

LEGISLATIVE SUMMARY SHEET

Tracking No. 0292-19

DATE: September 25, 2019

TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION, AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RDCD-97-18 TO ALLOW WAIVER OF 100% RIGHT-OF-WAY CONSIDERATION TO THE NONPROFIT ELECTRIC UTILITY COMPANIES PROVIDING SERVICE TO THE NAVAJO RESIDENTS ON NAVAJO TRUST LANDS ON THE EASTERN NAVAJO AGENCY

PURPOSE: The purpose of this legislation is to amend RDCD-97-18 such that non-profit electric utility companies that provide service to Navajo residents on Navajo Trust land in the Eastern Navajo Agency may be afforded a waiver of one hundred percent (100%) of the right-of-way consideration.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD:
Website Posting Time/Date: 6:12 pm 9-26-19
Posting End Date: 10-1-19
Eligible for Action: 10-2-19

PROPOSED STANDING COMMITTEE RESOLUTION
24th NAVAJO NATION COUNCIL -- First Year, 2019

INTRODUCED BY


(Prime Sponsor)

TRACKING NO. 0292-19

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; AMENDING RDCD-97-18
SUCH THAT NON-PROFIT ELECTRIC UTILITY COMPANIES THAT PROVIDE
SERVICE TO NAVAJO RESIDENTS ON NAVAJO TRUST LAND IN THE
EASTERN NAVAJO AGENCY MAY BE AFFORDED A WAIVER OF ONE
HUNDRED PERCENT (100%) OF THE RIGHT-OF-WAY CONSIDERATION

BE IT ENACTED:

SECTION ONE. AUTHORITY

Pursuant to 2 N.N.C. Section §501 (B)(2), The Resources and Development
Committee of the Navajo Nation Council has the authority to grant final approval for
all land withdrawals, non-mineral leases, permits, licenses, rights-of-way, surface
easements and bonding requirements on Navajo Nation lands and unrestricted (fee)
land. This authority shall include subleases, modifications, assignments, leasehold
encumbrances, transfers, renewals, and terminations.

SECTION TWO. FINDINGS

- A. The Resources and Development Committee through resolution RDCD-97-18 limited
the waiver of right-of-way consideration to fifty percent (50%) of assessed
consideration for utility companies. RDCD-97-18 is attached as **Exhibit A**.
- B. The non-profit electric utility companies that provide service to Navajo residents on

1 Navajo Trust land in the Eastern Navajo Agency may be provided one hundred
2 percent (100%) waiver of the right-of-way consideration because these companies are
3 serving the needs of Navajo residents. See the Eastern Navajo Land Commission
4 through resolution ENLCMY-02-19 attached as **Exhibit B**.

5
6 **SECTION THREE. APPROVAL**

7 The Resources and Development Committee of the Navajo Nation Council hereby
8 amends RDCD-97-18 SECTION THREE. APPROVAL as follows:

9
10 The Resources and Development Committee of the Navajo Nation Council hereby limits
11 the waiver of utility right-of-way consideration to up to fifty (50) percent of the total
12 consideration except instances of pre-existing contracts and agreements stating otherwise
13 and except regarding non-profit electric utility companies that provide service to Navajo
14 residents on Navajo Trust land in the Eastern Navajo Agency for which one hundred
15 percent (100%) of the right-of-way consideration may be waived.
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RD CD-97-18

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
23rd Navajo Nation Council --- Fourth Year, 2018

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING A
LIMIT OF THE WAIVER OF RIGHT-OF-WAY CONSIDERATION OF UP TO FIFTY
PERCENT (50%) OF THE ASSESSED CONSIDERATION

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. Pursuant to 2 N.N.C. § 501 (B) (2), the Resources and Development Committee of the Navajo Nation Council has authority to give final approval of all land withdrawals, non-mineral leases, permits, licenses, rights-of-way, surface easements and bonding requirements on Navajo Nation lands and unrestricted (fee) land. This authority shall include subleases, modifications, assignments, leasehold encumbrances, transfers include, renewals, and terminations.

SECTION TWO. FINDINGS

- A. The Resources and Development Committee receives many requests from utility companies seeking one hundred percent (100%) waivers of payment of right-of-way consideration.
- B. Right-of-way consideration fees generate substantial income for the Navajo Nation which is used to fund Navajo Nation programs for the Navajo People. With the anticipated closure of the Navajo Generating Station, the Navajo Nation will more urgently rely upon funds raised from right-of-way consideration. Because of the obligation to fund Navajo Nation programs, it is in the best interest of the Navajo Nation to limit the waiver of right-of-way consideration.
- C. The Code of Federal Regulations (CFR) § 169.110 (a) (1) (2) (3) provides that the Navajo Nation may negotiate its right-of-way compensation, not require valuation of the right-of-way and authorize that it "[h]as determined that accepting such agreed-upon compensation and waiving valuation is in its best interest".

- D. The Navajo Nation has agreement to waive consideration with the United States Bureau of Reclamation for the Navajo-Gallup Water Supply project. Limiting the waiver of consideration will not apply to these type of agreements between the Navajo Nation and the federal government.

SECTION THREE. APPROVAL

- A. The Resources and Development Committee of the Navajo Nation Council hereby limits the waiver of utility right-of-way consideration to up fifty (50) percent of the total consideration except instances of pre-existing contracts and agreements stating otherwise.

CERTIFICATION

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 23rd Navajo Nation Council at a duly called meeting at the Twin Arrows Navajo Casino & Resort, Leupp, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, and 0 opposed, on this 17th day of December 2018.



Alton Joe Shepherd, Chairperson
Resources and Development Committee
of the 23rd Navajo Nation Council

Motion: Honorable Leonard Pete
Second: Honorable Davis Filfred

Chairperson Alton Joe Shepherd not voting.

ENLCMY-02-19

**RESOLUTION OF THE
EASTERN NAVAJO LAND COMMISSION**

Recommending to the Resources and Development Committee of the Navajo Nation Council
that It Amends Its Resolution No. RDCD-97-18 to Waive All Consideration in Connection
with Its Approvals of Rights-of-Way on Navajo Nation Trust Lands for Non-Profit
Electric Utilities Companies Providing Service to Navajo Residents in the
Eastern Navajo Agency

WHEREAS:

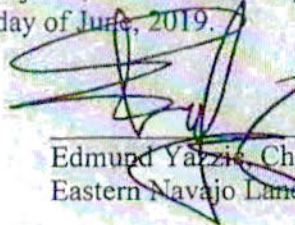
1. The Eastern Navajo Land Commission (the "Commission") is established as a Commission of the Navajo Nation Council charged with, among other things, coordinating Navajo efforts with respect to Eastern Navajo Agency land-related matters in dealings with private interests in legislative settings, 2 N.N.C. § 862; and
2. It is well known that many of the Navajo residents in the Eastern Navajo Agency lack electrical service, to the detriment of their health and safety and the educational achievements of the affected Navajo children; and
3. The Navajo Tribal Utility Authority ("NTUA") was established as a wholly-owned Navajo Nation enterprise to provide electrical service to Navajo tribal members, but NTUA does not provide electrical service within the Eastern Navajo Agency; and
4. Electrical service to the Eastern Navajo Agency is provided by five companies, primarily by the Continental Divide Electrical Cooperative, Inc. ("CDEC") or the Jemez Mountain Electrical Cooperative, Inc. ("Jemez"), and secondarily by Gallup Joint Utilities, Farmington Electric Utility System, and Socorro Electric Cooperative; and
5. Recently, both CDEC and Jemez received approval from the Resources and Development Committee of the Navajo Nation Council, which Committee has authority to approve grants of rights-of-way, by Resolutions Nos. RDCAP-008-19 (Apr. 24, 2019) and RDCAP-007-19 (Apr. 24, 2019), both of which resolutions approved the grant of twenty-year rights-of-way, waived the requirement for the utilities to post a bond or other security, and waived 50% of the monetary consideration that would normally be required; and
6. CDEC and Jemez are both non-profit electrical cooperatives that must recoup their costs, including right-of-way costs, from their ratepayers; thus, the Navajo ratepayers in most of the Eastern Navajo Agency bear right-of-way costs that are not imposed on Navajo ratepayers by NTUA, which is fully exempted by Navajo law from such right-of-way consideration; and
7. The Commission has considered all aspects of this matter and has concluded that it should respectfully recommend to the Resources and Development Committee that the Committee amend its Resolution No. RDCD-97-18 (Dec. 17, 2018) to permit a waiver of 100% of the right-of-way consideration for easements over Navajo Nation land sought by non-profit utility companies to serve Navajo residents in the Eastern Navajo Agency.

NOW, THEREFORE, BE IT RESOLVED THAT:

The Eastern Navajo Agency Council hereby respectfully recommends to the Resources and Development Committee that it amends its Resolution No. RDCD-97-18 to waive all consideration in connection with its approvals of rights-of-way on Navajo Nation Trust lands for non-profit electric utilities companies providing service to Navajo residents in the Eastern Navajo Agency.

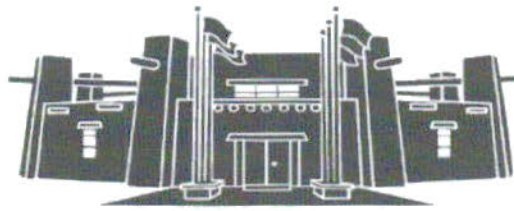
CERTIFICATION

I hereby certify that the foregoing resolution was considered by the Eastern Navajo Land Commission at a duly called meeting at Tohajiilee, NM at which a quorum was present by vote of 3 in favor and 0 opposed, this 14th day of June, 2019.

A handwritten signature in black ink, appearing to read 'Edmund Yazzie', is written over a horizontal line.

Edmund Yazzie, Chairperson
Eastern Navajo Land Commission

Motion: Mark Freeland
Second: Jamie Henio



MEMORANDUM

TO: Honorable Mark Freeland
Becenti, Lake Valley, Nahodishgish, Standing Rock, Whiterock, Huerfano,
Nageezi, Crownpoint Chapters

FROM: Mariana Kahn
Mariana Kahn, Attorney
Office of Legislative Counsel

DATE: September 25, 2019

SUBJECT: PROPOSED STANDING COMMITTEE RESOLUTION, AN ACTION RELATING TO
RESOURCES AND DEVELOPMENT; AMENDING RDCD-97-18 TO ALLOW
WAIVER OF 100% RIGHT-OF-WAY CONSIDERATION TO THE NONPROFIT
ELECTRIC UTILITY COMPANIES PROVIDING SERVICE TO THE NAVAJO
RESIDENTS ON NAVAJO TRUST LANDS ON THE EASTERN NAVAJO AGENCY

I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting.

Please ensure that his particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: 0292-19

SPONSOR: Mark A Freeland

TITLE: An Action Relating To Resources And Development; Amending RDCD-97-18 Such That Non-profit Electric Utility Companies That Provide Service To Navajo Residents On Navajo Trust Land In The Eastern Navajo Agency May Be Afforded A Waiver Of One Hundred percent (100%) of The Right-Of-Way Consideration

Date posted: September 26, 2019 at 6:12 PM

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

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