

AN ACT

RELATING TO HIGHWAYS; PROVIDING TERMS AND CONDITIONS FOR CERTAIN RIGHT-OF-WAY AGREEMENTS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 11 NMSA 1978 is enacted to read:

"LEGISLATIVE FINDINGS. -- The legislature finds that:

A. due to the United States supreme court decision in *Strate v. A-1 Contractors*, there is uncertainty in the allocation of jurisdiction between the state and a tribe within rights of way granted to the state by a tribe, and all future road projects through tribal land are put in jeopardy of being postponed, delayed or left unresolved;

B. New Mexico has entered into agreements with the Navajo Nation through the state police and various counties to resolve issues of jurisdiction in law enforcement as well as many other areas;

C. New Mexico has traditionally negotiated right-of-way agreements for either a definite term or for the life of the highway;

D. the state land office has negotiated regarding easements permitted through state land, and the terms of those agreements are either for the life of the highway or for a fixed term that is not permitted to exceed thirty-five years;

E. the state highway and transportation department has negotiated and agreed to pay Indian nations for easements through Indian lands in the past;

F. New Mexico wants to foster and develop improved government-to-government relations between the Navajo Nation and the state; and

G. New Mexico desires to resolve the uncertainty presented by the *Strate* decision regarding jurisdiction within grants of rights of way by the Navajo Nation and to reconcile questions regarding the granting of rights of way through negotiation with the Navajo Nation. "

Section 2. A new section of Chapter 11 NMSA 1978 is enacted to read:

"AGREEMENTS RELATING TO JURISDICTION ON HIGHWAYS AND RIGHTS OF WAY THROUGH NAVAJO NATION TRIBAL LAND. --The agencies of the state that are involved in constructing highways, providing law enforcement or providing emergency services along the state highways that cross over Navajo Nation land shall initiate negotiations with the Navajo Nation for the purpose of entering into cooperative agreements, if none exist, to provide for:

A. the coordination of law enforcement and emergency services required to ensure the health and safety of travelers on the state highways on rights of way granted to the state highway and transportation department by the Navajo Nation; and

B. the areas of shared jurisdiction between the various state agencies and the Navajo Nation, the areas of jurisdiction that are the sole responsibility of the state agency and the areas of jurisdiction that are the sole responsibility of the Navajo Nation regarding the provision of services in the rights of way granted to the state highway and transportation department by the Navajo Nation. "

Section 3. A new Section 67-3-71.1 NMSA 1978 is enacted to read:

"67-3-71.1. RIGHT-OF-WAY AGREEMENTS--NAVAJO NATION--TERMS.--

A. When acquiring a right of way for a public highway from the Navajo Nation, the secretary or his designee shall negotiate the terms and conditions of the grant with a person designated by the Navajo Nation. New Mexico and the Navajo Nation, as sovereign governments, are primarily interested in cooperating with one another and coordinating services and functions so that resources of the state and the Navajo Nation are used efficiently and to the greatest benefit of all persons traveling on the state and federal highways crossing the Navajo Nation. Right-of-way agreements shall be developed from negotiations between the Navajo Nation and the state, and shall include the following:

(1) the term of a right of way, which in no case shall be construed to be a perpetual easement or a

grant in fee simple but may be a term that does not extend beyond the life of the state highway, as long as the right of way is used by the state highway and transportation department for constructing, maintaining, rehabilitating, operating or administering the public highway;

(2) the terms and conditions for closing the public highway in the event of emergency, for public safety purposes or for religious, ceremonial or cultural purposes;

(3) the authority of the state highway and transportation department regarding the assignment or grant of easements through the right of way;

(4) the manner and timeliness required of notice from either the state highway and transportation department or the Navajo Nation regarding the initiation of negotiations to grant an easement to third parties or the initiation of construction, expansion or removal of facilities by or belonging to third parties within the easement;

(5) the terms and conditions regarding consideration for the right-of-way grant;

(6) the method of dispute resolution that will be used to resolve disputes arising between the state and the Navajo Nation regarding the agreement or issues arising from the implementation of the agreement;

(7) the areas of shared jurisdiction

between the state highway and transportation department and the Navajo Nation, and the areas of jurisdiction that will be the sole responsibility of the state highway and transportation department or the Navajo Nation; and

(8) any other rights or responsibilities that the state or the Navajo Nation believe should be appurtenant to a grant of right of way by the Navajo Nation to the state highway and transportation department.

B. The state highway and transportation department shall negotiate the terms of the right-of-way agreement in good faith with the Navajo Nation and shall make all attempts to conclude the negotiations in a timely manner. If the state highway and transportation department and the Navajo Nation are unable to complete a right-of-way agreement within twelve months from the date of first contact between the state highway and transportation department and the Navajo Nation requesting negotiations regarding a right-of-way agreement as evidenced by the date of a letter sent by either the Navajo Nation or the state highway and transportation department requesting negotiation regarding a particular right of way, the parties, unless they agree otherwise, shall engage mediators to help facilitate the process of reconciling the issues in dispute, at the shared expense of both parties.

C. Nothing in a grant of right of way shall operate to diminish or be construed to operate to diminish

the jurisdiction of the Navajo Nation over the right of way except as expressly provided in the grant of right of way to the department.

D. Nothing in a right-of-way agreement between the state highway and transportation department and the Navajo Nation shall be construed to be a waiver of the sovereign immunity of either the state or the Navajo Nation. "

Section 4. EMERGENCY. --It is necessary for the public peace, health and safety that this act take effect immediately. \_\_\_\_\_