

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0060-24_

SPONSOR: Otto Tso

TITLE: An Action Relating to the Resources and Development Committee; Approving a Waiver of Consideration for the Navajo Tribal Utility Authority (“NTUA”) for Certain Tribal Authorization Accesses and Telecommunication Tower Site Leases; and Amending Certain Tribal Authorization Accesses and Telecommunication Tower Site Leases Granted Since June 3, 2020 to Waive Consideration, Including any Consideration Assessed But Not Yet Paid by NTUA to the Navajo Nation

Date posted: March 14, 2024 at 6:52PM

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0060-24

DATE: March 14, 2024

TITLE OF RESOLUTION: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING A WAIVER OF CONSIDERATION FOR THE NAVAJO TRIBAL UTILITY AUTHORITY (“NTUA”) FOR CERTAIN TRIBAL AUTHORIZATION ACCESSES AND TELECOMMUNICATION TOWER SITE LEASES; AND AMENDING CERTAIN TRIBAL AUTHORIZATION ACCESSES AND TELECOMMUNICATION TOWER SITE LEASES GRANTED SINCE JUNE 3, 2020 TO WAIVE CONSIDERATION, INCLUDING ANY CONSIDERATION ASSESSED BUT NOT YET PAID BY NTUA TO THE NAVAJO NATION

PURPOSE: The purpose of this legislation is as follows: (1) provide a waiver of consideration to the Navajo Tribal Utility Authority (“NTUA”) for “public purposes” and “commercial operations” Tribal Authorization Accesses (“TAAs”); (2) provide a waiver of consideration to NTUA for telecommunication tower site leases, including those involving commercial co-locations; and (3) to amend certain TAAs and telecommunication tower site leases granted to NTUA since June 3, 2020 to waive consideration, including any consideration that has been assessed, but not yet paid by NTUA to the Navajo Nation.

Final Authority: Resources and Development Committee

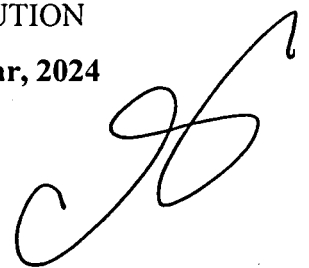
Vote Required: Simple Majority

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. 24-099-1

5-DAY BILL HOLD PERIOD
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. 0060-24

9
10 AN ACTION

11 RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE;
12 APPROVING A WAIVER OF CONSIDERATION FOR THE NAVAJO TRIBAL
13 UTILITY AUTHORITY (“NTUA”) FOR CERTAIN TRIBAL AUTHORIZATION
14 ACCESSES AND TELECOMMUNICATION TOWER SITE LEASES; AND
15 AMENDING CERTAIN TRIBAL AUTHORIZATION ACCESSES AND
16 TELECOMMUNICATION TOWER SITE LEASES GRANTED SINCE JUNE 3,
17 2020 TO WAIVE CONSIDERATION, INCLUDING ANY CONSIDERATION
18 ASSESSED BUT NOT YET PAID BY NTUA TO THE NAVAJO NATION

19
20 **BE IT RESOLVED:**

21 **SECTION ONE. AUTHORITY**

22 A. The Resources and Development Committee of the Navajo Nation Council has final
23 approval for all land withdrawals, non-mineral leases, permits, licenses, rights-of-way,
24 surface easements and bonding requirements on Navajo Nation lands and unrestricted
25 (fee) lands. This authority shall include subleases, modifications, assignments,
26 leasehold encumbrances, transfers, renewals and terminations. 2 N.N.C. §
27 501(B)(2)(a).

28 **SECTION TWO. FINDINGS**

29 A. The Code of Federal Regulations, Title 25, Part 169. Rights-of-way over Indian Land
30 Subpart A. Purpose, Definitions, General Provisions, 25 CFR § 169.4 (b)(3)(iii) states

1 “You do not need a right-of-way if you are... (iii) An independent legal entity wholly
2 owned and operated by the tribe that owns 100 percent of the trust or restricted interests
3 in the land.” 25 CFR § 169.4 (b)(3)(iii) further states: “but the following conditions
4 apply . . . The tribal governing body must pass a tribal authorization authorizing access
5 without BIA approval and including a legal description, and you must submit both
6 documents to BIA for our records.”

7 B. The Navajo Tribal Utility Authority (“NTUA”) is an enterprise of the Navajo Nation
8 and provides overhead and underground electricity, water, wastewater, natural gas,
9 telecommunication, and photovoltaic services to the Navajo Nation. *See* 21 N.N.C. § 5
10 (A)(1-6).

11 C. Pursuant to RCD-104-10, the Resources Committee of the Navajo Nation Council
12 delegated the authority to the Navajo Land Department to approve NTUA rights-of-
13 way for overhead and underground electric, water, sewer, natural gas distribution lines,
14 service taps, transmission lines, substation tracts, office tracts, well/storage
15 tanks/watering point tracts, communication tracts, and fiber optic cable enabling
16 Navajo Nation residents to obtain these much-needed utility services. No consideration
17 was assessed for these rights-of-way. However, the Resources Committee retained
18 approval authority if any portion of the right-of-way was used for commercial
19 operations. Fees would be assessed for that portion of the right-of-way and would be
20 due to the Navajo Nation. RDC-104-10 is herein attached as **Exhibit 1** (exhibits
21 omitted).

22 D. Pursuant to RDCS-97-17, the Resources and Development Committee of the Navajo
23 Nation Council amended RCD-104-10 to waive consideration for any portion of a
24 right-of-way used for commercial operations until such time the Committee deemed it
25 was not in the best interests of the Navajo Nation to waive the consideration. RDCS-
26 97-17 is herein attached as **Exhibit 2** (with exhibits omitted).

27 E. Pursuant to RDCJN-17-20, the Resources and Development Committee approved the
28 Tribal Authorization Access without Bureau of Indian Affairs Approval for
29 Independent Legal Entities Wholly Owned and Operated by the Navajo Nation,
30 Approved the delegation of authority to the Department Manager of the Navajo Land

1 Department to grant tribal access for rights-of-way on the Navajo Nation for
2 independent legal entities wholly owned by the Navajo Nation, approved the
3 departmental administrative rules and regulations and the terms and conditions for the
4 delegation of authority and rescinded RCD-104-10, RDCS-97-17, and other prior
5 inconsistent resolutions. RDCJN-17-20 is herein attached as **Exhibit 3**.

6 F. Specifically, RDCJN-17-20 provides a Delegation of Authority to the Department
7 Manager of the Navajo Land Department to grant Tribal Authorization Access for the
8 proposed overhead and underground electric, water, sewer, natural gas distribution
9 lines, transmission lines, substation tracts, fiber optic cable and roads. However, the
10 Resources and Development Committee retains the authority to approve all commercial
11 Tribal Authorization Accesses.

12 G. The Navajo Land Department has been assessing consideration on various NTUA
13 utility projects for public purposes, which adds to the overall costs of these projects.
14 “Public purpose” means any residence, governmental building, including chapter
15 houses, healthcare facility, school, including higher education entities, daycare, Head
16 Start building, senior center, library, or public safety building. Assessing consideration
17 for these sorts of projects is in contrast to the Nation’s goal of bringing critical
18 infrastructure to the Navajo people, especially in light of the Nation’s opportunity to
19 utilize time-sensitive funding opportunities like the American Rescue Plan Act and the
20 Infrastructure Investment and Jobs Act.

21 H. Consideration is also being assessed on Tribal Authorization Accesses related to NTUA
22 installing and operating utilities for commercial customers wanting to develop
23 businesses on the Navajo Nation. Consideration assessed for these commercial
24 operations Tribal Authorization Accesses is passed on to the business developer, which
25 is in addition to the actual costs to extend services to the commercial customer/operator,
26 thereby increasing the overall business development costs. Commercial operations on
27 the Nation are subject to non-typical costs such as business site lease costs, dual
28 taxation from the Nation and the State, as well as federal taxes. The additional costs
29 imposed for a commercial operation Tribal Authorization Access could serve as a
30 deterrent for businesses considering locating to and investing on the Nation.

- 1 I. Obtaining a waiver of consideration for each Tribal Authorization Access is time
2 consuming and delays NTUA from extending basic infrastructure to the Navajo people
3 and potentially hinders business development on the Navajo Nation.
- 4 J. NTUA is requesting a waiver from the Resources and Development Committee for the
5 assessment of consideration for all “public purpose” and “commercial operations”
6 Tribal Authorization Accesses, as described above. This would include any “public
7 purpose” or “commercial operations” Tribal Authorization Access that is currently
8 pending final approval by the Navajo Nation. The Resources and Development
9 Committee finds that amending RDCJN-17-20 to grant such a waiver is in the best
10 interests of the Navajo Nation.
- 11 K. Pursuant to RCJY-98-06, the Resources Committee approved the Delegation of
12 Authority to the Director of the Land Department to Approve Leases, Permits, and
13 Rights-of-Way for Telecommunications Projects upon the Navajo Nation Land. RCJY-
14 98-06 is herein attached as **Exhibit 4**.
- 15 L. Pursuant to RCAP-25-07, the Resources Committee amended RCJY-98-06 to include
16 an annual rental of \$12,000. RCAP-25-07 is herein attached as **Exhibit 5**.
- 17 M. According to NTUA, imposing fees of \$12,000 per tower site lease per year makes it
18 uneconomical to construct and maintain telecommunications towers on the Navajo
19 Nation. Many of the towers that have been constructed or need to be constructed are in
20 areas where they will serve an insufficient number of customers to cover the annual
21 fee, let alone the costs of constructing and powering the towers, in addition to
22 maintaining the associated equipment.
- 23 N. The Resources and Development Committee finds that granting a waiver to NTUA for
24 all annual payments of its Telecommunication Tower Site Leases is in the best interests
25 of the Nation to promote economic growth and to provide utility services on the Nation.
26 This waiver includes any Telecommunication Tower Site Lease where a sublease is
27 issued for any commercial co-location (*i.e.* carriers who are commercial/for profit in
28 nature). However, consideration will still be due for any and all co-locations related to
29 these Telecommunication Tower Site Leases in accordance with RCAP-25-07.
30

1 O. NTUA is also requesting the Resources and Development Committee amend any and
2 all Tribal Authorization Accesses granted by the Navajo Land Department since the
3 adoption of RDCJN-17-20 (*i.e.* June 3, 2020) for “public purposes” to waive the
4 consideration for these Tribal Authorization Accesses, including any consideration that
5 has been assessed but not yet paid by NTUA to the Navajo Nation. Additionally,
6 NTUA is requesting the Resources and Development Committee amend all
7 Telecommunication Tower Site Leases issued to NTUA since June 3, 2020 to waive
8 the annual lease payments for each lease at issue, including any annual lease payment
9 that has been assessed but has yet to be paid by NTUA. These specific Tribal
10 Authorization Accesses and Telecommunication Tower Site Leases have been
11 identified by NTUA and are herein attached and incorporated as **Exhibit 6**.

12
13 **SECTION THREE. APPROVALS**

14 A. The Resources and Development Committee hereby amends RDCJN-17-20 to add the
15 following as a new Section Seven:

16
17 **SECTION SEVEN. WAIVERS OF CONSIDERATION FOR THE**
18 **NAVAJO TRIBAL UTILITY AUTHORITY**

19
20 The Resources and Development Committee hereby grants a waiver for one hundred
21 percent (100%) of the consideration for any public purpose Tribal Authorization
22 Access issued to the Navajo Tribal Utility Authority (“NTUA”). “Public purpose”
23 means any residence, governmental building, including chapter houses, healthcare
24 facility, school, including higher education entities, daycare, Head Start building,
25 senior center, library, or public safety building. Additionally, NTUA shall receive a
26 waiver of one hundred percent (100%) of the consideration for commercial operations
27 Tribal Authorization Accesses. “Commercial operations” means any Tribal
28 Authorization Access granted to NTUA to be used in whole or in part for NTUA to
29 extend utility services to any for-profit business customer/operator located, or to be
30 located, on the Navajo Nation.

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B. The Resources and Development Committee hereby waives the annual payment of \$12,000, as required under RCAP-25-07, for any Telecommunication Tower Site Lease issued to NTUA after the approval of this resolution. This waiver includes any Telecommunication Tower Site Lease where a sublease is issued for any commercial co-location (*i.e.* carriers who are commercial/for profit in nature). However, consideration will still be due for any and all co-locations related to these Telecommunication Tower Site Leases in accordance with RCAP-25-07.

C. The Resources and Development Committee hereby approves amendments to the Tribal Authorization Accesses and Telecommunication Tower Site Leases identified in **Exhibit 6** to waive any consideration due to the Navajo Nation pursuant to these Tribal Authorization Accesses and Telecommunication Tower Site Leases, including the waiver of any consideration due that has not yet been paid by NTUA to the Navajo Nation.