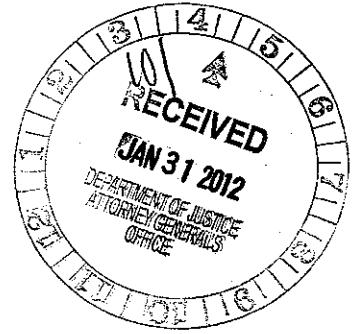


LEGISLATIVE SUMMARY SHEET

Tracking No. 0033-12



DATE: January 27, 2012

TITLE OF RESOLUTION: RELATING TO THE LAW AND ORDER; RESOURCES AND DEVELOPMENT; AND NABIK'ÍYÁTI' COMMITTEE; THE RADIOACTIVE AND RELATED SUBSTANCES, EQUIPMENT, VEHICLES, PERSONS AND MATERIALS TRANSPORTATION ACT OF 2012: AMENDING THE NAVAJO NATION CODE TITLE 18, CHAPTER 12, TO PROVIDE FOR THE PROTECTION, HEALTH AND SAFETY OF THE NAVAJO NATION PEOPLE WITH REGARD TO THE TRANSPORTATION OF RADIOACTIVE AND RELATED SUBSTANCES, EQUIPMENT, VEHICLES, PERSONS AND MATERIALS OVER AND ACROSS NAVAJO NATION LAND

PURPOSE: THE RADIOACTIVE AND RELATED SUBSTANCES, EQUIPMENT, VEHICLES, PERSONS AND MATERIALS TRANSPORTATION ACT OF 2012: AMENDING THE NAVAJO NATION CODE TITLE 18, CHAPTER 12, TO PROVIDE FOR THE PROTECTION, HEALTH AND SAFETY OF THE NAVAJO NATION PEOPLE WITH REGARD TO THE TRANSPORTATION OF RADIOACTIVE AND RELATED SUBSTANCES, EQUIPMENT, VEHICLES, PERSONS AND MATERIALS OVER AND ACROSS NAVAJO NATION LAND

This written summary is provided in accord with Navajo Nation Council Rules of Order, Rule 11(A), or Standing Committee Rules of Order, Rule 12, on the resolution as drafted by the Office of Legislative Counsel. 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
COMMENT PERIOD
Start: 31 JAN 2012
End: 04 FEB 2012
Signature: E. N. ...

LAW AND ORDER
COMMITTEE

THENCE

RESOURCES &
DEVELOPMENT COMMITTEE

THENCE

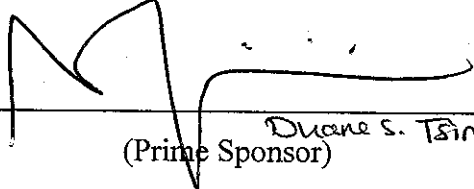
NABIK'ÍYÁTI' COMMITTEE

THENCE

NAVAJO NATION COUNCIL

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
22ND NAVAJO NATION COUNCIL – Second Year, 2012

INTRODUCED BY



(Prime Sponsor) Duane S. Tsingine

TRACKING NO. 0033-12

AN ACTION

RELATING TO THE LAW AND ORDER; RESOURCES AND DEVELOPMENT;
AND NABIK'ÍYÁTI' COMMITTEE; THE RADIOACTIVE AND RELATED
SUBSTANCES, EQUIPMENT, VEHICLES, PERSONS AND MATERIALS
TRANSPORTATION ACT OF 2012: AMENDING THE NAVAJO NATION CODE
TITLE 18, CHAPTER 12, TO PROVIDE FOR THE PROTECTION, HEALTH AND
SAFETY OF THE NAVAJO NATION PEOPLE WITH REGARD TO THE
TRANSPORTATION OF RADIOACTIVE AND RELATED SUBSTANCES,
EQUIPMENT, VEHICLES, PERSONS AND MATERIALS OVER AND ACROSS
NAVAJO NATION LAND

BE IT ENACTED:

1. Findings and Purpose.

A. The Navajo Nation finds it to be in the best interest of the Navajo Nation, its citizens, guests and visitors to adopt "The Radioactive and Related Substances, Equipment, Vehicles, Persons and Materials Transportation Act of 2012" and hereby adopts said Act amending Title 18, Chapter 12 as follows:

Chapter 12-A.

1 The Radioactive and Related Substances Equipment, Vehicles, Persons and
2 Materials Transportation Act of 2012

3
4 § 1304. Background, Findings, and Rationale

- 5
6 A. The Navajo Nation opposes generally the transportation of radioactive and related
7 substances, equipment, vehicles, persons and materials over and across Navajo
8 Nation lands, except for purposes of transporting uranium ore or product currently
9 left within the Navajo Nation from past uranium mining or milling operations for
10 disposal at an appropriate long-term facility outside of Navajo Indian country or
11 at an appropriate temporary facility within Navajo Indian country and approved
12 by the Navajo Nation Environmental Protection Agency.
- 13 B. The Navajo Nation has the right to exclude nonmembers and to condition their
14 entry onto Navajo Nation lands, and has the independent sovereign right and duty
15 to protect the health, welfare and safety of the Navajo Nation and its citizens.
- 16 C. As a matter of federal law, Congress has plenary authority to regulate commerce with
17 the Navajo Nation. Article III of the treaty between the United States of America and
18 the Navajo Nation ratified on September 9, 1850 provides that the United States shall
19 have the sole and exclusive right of regulating trade and intercourse with the Navajo
20 Nation, and, in exchange, Article XI of the Treaty provides that the United States
21 “shall so legislate and act as to secure the permanent prosperity and happiness of” the
22 Navajo People.” “Under that treaty and the second such treaty made and ratified in
23 1868, see 15 Stat. 667, “Congress has . . . left the [Navajos] largely free to run the
24 reservation and its affairs without state control,” *Warren Trading Post Co. v. Arizona*
25 *State Tax Comm’n*, 380 U.S. 685, 690 (1965), and the Navajo Nation has accepted the
26 responsibility of governing its territory, see *Kerr-McGee Corp. v. Navajo Tribe of*
27 *Indians*, 471 U.S. 195, 200-201 (1985); *Williams v. Lee*, 358 U.S. 217, 223 (1959).
- 28
29 D. Under its constitutional authority, Congress defined “Indian Country” broadly in
30 1948, and applied that term to demarcate generally civil and criminal authority of

1 states on the one hand and of the United States and Indian governments on the
2 other, and rejected jurisdictional determinations based on refinements of easement
3 law by including all rights-of-way running through Indian reservations as "Indian
4 country." See Richard B. Collins, *Implied Limitations on the Territorial*
5 *Jurisdiction of Indian Tribes*, 54 Wash. L. Rev. 479, 527 & n.286 (1979).

6 E. The road system within Navajo Indian country includes Bureau of Indian Affairs
7 roads, Navajo tribal roads, and State and county roads, all such roads and related
8 rights-of-way being Navajo "Indian country" as defined by Congress for purposes
9 of Navajo Nation civil and criminal jurisdiction.

10 F. The Navajo People and the Navajo Nation government have been substantially
11 harmed by the exploration for and mining, production, processing, milling and
12 transportation of uranium ore, yellowcake and other radioactive products other
13 than those used for medical purposes. Over 500 uranium mines were left
14 abandoned in Navajo Indian country, four very large piles of uranium mill tailings
15 are located on or adjacent to Navajo Nation lands in unlined areas leaching
16 contaminants into surface and ground water supplies; Navajo people bore the
17 brunt of the largest accidental release of radioactivity in the United States, see
18 *UNC Resources, Inc. v. Benally*, 514 F. Supp. 358 (D.C. N.M. 1981); Navajo
19 uranium miners in the Cold War era continue to suffer debilitating and lethal
20 impacts from their service; planned uranium mining threatens scarce Navajo
21 drinking water resources; and hazardous and other wastes contaminate the Navajo
22 environment with no responsible person, corporation, or other governmental
23 entity willing to clean up these wastes.

24 G. Many Navajo Nation Chapters have expressed serious concerns about the
25 Activities (as defined herein) occurring within Navajo Indian country.

26 H. The Navajo Nation finds it necessary and desirable to require that appropriate
27 agencies of the Navajo Nation receive no less than four days advance notice by
28 any carrier of any Products (as defined herein) who is intending to transport such
29 Products on Navajo Nation lands or otherwise within Navajo Indian country, and
30 that such notice be given in accordance with federal rules applicable to such

1 notice to a state governor and/or to local law enforcement officials in order that
2 proper emergency measures may be taken by the Navajo Nation.

- 3 I. The Navajo Nation finds it necessary and desirable to ensure that any future
4 Activities occurring within, on or over Navajo Indian country are performed in a
5 manner that protects the Navajo Nation environment and water resources, the
6 health and safety of Navajo citizens and guests and visitors alike, and the welfare
7 of the Navajo Nation, and responsible regulation by Navajo agencies under
8 Navajo law is the most appropriate manner to ensure such protection.
- 9 J. The Navajo Nation finds that the Navajo Nation Environmental Protection
10 Agency should be authorized, after meaningful consultation with the Navajo
11 Nation Division of Public Safety and subject to the approval of the Resources and
12 Development Committee, to promulgate regulations to implement this Act, for
13 developing and modifying reasonable license fees, bonding requirements, route
14 restrictions, curfews and other terms and conditions for conducting any Activities
15 on or across Navajo Nation lands or otherwise within Navajo Indian country.
- 16 K. Nothing in this Act is intended, nor shall it be construed, to repeal, in whole or in
17 part, the Dine' Natural Resources Protection Act (DNRPA). In the event of any
18 inconsistency between this Act and the DNRPA, the provisions of the DNRPA
19 shall control.

20
21 **§ 1305. Definitions**

- 22 1. "Activities" means exploration, mining, production, processing, milling and/or
23 transportation of the Products as defined below.
- 24 2. "Indian Country" shall have the same meaning as that term is defined in 18
25 U.S.C. §1151.
- 26 3. "Navajo Indian Country" shall mean the territory over which the Navajo Nation
27 has criminal, civil and regulatory authority, as defined in 7 N.N.C. §254(A)
28 (2005) and as otherwise not limited by applicable federal law.
- 29 4. "Navajo Nation lands" means land held in trust for the Navajo Nation or any
30 Band of the Navajo Nation by the United States, land owned in fee by the Navajo

1 Nation, and Navajo trust allotments in which the Navajo Nation owns any
2 undivided fractional beneficial interest

- 3 5. "Products" means singly or in any combination uranium ore, yellowcake,
4 radioactive waste and other radioactive products other than those used for medical
5 purposes.

6
7 **§ 1306. Statement of Policy**

- 8 A. The Navajo Nation opposes generally the transportation of Products over, on,
9 under and across Navajo Nation lands or otherwise over, under or across Navajo
10 Indian Country, except for purposes of transporting Products currently left within
11 the Navajo Nation from past Activities for disposal at an appropriate long-term
12 facility outside of Navajo Indian country or at an appropriate temporary facility
13 within Navajo Indian country and approved by the Navajo Nation Environmental
14 Protection Agency. The Navajo Nation generally opposes the transportation over,
15 on, under or across Navajo Nation lands or otherwise within Navajo Indian
16 country of any equipment, vehicles, persons and materials to be used in
17 conjunction with such current or future Activities where such Activities are
18 conducted or to be conducted on or under the surface of or adjacent to Navajo
19 Nation lands or where such Activities may affect surface or ground waters of the
20 Navajo Nation.
- 21 B. The Navajo Nation may permit and regulate transportation of Products pursuant
22 to its right to protect the health, safety, welfare and environment of the Navajo
23 Nation, its citizens, visitors and guests and pursuant to its right to exclude and to
24 condition entry of non-members onto Navajo Nation lands and other lands within
25 Navajo Indian country.

26
27 **§ 1307. Transportation Notice and Other Requirements**

- 1 A. No person or entity may transport any Products on or across Navajo Nation lands
2 or otherwise within Navajo Indian country unless such person or entity complies
3 with the requirements of this section and applicable federal law.
- 4 B. Such person or entity shall give at least four days advance notice of its intent to
5 transport any Products on or across Navajo Nation lands or otherwise within
6 Navajo Indian country to the Executive Director of the Navajo Nation
7 Environmental Protection Agency and to the Director of Public Safety.
- 8 C. Such notice shall be given in conformity with the procedures established under
9 federal rules governing such notice to a state governor and to local law
10 enforcement officials in order that proper preparatory emergency measures may
11 be taken by the Navajo Nation.
- 12 D. Such notice shall be accompanied by a reasonable license fee; a showing that
13 bonding or other insurance is in place adequate to protect the Navajo Nation in the
14 event of a spill, disposal or accident; an adequate description of the route to be
15 taken and the vehicles to be used in such transportation; adequate training
16 requirements; and assurances that any Navajo Nation curfews for such
17 transportation of any Products shall be honored.
- 18 E. No person or entity may transport across Navajo Nation lands any equipment,
19 vehicles, persons or materials for the purpose of exploring for or mining,
20 producing, processing, or milling any Products on or under the surface of or
21 adjacent to Navajo Nation lands, or where such Activities may affect surface or
22 ground waters of the Navajo Nation, without first:
- 23 1. Obtaining Navajo Nation consent and a federal grant of easement
24 pursuant to the laws of the United States;
 - 25 2. Consenting in writing to the full subject matter and personal
26 jurisdiction of the Navajo Nation; and
 - 27 3. Agreeing to terms and conditions deemed reasonable and
28 appropriate by the Navajo Nation. Such terms and conditions
29 shall, at a minimum, include the clean-up and remediation in
30 accordance with the more stringent of applicable federal or Navajo

1 law, of any uranium contamination on any parcel of Navajo Nation
2 lands that degrades the Navajo environment and/or poses a risk to
3 the health and safety of Navajo citizens provided such person,
4 entity, affiliate or proposed user of the right-of-way is, under any
5 applicable Navajo or federal statute, regulation or order wholly or
6 partially responsible for the clean-up of the contamination.
7 Additionally, any such person, entity, affiliate or proposed user of
8 such right-of-way must agree to clean-up and remediation of any
9 uranium contaminated parcel on Navajo Nation lands that such
10 right-of way crosses.

11 Notwithstanding the foregoing, this subsection (E) shall not apply to the transport of
12 any such equipment, vehicles, persons or materials over any federal, state, or county
13 highway or road for which a right-of-way has been approved by the Navajo Nation
14 and a grant of easement has been issued by the Secretary of the Interior or his or her
15 authorized delegate.

16 F. The Navajo Nation Environmental Protection Agency shall promulgate, after
17 meaningful consultation with the Navajo Nation Division of Public Safety and
18 subject to the approval of the Resources and Development Committee, regulations
19 necessary or desirable to implement this section, including the establishment of
20 notice requirements, designation of reasonable license fees, bonding
21 requirements, route restrictions and curfews for the transportation of any Products
22 on Navajo Nation lands or otherwise within Navajo Indian country; provided,
23 however, that the minimum requirements of subsection (E) of this section shall be
24 self-executing and shall not require regulations in order to be effective as of the
25 effective date of these amendments.

26
27
28 **2. Effective Date**

29 The provisions of these amendments shall become effective in accordance
30 with 2 N.N.C. §221 (B).

1 **3. Codification.**

2 The provisions of this legislation which add or amend sections of the Navajo
3 Nation Code shall be codified by the Office of Legislative Counsel.

4 **4. Savings Clause.**

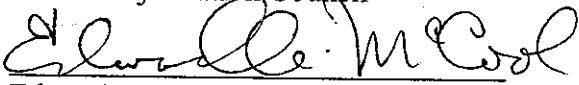
5 Nothing in this Act is intended, nor shall it be construed, to repeal, in whole or
6 in part, the Dine' Natural Resources Protection Act (DNRPA). In the event of any
7 inconsistency between this Act and the DNRPA, the provisions of the DNRPA shall
8 control. If any provision of this legislation is held invalid by the Navajo
9 Nation Supreme Court, or unappealable order of any court of competent jurisdiction,
10 those portions of this Act which are not determined invalid shall remain in full force
11 and effect.

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MEMORANDUM

TO: Dwayne Tsinigine, Delegate
22nd Navajo Nation Council

FROM: 
Edward A. McCool, Acting Chief Legislative Counsel
Office of Legislative Counsel

DATE: January 27, 2012

SUBJECT:

RELATING TO THE LAW AND ORDER; RESOURCES AND DEVELOPMENT; AND NABIK'ÍYÁTI' COMMITTEE; THE RADIOACTIVE AND RELATED SUBSTANCES, EQUIPMENT, VEHICLES, PERSONS AND MATERIALS TRANSPORTATION ACT OF 2012: AMENDING THE NAVAJO NATION CODE TITLE 18, CHAPTER 12, TO PROVIDE FOR THE PROTECTION, HEALTH AND SAFETY OF THE NAVAJO NATION PEOPLE WITH REGARD TO THE TRANSPORTATION OF RADIOACTIVE AND RELATED SUBSTANCES, EQUIPMENT, VEHICLES, PERSONS AND MATERIALS OVER AND ACROSS NAVAJO NATION LAND

As requested, I have prepared the attached proposed resolution. Please review the proposed resolution. If this legislation is acceptable to you, please attach the exhibits, sign the proposed resolution under the language "INTRODUCED BY" and submit it to the Office of Legislative Services where it will be given a tracking number and submitted to the Speaker of the Navajo Nation Council for his assignment. If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes which you would like made to the proposed resolution. Please contact me at 928.871.7166 if you need further legal advice or legislative assistance in this matter.

Thank you.

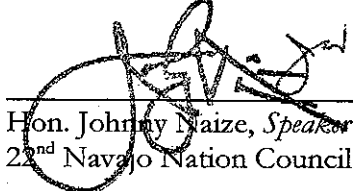
OLC # 12-224 -1



January 30, 2012

MEMORANDUM

TO : *Honorable Members*
Law and Order Committee
Resources and Development Committee
Naa'bik'iyati' Committee
Navajo Nation Council

FROM : 
Hon. Johnny Naize, *Speaker*
22nd Navajo Nation Council

SUBJECT : ASSIGNMENT OF LEGISLATION

Pursuant to 2 N.N.C. § 164 (A)(4), this memorandum serves to inform and advise you that I assign the following legislation to the Law and Order Committee, Resources and Development Committee; Naa'bik'iyati' Committee and the Navajo Nation Council:

Legislation No. 0033-12

RELATING TO LAW AND ORDER; RESOURCES AND DEVELOPMENT AND THE NAA'BIK'IYATI' COMMITTEE; THE RADIOACTIVE AND RELATED SUBSTANCES, EQUIPMENT, VEHICLES, PERSONS AND MATERIALS TRANSPORTATION ACT OF 2012: AMENDING THE NAVAJO NATION CODE TITLE 18, CHAPTER 12, TO PROVIDE FOR PROTECTION, HEALTH AND SAFETY OF THE NAVAJO NATION PEOPLE WITH REGARD TO THE TRANSPORTATION OF RADIOACTIVE AND RELATED SUBSTANCES, EQUIPMENT, VEHICLES, PERSONS AND MATERIALS OVER AND ACROSS NAVAJO NATION LAND

As the Committee assigned to consider the legislation, Legislation No. 0033-12 must be placed on the Law and Order Committee, Resources and Development Committee, Naa'bik'iyati' Committee and the Navajo Nation Council's agenda at the next regular meeting for final consideration.

ATTACHMENT: Legislation No. 0033-12

xc: Hon. Ben Shelly., *President*
The Navajo Nation
Harrison Tsosie, *Attorney General*
Mark Grant, *Controller*
Honorable Duane S. Tsinigine, Council Delegate (*Prime Sponsor*)