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FISCAL IMPACT REPORT

SPONSOR: SJC DATE TYPED: 03/11/01 HB _____
 SHORT TITLE: Navajo Nation Right-of-Way Agreements SB 709/SJCS/aSFl #1
 ANALYST: Valdes

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			Indeterminate		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files
 State Highway and Transportation Department (SHTD)

SUMMARY

Synopsis of SFl #1 Amendment

This amendment adds the following provisions:

- c The original committee substitute requires the State Highway and Transportation and the Navajo Nation to engage a mediator if they fail to reach agreement on a right of way after one year of negotiations. This language is added to the sentence: “unless they agree otherwise.” This allows the parties to use an alternate form of dispute resolution.
- c Language was added to clarify that nothing in the right of way agreement would serve to diminish the jurisdiction of the Navajo Nation over the right of way except what is expressly granted to the State Highway and Transportation Department in the right of way agreement.

Synopsis of Original Bill

Senate Bill 709 specifies terms and conditions upon which the State Highway and Transportation Department (SHTD) shall accept right of way grants from the Interior Department Secretary pursuant to Navajo Nation approval. The bill also requires the state to enter into cooperative agreements with the Navajo Nation for law enforcement and emergency services required to ensure the health and safety of persons traveling on highway rights of way in the Navajo Nation. It also requires the state to negotiate shared jurisdictions with the Navajo Nation. The following provisions are specified regarding negotiations between the state and the Navajo Nation:

- Term of the right of way shall not be a perpetual agreement or a grant in fee simple. The term of the agreement cannot exceed the life of the highway.
- Terms and conditions for closing the public highway in the event of emergency, for public safety purposes or for religious, ceremonial or cultural purposes are to be negotiated.
- Authority of SHTD regarding assignment or grant of easements through the right of way.
- Time and matter of notice required between SHTD and the Navajo Nation regarding initiation of negotiations or construction by third parties within the right of way.
- Terms and conditions regarding consideration of right of way grant.
- The method of dispute resolution to be used between the state and Navajo Nation.
- The areas of shared jurisdiction.
- Any other rights or responsibilities the state or Navajo Nation believe should be appurtenant to a grant of right of way by the Navajo Nation to the state.

The bill also requires SHTD to negotiate right of way agreements with the Navajo Nation in good faith and in a timely manner. If the agreement cannot be completed within one year, the parties shall engage the services of mediators to help facilitate the process of reconciling issues in the dispute, at shared expense between the parties.

The bill contains an emergency clause.

Significant Issues

The Senate Judiciary Committee substitute was drafted to address State Highway and Transportation Department concerns with the original version of Senate Bill 709. The provision in the original bill to require the department to renegotiate all existing right of way agreements was deleted. The length of the agreement can be for the life of the road. The committee substitute is now acceptable to both SHTD and Navajo Nation administrators.

FISCAL IMPLICATIONS

No impact.

ADMINISTRATIVE IMPLICATIONS

The committee substitute would require SHTD to negotiate in good faith with the Navajo Nation for right of way agreements within a twelve month period. If agreement is not reached within that period the parties are required to engage a mediator to help facilitate resolution of the dispute.

MFV/njw:ar