

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0223-21_

SPONSOR: Daniel E. Tso

TITLE: An Action Relating to Resources and Development and Naabik'iyáti' Committees; Requesting and Supporting the Introduction of Federal Legislation or Amendments to Federal Regulations to Expedite the Improvement of Historic Established Federal Roads and Other Infrastructure for the Benefit of Navajo Communities

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0223-21

DATE: October 27, 2021

TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT AND NAABIK'ÍYÁTI' COMMITTEES; REQUESTING AND SUPPORTING THE INTRODUCTION OF FEDERAL LEGISLATION OR AMENDMENTS TO FEDERAL REGULATIONS TO EXPEDITE THE IMPROVEMENT OF HISTORIC ESTABLISHED FEDERAL ROADS AND OTHER INFRASTRUCTURE FOR THE BENEFIT OF NAVAJO COMMUNITIES

PURPOSE: The purpose of the resolution is to request and support the introduction of federal legislation or amendments to federal regulations that would classify roads established in Navajo Indian Country prior to 1970 as "historically established federal roads." That designation as "historically established federal roads" will allow for these "historically established federal roads" to be improved, widened, and/or paved without requiring additional studies or clearances upon notice to the Navajo Nation and that utility corridors along these "historically established federal roads" providing for infrastructure such as electric utility lines, fiber optics connections and wireless communications facilities will be installed or erected without requiring additional studies or clearances upon notice to the Navajo Nation.

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: Verdman
Website Posting Time/Date:
Posting End Date: November 6, 2021
Eligible for Action: November 7, 2021

Resources & Development Committee
Thence
Naabik'iyáti' Committee

1 **PROPOSED STANDING COMMITTEE RESOLUTION**
2 **24th NAVAJO NATION COUNCIL – Third Year, 2021**

3
4 **INTRODUCED BY**

5 *Daniel E. Irv*
6
7 **(Prime Sponsor)**

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9 **TRACKING NO. 0223-21**

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11 **AN ACTION**
12 **RELATING TO RESOURCES AND DEVELOPMENT AND NAABIK'ÍYÁTI'**
13 **COMMITTEES; REQUESTING AND SUPPORTING THE INTRODUCTION OF**
14 **FEDERAL LEGISLATION OR AMENDMENTS TO FEDERAL REGULATIONS**
15 **TO EXPEDITE THE IMPROVEMENT OF HISTORIC ESTABLISHED FEDERAL**
16 **ROADS AND OTHER INFRASTRUCTURE FOR THE BENEFIT OF NAVAJO**
17 **COMMUNITIES**

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19 **BE IT RESOLVED:**

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21 **SECTION ONE. AUTHORITY**

- 22 A. The Naabik'iyáti' Committee is established as a standing committee of Navajo Nation
23 Council with authority to review and continually monitor the programs and activities
24 of federal and state departments and to assist development of such programs designed
25 to serve the Navajo People and the Navajo Nation through intergovernmental
26 relationships between the Navajo Nation and such departments. 2 N.N.C. §§ 164
27 (A)(9), 700 (A), 701 (A)(7).
- 28 B. The Resources and Development Committee was established as a standing committee
29 of the Navajo Nation Council with oversight over water, land, grazing, environmental
30 protection, cultural resources, agriculture, livestock, wildlife, roads and

1 transportation, air transportation, communications and utilities, information
2 technology, chapter activities, economic and community development, commerce and
3 trade, gaming, rights-of-way, minerals, public utilities, telecommunication, and
4 housing. 2 N.N.C. § 500 (A) (C).

6 SECTION TWO. FINDINGS

- 7 A. The Eastern Navajo Land Commission (Commission) is established as a Commission
8 of the Navajo Nation within the Legislative Branch. 2 N.N.C. § 861.
- 9 B. The Commission is charged with assisting in resolving land title issues, aiding Navajo
10 residents with respect to land-related matters, and coordinating Navajo Nation efforts
11 with respect to Eastern Navajo Agency land-related matters with other governmental
12 authorities and private interests. 2 N.N.C. § 861.
- 13 C. The Eastern Navajo Land Commission has considered and passed Resolution
14 ENLCAP-03-21 requesting that the Navajo Nation Council formally resolve to support
15 federal legislation or federal regulatory changes to the current federal regulatory
16 process for approval of rights-of-way and utility corridors on Navajo Nation lands.
17 Resolution ENLCAP-03-21 is attached as **Exhibit A**.
- 18 D. Communities within the Eastern Navajo Agency lack basic infrastructure and
19 governmental services.
- 20 E. The current infrastructure situation in the Eastern Navajo Agency is the result of many
21 factors including lack of funding for roads and other infrastructure, and the advent of
22 federal laws and regulations that hinder infrastructure development.
- 23 F. In the early days of the Navajo Nation, Navajos used footpaths, horse trails, and wagon
24 tracks to travel, and without authorization and permission from any governmental
25 entities or other residents; many decades later the Indian Service (now the Bureau of
26 Indian Affairs or "BIA") assisted transportation infrastructure by "dropping blades" that
27 established community roads for access to schools, to windmills and to dams.
- 28 G. As time passed, those roads were improved to serve as school bus routes, mail delivery
29 routes, and commercial routes for trading posts.
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- 1 H. Navajo community residents and landowners accepted this federal government activity
2 and the minor disturbances that it entailed as a necessary and proper exercise of federal
3 governmental authority for the benefit of all community members, a form of eminent
4 domain that no one required to be formally exercised and that did not require consent
5 of Chapters, customary land users, or owners of allotment land held in trust by the
6 United States.
- 7 I. After many decades, Congress then enacted federal statutes that governed rights-of-
8 way and environmental laws (including the National Environmental Policy Act, the
9 National Historic Preservation Act, the Endangered Species Act), and the U.S.
10 President supplemented Congressional statutes with regulations. These regulations
11 affected rights-of-way for new or improved roads, utilities, and other infrastructure that
12 became costlier and more time-consuming within Indian country, further exacerbating
13 the infrastructure deficit for communities and residents of the Eastern Navajo Agency.
- 14 J. For many decades, the federal government did not obtain rights-of-way or easements
15 for many historic federal roads throughout Eastern Navajo Agency. The historic lack
16 of any approved road right-of-way or easements is problematic because current federal
17 laws and regulations must be complied with to repair or maintain existing historic
18 federal roads. It is very cumbersome, burdensome, problematic and almost impossible
19 to obtain rights-of-way or easements on historic federal roads throughout Eastern
20 Navajo Agency.
- 21 K. The infrastructure deficit in the Eastern Navajo Agency and other parts of the Navajo
22 Nation is thus a product of history and the current federal legal environment, and,
23 although history cannot be changed, the Navajo Nation seeks to employ innovative
24 means to bring basic infrastructure to Navajo Chapters, Navajo communities, and all
25 residents throughout the Navajo Nation by re-examining the relevant federal legal
26 requirements.
- 27 L. Upon careful deliberation, the Navajo Nation has determined that, to facilitate the
28 improvement and development of infrastructure in the Eastern Navajo Agency, the
29 roads established long ago by the federal government, including the BIA, should be
30 denominated "historically established federal roads" (HEFR) and that any "historically

1 established federal roads" should be able to be improved, widened, and/or paved, and
2 that other infrastructure (such as electric utility lines, fiber optics connections, and
3 wireless communications facilities) should be able to be installed or erected within or
4 within a reasonable distance (i.e. utility corridor) from such "historically established
5 federal roads" without requiring additional studies or clearances upon proper notice to
6 the Resources and Development Committee (Committee), and failure of the
7 Committee to file a formal objection promptly; provided, however, that upon
8 completion of such improvements, the entity constructing or maintaining the road or
9 utility shall promptly provide the Navajo Nation and/or the BIA, as appropriate, with
10 as-built schematics or other documentation as may be required by either to show the
11 nature and location of such improvements for recording and other purposes.

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13 **SECTION THREE. REQUEST FOR FEDERAL LEGISLATION OR**
14 **AMENDMENTS TO FEDERAL REGULATIONS**

15 The Navajo Nation Council hereby requests and supports the introduction of federal
16 legislation or amendments to federal regulations that would classify roads established in
17 Navajo Indian Country prior to 1970 as "historically established federal roads." That
18 designation as "historically established federal roads" will allow for these "historically
19 established federal roads" to be improved, widened, and/or paved without requiring
20 additional studies or clearances upon notice to the Navajo Nation. That utility corridors
21 along these "historically established federal roads" providing for infrastructure such as
22 electric utility lines, fiber optics connections and wireless communications facilities will
23 be installed or erected without requiring additional studies or clearances upon notice to
24 the Navajo Nation. That notice to the Navajo Nation regarding these "historically
25 established federal roads" improvements would be provided to the Navajo Nation
26 Council's Resources and Development Committee, or standing committee with oversight
27 for roads, providing for the Resources and Development Committee to file a formal
28 objection within thirty (30) days of receipt of such notice in the event the Committee
29 determines an objection is necessary. That upon completion of such improvements, the
30 entity making them shall be required to promptly provide the Navajo Land Department

1 and/or the U.S. Department of the Interior, Bureau of Indian Affairs, as appropriate, with
2 as-built schematics or other documentation as may be required to show the nature and
3 location of such improvements for recording and other purposes.
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5 **SECTION FOUR. AUTHORIZATION FOR NAVAJO NATION PRESIDENT**
6 **AND SPEAKER OF THE NAVAJO NATION COUNCIL TO ADVOCATE ON**
7 **THE NATION'S BEHALF**

8 The Navajo Nation hereby authorizes the President of the Navajo Nation, the Speaker
9 of the Navajo Nation Council, and their designees, to advocate and communicate with
10 the United States Congress and its federal agencies the Navajo Nation's request and
11 support of the introduction of federal legislation or amendments to federal regulations
12 to expedite the improvement of historic established federal roads and other
13 infrastructure for the benefit of Navajo communities.
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