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FISCAL IMPACT REPORT

SPONSOR: Tsosie DATE TYPED: 2/25/03 HB _____

SHORT TITLE: Navajo Nation Highway Grant Easements SB 798

ANALYST: Reynolds-Forte

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			Indeterminate See Fiscal Implications	Recurring	State Road Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
State Highway and Transportation Department

SUMMARY

Synopsis of Bill

SB 798 requires the State Highway and Transportation Department to grant easements for extending water or utility lines, or other beneficial uses that do not conflict with use of land as a highway, upon request by the Navajo Nation.

Significant Issues

SB 798 requires, rather than simply authorizes, the State Highway and Transportation Department to grant the easement rather than a use permit.

Use of the wording “shall grant an easement” may be construed as imposing a mandatory duty to issue such permits, exempting only the Navajo Nation from the current permitting process. This reduces the Department’s ability to impose limitations on such permits to further the safety of utility uses on Department right-of-way.

FISCAL IMPLICATIONS

SB 798 could result in an increase in costs for the re-construction of highways. Current practice is for the Department to issue permits for utility uses. SB 798 requires the granting of an easement. On occasion, highway re-construction can require the Department to require utility users to re-locate their utility lines. If the Department were to issue an easement, as SB 798 requires, extinguishments of an easement would require compensation since an easement is a compensable interest in real property. The permits issued by the Department for utility use are not compensable. Consequently, issuing easements rather than the permits would result in increased costs for the re-construction of highways having such easements.

ADMINISTRATIVE IMPLICATIONS

SB 798 would remove current discretion of the State Highway and Transportation Department grant entities permission to use right-of-way for utility purposes.

OTHER SUBSTANTIVE ISSUES

Current law includes statutory language setting forth the policy of the State Highway and Transportation Department (Department) toward granting utilities permission to use Department right-of-way, expressing broadly framed support for such use, providing, "Public highways are intended principally for public travel and transportation; but they are also intended for proper utility uses in serving the public, as authorized pursuant to the laws of this state, and such utility uses are for the benefit of the public served. Without making use of public ways utility lines could not reach or economically service the adjacent public, particularly in urban areas." NMSA 1978 sec.67-8-15B (1959).

Pursuant to this policy, the Department has established a system to grant permits to entities which choose to use Department right-of-way for utility purposes. Current regulations provide a system for application for such permits. The Department has issued such permits to entities of the Navajo Nation government such as the Navajo Tribal Utility Authority and the Navajo Housing Authority. Therefore, the need for statutory authority to allow use of Department right-of-way by tribal entities for utility purposes is not apparent.

SB 798 does not depart from current practice except in its use of the word "shall" to describe the Department's obligation to grant a utility use permit. Current practice allows the issuance of a permit to be at the discretion of the Department to accommodate safety and compatibility concerns.

PRF/njw