

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0057-24_

SPONSOR: Casey Allen Johnson

TITLE: An Action Relating to the Resources and Development Committee; Approving Amendments to RDCS-21-11 “Approving the Delegation of Authority to the Department Manager of the Navajo Land Department to Grant Rights-of-Way on Navajo Nation Trust Lands and Fee Lands; Approving the Departmental Administrative Rules and Regulations; and, the Terms and Conditions for the Delegation of Authority”

Date posted: March 14, 2024 at 6:41PM

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.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

LEGISLATIVE SUMMARY SHEET

Tracking No. 0057-24

DATE: March 14, 2024

TITLE OF RESOLUTION: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING AMENDMENTS TO RDCS-21-22 “APPROVING THE DELEGATION OF AUTHORITY TO THE DEPARTMENT MANAGER OF THE NAVAJO LAND DEPARTMENT TO GRANT RIGHTS-OF-WAY ON NAVAJO NATION TRUST LANDS AND FEE LANDS; APPROVING THE DEPARTMENTAL ADMINISTRATIVE RULES AND REGULATIONS; AND, THE TERMS AND CONDITIONS FOR THE DELEGATION OF AUTHORITY”

PURPOSE: The purpose of this legislation is to approve amendments to RDCS-21-22. The amendments include the following: (1) allowing the Department Manager of the Navajo Land Department to waive consideration for “public purpose” rights-of-way; (2) to give the Department Manager of the Navajo Land Department the authority to waive valuation under 25 C.F.R. § 169.110 (a); (3) providing a definition of “commercial” right-of-way; (4) clarifying that the Resources and Development Committee approves any right-of-way containing both a “public purpose” and non-public purpose; and (5) deleting the reference to “service line drops”.

Final Authority: Resources and Development Committee

Vote Required: Simple Majority

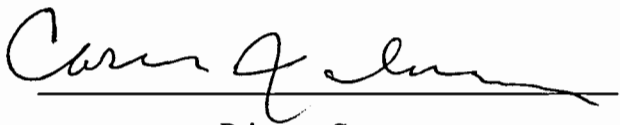
This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each Council Delegate to review the proposed resolution in detail.

OLC No. 23-568-1

5-DAY BILL HOLD PERIOD JSD
Website Posting Time/Date _____
Posting End Date: 03-19-24
Eligible for Action: 03-20-24

1 PROPOSED STANDING COMMITTEE RESOLUTION
2 25th NAVAJO NATION COUNCIL— Second Year, 2024

3 INTRODUCED BY

4 
5

6 Primary Sponsor

7
8 TRACKING NO. 0057-24

9
10 AN ACTION

11 RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE;
12 APPROVING AMENDMENTS TO RDCS-21-22 “APPROVING THE
13 DELEGATION OF AUTHORITY TO THE DEPARTMENT MANAGER OF THE
14 NAVAJO LAND DEPARTMENT TO GRANT RIGHTS-OF-WAY ON NAVAJO
15 NATION TRUST LANDS AND FEE LANDS; APPROVING THE
16 DEPARTMENTAL ADMINISTRATIVE RULES AND REGULATIONS; AND,
17 THE TERMS AND CONDITIONS FOR THE DELEGATION OF AUTHORITY”

18
19 **BE IT RESOLVED:**

20 **SECTION ONE. AUTHORITY**

- 21 A. The Resources and Development Committee of the Navajo Nation Council has final
22 approval for all land withdrawals, non-mineral leases, permits, licenses, rights-of-
23 way, surface easements and bonding requirements on Navajo Nation lands and
24 unrestricted (fee) lands. This authority shall include subleases, modifications,
25 assignments, leasehold encumbrances, transfers, renewals and terminations. 2
26 N.N.C. § 501 (B)(2)(a).
- 27 B. The Resources and Development Committee can delegate its final approval
28 authority for the transactions listed in 2 N.N.C. § 501 (B)(2)(a) to appropriate
29 divisions, governance-certified Chapters, Townships or appropriate entities for
30 efficiency and streamlining of government processes provided that the Committee

1 first grants final approval of rules and regulations governing such delegations and
2 rescission of such delegations. 2 N.N.C. § 501 (B)(3).

3
4 **SECTION TWO. FINDINGS**

5 A. Pursuant to RDCS-21-22, the Resources and Development Committee delegated to
6 the Department Manager of the Navajo Land Department the authority to approve
7 rights-of-way for proposed overhead and underground electric, water, sewer,
8 natural gas distribution lines, transmission lines, substation tracts, fiber optic cable
9 and roads and service line drops for Navajo residents on fee and trust lands,
10 including the Eastern Navajo Agency. RDCS-21-22 is herein attached as **Exhibit**
11 **1**.

12 B. With the approval of RDCS-21-22, the Resources and Development Committee
13 also approved the Departmental Administrative Rules and Regulations for the
14 Delegation of Authority to the Department Manager of the Navajo Land
15 Department to Approve Rights-of-Way for Proposed Overhead and Underground
16 Electric, Water, Sewer, Natural Gas Distribution Lines, Transmission Lines,
17 Substation Tracts, Fiber Optic Cable and Roads and Service Line Drops for Navajo
18 Residents on Fee and Trust Lands Including the Eastern Navajo Agency Residents
19 (herein referred to as the “Departmental Administrative Rules and Regulations”).

20 C. The purpose of the delegation to the Department Manager of the Navajo Land
21 Department was to shorten the amount of time it takes to approve rights-of-way
22 and, thereby, provide for expeditious development of much needed infrastructure
23 on the Navajo Nation.

24 D. In certain instances, the right-of-way applicant is seeking a waiver of consideration,
25 thus delaying the issuance of the right-of-way, which in turn, delays the
26 development of much needed infrastructure for the Navajo people.

27 E. The Resources and Development Committee hereby amends RDCS-21-22,
28 specifically, to amend the Departmental Administrative Rules and Regulations, to
29 clarify that the ability to waive right-of-way consideration shall be delegated to the
30

1 Department Manager of the Navajo Land Department for certain rights-of-way, as
2 discussed below.

3 F. This delegation to the Department Manager of the Navajo Land Department to
4 waive right-of-way consideration will only apply to any right-of-way issued
5 pursuant to RDCS-21-22 for a “public purpose”, which is defined to mean any
6 residence, governmental building, including chapter houses, healthcare facility,
7 school, including higher education entities, daycare, Head Start building, senior
8 center, library, or public safety building.”

9 G. The Departmental Administrative Rules and Regulations will also be amended to
10 delegate to the Department Manager of the Navajo Land Department the authority
11 to waive valuation on behalf of the Navajo Nation pursuant to 25 C.F.R. § 169.110
12 (a) for any right-of-way issued in accordance with this amended delegation. The
13 Resources and Development Committee shall retain the authority to grant any other
14 waiver requested under 25 C.F.R. Part 169.

15 H. 25 C.F.R. § 169.110 (a) addresses how much monetary compensation must be paid
16 for a right-of-way over and across tribal land. It states: (a) A right-of-way over or
17 across tribal land may allow for any payment amount negotiated by the tribe, and
18 we will defer to the tribe and not require valuation if the tribe submits a tribal
19 authorization expressly stating that it: (1) Has agreed upon compensation
20 satisfactory to the tribe; (2) Waives valuation; and (3) Has determined that
21 accepting such agreed-upon compensation and waiving valuation is in its best
22 interest.

23 I. Other major amendments to the Departmental Administrative Rules and
24 Regulations include the following:

- 25 1. A definition of “commercial” rights-of-way has been created.
26 “Commercial” means a right-of-way for which its use/purpose, either in
27 whole or in part, is commercial/for profit in nature, regardless of whether or
28 not the right-of-way applicant is commercial/for profit in nature, but does
29 not include any uses/purposes defined under “public purpose”.
30

1 2. If any right-of-way application includes both a “public purpose” and non-
2 public purpose component (e.g. a commercial component), the right-of-way
3 must be approved by the Resources and Development Committee.

4 3. References to “service line drops” were deleted because the Navajo Nation
5 now issues “service line agreements”.

6 J. The Resources and Development Committee finds it is in the best interest of the
7 Navajo Nation to approve the amendments to the Departmental Administrative
8 Rules and Regulations herein attached as **Exhibit 2**.

9 K. Executive Official Review Document No. 022108 is attached as **Exhibit 3**.

10
11 **SECTION THREE. APPROVAL**

12 A. The Resources and Development Committee hereby approves the amendments to
13 the Departmental Administrative Rules and Regulations herein attached as **Exhibit**
14 **2**.