

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0198-24\_

SPONSOR: Casey Allen Johnson

**TITLE: An Act Relating to an Emergency for the Navajo Nation Council; Amending the Radioactive and Related Substances, Equipment, Vehicles, Persons and Materials Transportation Act of 2012, the Navajo Nation Code Title 18, Chapter 12-A, to Provide for the Protection, Health and Safety of the Navajo Nation People with Regards to the Transportation of Radioactive and Related Substances, Equipment, Vehicles, Persons and Materials Over and Across Navajo Nation Land**

*Date posted:* August 26, 2024 at 9:09AM

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## LEGISLATIVE SUMMARY SHEET

Tracking No. 0198-24

**DATE:** August 23, 2024

**TITLE OF RESOLUTION:** AN ACT RELATING TO AN EMERGENCY FOR THE NAVAJO NATION COUNCIL; AMENDING THE RADIOACTIVE AND RELATED SUBSTANCES, EQUIPMENT, VEHICLES, PERSONS AND MATERIALS TRANSPORTATION ACT OF 2012, THE NAVAJO NATION CODE TITLE 18, CHAPTER 12-A, 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:** This legislation, if approved, will amend N.N. Code Title 18, Chapter 12-A, to provide for the protection, health and safety of the Navajo people with regard to the transportation of radioactive and related substances, etc. over and across Navajo Nation land.

**FINAL AUTHORITY:** Navajo Nation Council

**VOTE REQUIRED:** Simple Majority

**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.**

PROPOSED NAVAJO NATION COUNCIL RESOLUTION  
25<sup>th</sup> NAVAJO NATION COUNCIL – Second Year, 2024

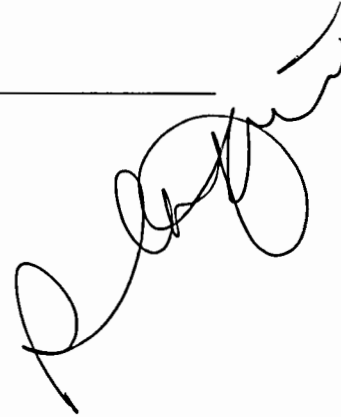
INTRODUCED BY

\_\_\_\_\_  
(Sponsor)



0198-24

TRACKING NO.



AN ACT

**RELATING TO AN EMERGENCY FOR THE NAVAJO NATION COUNCIL;  
AMENDING THE RADIOACTIVE AND RELATED SUBSTANCES,  
EQUIPMENT, VEHICLES, PERSONS AND MATERIALS TRANSPORTATION  
ACT OF 2012, THE NAVAJO NATION CODE TITLE 18, CHAPTER 12-A, 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:

**SECTION ONE. AUTHORITY**

- A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §102(A). As such, the Council may consider proposed legislation regarding an emergency matter, pursuant to 2 N.N.C. §164(A)(16).
- B. “[M]atters constituting an emergency shall be limited to the cessation of law enforcement services, and disaster relief services, fire protection services or other direct services required as an entitlement under Navajo Nation or Federal law, or which

1 directly threaten the sovereignty of the Navajo Nation. Such an emergency matter must  
2 arise due to the pressing public need for such resolution(s) and must be a matter  
3 requiring final action by the Council.” 2 N.N.C. §164(A) (16).  
4

## 5 **SECTION TWO. FINDINGS**

- 6 A. The purpose of this legislation is to provide for the protection, health and safety of the  
7 Navajo people, their guests and visitors, and the Navajo Nation environment, including  
8 its water resources.
- 9 B. On July 30, 2024, uranium ore was shipped through the Navajo Nation without the prior  
10 consent of the Navajo Nation. Uranium ore transportation across the Navajo Nation  
11 without prior consent directly threatens the sovereignty of the Navajo Nation because it  
12 ignores Navajo Nation laws.
- 13 C. The adverse impacts of radiation and uranium toxicity on the Navajo people and the  
14 environment are well known and must be guarded against by strict regulations to prevent  
15 exposures due to the transportation of uranium ore across the Navajo Nation.
- 16 D. Renewed transportation of uranium ore across the Navajo Nation is imminent. There is  
17 a public need to address this issue immediately. The use of emergency legislative powers  
18 is warranted for the expedited protection of the Navajo people and the protection of  
19 Navajo Nation sovereignty due to this imminent threat.
- 20 E. To address uranium ore transport across the Navajo Nation, this Act authorized the  
21 Navajo Nation Environmental Protection Agency to promulgate regulations  
22 implementing this Act. Due to the imminent threat of such transport, this amendment to  
23 Title 18, Chapter 12-a would authorize the Navajo Nation Environmental Protection  
24 Agency to issue interim regulations, attached as **Exhibit A**, to go into effect immediately  
25 to implement this Act. The interim regulations would expire in one year, during which  
26 period the Navajo Nation Environmental Protection Agency would engage in public  
27 notice and comment on the interim regulations and promulgate final regulations  
28 effective upon approval by the Resources and Development Committee.
- 29 F. Until such time as the Navajo Nation Environmental Protection Agency promulgates  
30 regulations, any person or entity seeking to transport any uranium ore, yellowcake,

1 radioactive waste or other radioactive products on or across Navajo Nation lands or  
2 otherwise within Navajo Indian country would be required to enter into an agreement  
3 with the Navajo Nation providing the terms and conditions for such transport, including  
4 routes, emergency plans, financial assurances, curfews and other travel restrictions,  
5 containment requirements, and fees.

- 6 G. The Navajo Nation finds it to be in the best interest of the Navajo Nation, its citizens,  
7 guests and visitors to amend “The Radioactive and Related Substances, Equipment,  
8 Vehicles, Persons and Materials Transportation Act of 2012” in Title 18, Chapter 12-a.  
9

10 **SECTION THREE. AMENDMENTS TO TITLE 18 OF THE NAVAJO NATION CODE**

11 The Navajo Nation hereby approves amendments to the Navajo Nation Code, Title 18,  
12 Chapter 12-A, as follows:  
13

14 \_\_\_\_\_

15 **NAVAJO NATION CODE**  
16 **TITLE 18. MINES AND MINERALS**  
17 **CHAPTER 12-A. THE RADIOACTIVE AND RELATED SUBSTANCES**  
18 **EQUIPMENT, VEHICLES, PERSONS AND MATERIALS TRANSPORTATION**  
19 **ACT OF 2012**  
20

21 § 1304. Background, Findings, and Rationale

- 22 A. The Navajo Nation opposes generally the transportation of radioactive and related  
23 substances, equipment, vehicles, persons and materials over and across Navajo  
24 Nation ~~lands~~Lands or otherwise over and across Navajo Indian Country, except for  
25 purposes of transporting uranium ore or product currently left within the Navajo  
26 Nation from past uranium mining or milling operations for disposal at an  
27 appropriate ~~facility~~long-term facility outside of Navajo Indian country or at an  
28 ~~appropriate temporary facility within Navajo Indian country~~ and approved by the  
29 Navajo Nation Environmental Protection Agency.  
30

- 1       ~~B. The Navajo Nation has the right to exclude nonmembers and to condition their entry~~  
2       ~~onto Navajo Nation lands, and has the independent sovereign right and duty to~~  
3       ~~protect the health, welfare and safety of the Navajo Nation and its citizens.~~
- 4       ~~C. As a matter of federal law, Congress has plenary authority to regulate commerce~~  
5       ~~with the Navajo Nation. Article III of the treaty between the United States of~~  
6       ~~America and the Navajo Nation ratified on September 9, 1850 provides that the~~  
7       ~~United States shall have the sole and exclusive right of regulating trade and~~  
8       ~~intercourse with the Navajo Nation, and, in exchange, Article XI of the Treaty~~  
9       ~~provides that the United States “shall so legislate and act as to secure the permanent~~  
10       ~~prosperity and happiness of” the Navajo People.” “Under that treaty and the second~~  
11       ~~such treaty made and ratified in 1868, see 15 Stat. 667, “Congress has . . . left the~~  
12       ~~[Navajos] largely free to run the reservation and its affairs without state control,”~~  
13       ~~*Warren Trading Post Co. v. Arizona State Tax Comm’n*, 380 U.S. 685, 690 (1965),~~  
14       ~~and the Navajo Nation has accepted the responsibility of governing its territory, see~~  
15       ~~*Kerr-McGee Corp. v. Navajo Tribe of Indians*, 471 U.S. 195, 200-201 (1985);~~  
16       ~~*Williams v. Lee*, 358 U.S. 217, 223 (1959).~~
- 17       ~~D. Under its constitutional authority, Congress defined “Indian Country” broadly in~~  
18       ~~1948, and applied that term to demarcate generally civil and criminal authority of~~  
19       ~~states on the one hand and of the United States and Indian governments on the other,~~  
20       ~~and rejected jurisdictional determinations based on refinements of easement law by~~  
21       ~~including all rights-of-way running through Indian reservations as “Indian~~  
22       ~~country.” See Richard B. Collins, *Implied Limitations on the Territorial*~~  
23       ~~*Jurisdiction of Indian Tribes*, 54 Wash. L. Rev. 479, 527 & n.286 (1979).~~
- 24       ~~E. The road system within Navajo Indian country includes Bureau of Indian Affairs~~  
25       ~~roads, Navajo tribal roads, and State and county roads, all such roads and related~~  
26       ~~rights-of-way being Navajo “Indian country” as defined by Congress for purposes~~  
27       ~~of Navajo Nation civil and criminal jurisdiction.~~
- 28       B. The Navajo People and the Navajo Nation government have been substantially  
29       harmed by the exploration for and mining, production, processing, milling and  
30       transportation of uranium ore, yellowcake and other radioactive products other than

1 those used for medical purposes and shall hereinafter singly or in any combination  
2 be referred to as the "Products" on, near and through Navajo Indian  
3 Country~~country~~; such exploration, mining, production, processing, milling, and  
4 transportation of the Products to be referred hereinafter as the "Activities." Over  
5 500 uranium mine sites were left abandoned in Navajo Indian country, four very  
6 large piles of uranium mill tailings are located on or adjacent to Navajo Nation  
7 lands~~Lands or Navajo Indian Country~~ in unlined areas leaching contaminants into  
8 surface and ground water supplies; Navajo people bore the brunt of the largest  
9 accidental release of radioactivity in the United States, *see UNC Resources, Inc. v.*  
10 *Benally*, 514 F. Supp. 358 (D.C. N.M. 1981); Navajo uranium miners in the Cold  
11 War era continue to suffer debilitating and lethal impacts from their service;  
12 planned uranium mining threatens scarce Navajo drinking water resources; and  
13 hazardous and other wastes contaminate the Navajo environment with no  
14 responsible person, corporation, or other governmental entity willing to clean up  
15 these wastes.

16 C. Many Navajo Nation Chapters have expressed serious concerns about the Activities  
17 occurring within Navajo Indian ~~country~~Country.

18 ~~D. The Navajo Nation finds it necessary and desirable to require that appropriate~~  
19 ~~agencies of the Navajo Nation receive no less than four days advance notice by any~~  
20 ~~carrier of any Products (as defined herein) who is intending to transport such~~  
21 ~~Products on Navajo Nation lands or otherwise within Navajo Indian country, and~~  
22 ~~that such notice be given in accordance with federal rules applicable to such notice~~  
23 ~~to a state governor and/or to local law enforcement officials in order that proper~~  
24 ~~emergency measures may be taken by the Navajo Nation.~~

25 D. The Navajo Nation finds it necessary and desirable to ensure that any future  
26 Activities occurring within, on or over Navajo Nation Lands or Navajo Indian  
27 ~~country~~Country are performed in a manner that protects the Navajo Nation  
28 environment and water resources, the health and safety of Navajo citizens and  
29 guests and visitors alike, and the welfare of the Navajo Nation, and responsible  
30

1 regulation by Navajo agencies under Navajo law is the most appropriate manner to  
2 ensure such protection.

3 E. The Navajo Nation finds that the Navajo Nation Environmental Protection Agency  
4 should be authorized, after meaningful consultation with the Navajo Nation  
5 Division of Public Safety and subject to the approval of the Resources and  
6 Development Committee, to promulgate regulations to implement this Act, for  
7 developing and modifying reasonable license fees, bonding requirements, route  
8 restrictions, curfews and other terms and conditions for conducting any Activities  
9 on or across Navajo Nation Landslands or otherwise within Navajo Indian  
10 countryCountry.

11 F. Until such time as the Navajo Nation Environmental Protection Agency  
12 promulgates regulations to implement this Act, and in order to address imminent  
13 threats of transport of Products on or across Navajo Nation Lands or otherwise  
14 within Navajo Indian Country, the Navajo Nation finds that the Navajo Nation  
15 Environmental Protection Agency should be authorized to issue interim regulations  
16 to implement this Act that shall go into effect immediately and expire in one year.

17 ~~F. Nothing in this Act is intended, nor shall it be construed, to repeal, in whole or in~~  
18 ~~part, the Dine' Natural Resources Protection Act (DNRPA). In the event of any~~  
19 ~~inconsistency between this Act and the DNRPA, the provisions of the DNRPA shall~~  
20 ~~control.~~

21  
22 § 1305. Definitions

- 23 1. "Activities" means exploration, mining, production, processing, milling and/or  
24 transportation of the Products as defined below.
- 25 2. "Director" means the Executive Director of the Navajo Nation Environmental  
26 Protection Agency.
- 27 3. 2:"Indian Country" shall have the same meaning as that term is defined in 18 U.S.C.  
28 §1151.
- 29  
30



- 1 4. ~~3~~“Navajo Indian Country” shall mean the territory over which the Navajo Nation  
2 has criminal, civil and regulatory authority, as defined in 7 N.N.C. §254(A) ~~(2005)~~  
3 ~~and as otherwise not limited by applicable federal law.~~
- 4 5. 4:“Navajo Nation Landslands” means land held in trust for the Navajo Nation or  
5 any Band of the Navajo Nation by the United States, land owned in fee by the  
6 Navajo Nation, and Navajo trust allotments in which the Navajo Nation owns any  
7 undivided fractional beneficial interest.
- 8 6. ~~5~~“Products” means singly or in any combination uranium ore, yellowcake,  
9 radioactive waste and other radioactive products other than those used for medical  
10 purposes.
- 11 7. “Uniform Regulations” means the Navajo Nation Environmental Protection  
12 Agency Uniform Regulations for Permit Review, Administrative Enforcement  
13 Orders, Hearings, and Rulemakings under Navajo Nation Environmental Acts.

14  
15 § 1306. Statement of Policy

- 16 A. The Navajo Nation opposes generally the transportation of Products over, on, under  
17 and across Navajo Nation Landslands or otherwise over, under or across Navajo  
18 Indian Country, except for purposes of transporting Products currently left within  
19 the Navajo Nation from past Activities for disposal at ~~a an appropriate long-~~  
20 ~~term facility outside of Navajo Indian country or at an appropriate temporary facility~~  
21 ~~within Navajo Indian country~~ and approved by the Navajo Nation Environmental  
22 Protection Agency. The Navajo Nation generally opposes the transportation over,  
23 on, under or across Navajo Nation Landslands or otherwise within Navajo Indian  
24 ~~country~~Country of any equipment, vehicles, persons and materials to be used in  
25 conjunction with such current or future Activities where such Activities are  
26 conducted or to be conducted on or under the surface of or adjacent to Navajo  
27 Nation Landslands or where such Activities may affect surface or ground waters of  
28 the Navajo Nation.
- 29 B. The Navajo Nation may permit and regulate transportation of Products pursuant to  
30 its right to protect the health, safety, welfare and environment of the Navajo Nation,

1 its citizens, visitors and guests and pursuant to its right to exclude and to condition  
2 entry of non-members onto Navajo Nation Landslands and other lands within  
3 Navajo Indian ~~e~~Country.

4  
5 § 1307. Transportation Notice and Other Requirements

6 A. No person or entity ~~may~~shall transport any Products on or across Navajo Nation  
7 Landslands or otherwise within Navajo Indian ~~e~~Country unless such person  
8 or entity complies with the requirements of this section and ~~applicable~~ federal law.

9 B. Such person or entity shall give at least ~~four~~seven days advance notice of its intent  
10 to transport any Products on or across Navajo Nation Landslands or otherwise  
11 within Navajo Indian ~~e~~Country to the Executive Director of the Navajo  
12 Nation Environmental Protection Agency and to the Director of Public Safety.

13 ~~C. Such notice shall be given in conformity with the procedures established under~~  
14 ~~federal rules governing such notice to a state, governor and to local law~~  
15 ~~enforcement officials in order that proper preparatory emergency measures may be~~  
16 ~~taken by the Navajo Nation.~~

17 C. ~~D.~~Such notice shall be accompanied by a reasonable license fee; a showing that an  
18 emergency response plan and bonding or other insurance is in place adequate to  
19 protect the Navajo Nation in the event of a spill, disposal or accident; an adequate  
20 description of the route to be taken and the vehicles to be used in such  
21 transportation; adequate training requirements; and assurances that any Navajo  
22 Nation curfews for such transportation of any Products shall be honored.

23 D. ~~E.~~No person or entity ~~may~~shall transport across Navajo Nation Landslands any  
24 equipment, vehicles, persons or materials for the purpose of exploring for or  
25 mining, producing, processing, or milling any Products on or under the surface of  
26 or adjacent to Navajo Nation Landslands, or where such Activities may affect  
27 surface or ground waters of the Navajo Nation, without first:

- 28 1. Obtaining Navajo Nation consent and a federal grant of easement  
29 pursuant to the laws of the United States;  
30

- 1           2.       Consenting in writing to the full subject matter and personal jurisdiction  
2                   of the Navajo Nation; and
- 3           3.       Agreeing to terms and conditions deemed reasonable and appropriate  
4                   by the Navajo Nation. Such terms and conditions shall, at a minimum,  
5                   include the clean-up and remediation in accordance with the more  
6                   stringent of applicable federal or Navajo law, of any uranium  
7                   contamination on any parcel of Navajo Nation Landslands that degrades  
8                   the Navajo environment and/or poses a risk to the health and safety of  
9                   Navajo citizens provided such person, entity, affiliate, subsidiary,  
10                  partner, co-venturer, agent, contractor (including all subcontractors) or  
11                  other related party, and/or proposed user of the right-of-way is, under  
12                  any applicable Navajo or federal statute, regulation or order wholly or  
13                  partially responsible for the clean-up of the contamination.

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

19       E. ~~F-~~The Navajo Nation Environmental Protection Agency shall issue, by posting on  
20       its website, interim regulations promulgate, after meaningful consultation with the  
21       ~~Navajo Nation Division of Public Safety and subject to the approval of the~~  
22       ~~Resources and Development Committee, regulations necessary or desirable to~~  
23       ~~implement this section, including the establishment of~~establishing notice  
24       requirements, ~~designation of~~ reasonable license fees, emergency plans, bonding or  
25       other financial assurance requirements, route restrictions, and curfews, and other  
26       requirements for the transportation of any Products on Navajo Nation Landslands  
27       or otherwise within Navajo Indian ~~country.~~Country. Due to exigent circumstances,  
28       such interim regulations shall be effective immediately upon posting in order to  
29       protect the health, safety, welfare, and environment of the Navajo Nation. The  
30       Navajo Nation Environmental Protection Agency will provide subsequent public

1 notice and a 30-day comment period on the interim regulations in accordance with  
2 the Navajo Nation Environmental Protection Agency's Uniform Regulations. The  
3 Navajo Nation Environmental Protection Agency will promulgate the final  
4 regulations after such notice and comment, pursuant to Uniform Regulations § 407,  
5 and the final regulations will become effective after approval by the Resources and  
6 Development Committee, as provided therein. The final regulations will replace the  
7 interim regulations,; provided, however, that which in any event shall expire  
8 automatically one year after their posting even if final regulations have not yet  
9 become effective. Notwithstanding the foregoing, the minimum requirements of  
10 subsections (A) through (DE) of this section shall be self-executing and shall not  
11 require regulations in order to be effective as of the effective date of these  
12 amendments.

13 F. Until the Navajo Nation Environmental Protection Agency posts interim  
14 regulations authorized under Subsection E of this section, any person or entity  
15 seeking to transport any Products on or across Navajo Nation Lands or otherwise  
16 within Navajo Indian Country shall enter into an agreement with the Navajo Nation  
17 providing the terms and conditions for such transport, including notice  
18 requirements, routes, reasonable license fees, emergency plans, bonding or other  
19 financial assurances, curfews, and other requirements. The regulations authorized  
20 under Subsection E shall not supplant any agreement entered into prior to their  
21 issuance.

22  
23 § 1308. Enforcement

24 A. Administrative Enforcement. Whenever the Director finds that any person or entity  
25 has violated this Act or any regulations issued pursuant to this Act, the Director  
26 may issue and serve on such person or entity an order to comply, which may in  
27 addition impose civil administrative penalties.

- 28 1. An order to comply, including a penalty order, shall be issued pursuant  
29 to the Uniform Regulations Subpart 3, Part B.
- 30 2. Hearings shall be provided pursuant to Uniform Regulations Subpart C.

1           3.     The Director may develop a field citation program pursuant to Uniform  
2                     Regulations Subpart D.

3           4.     Judicial review of final administrative actions shall be provided  
4                     pursuant to Uniform Regulations Subpart E.

5     B. Judicial Enforcement. The Director may request the Attorney General to file an action  
6     for a temporary restraining order, a preliminary or permanent injunction, or any other  
7     relief provided by law, including the assessment and recovery of civil penalties of up  
8     to \$25,000 per day, whenever a person or entity has violated this Act or any regulations  
9     issued pursuant to this Act or is creating an imminent and substantial endangerment to  
10    public health or the environment because of a release of a Product. Any such action  
11    shall be brought in the Navajo Nation District Court in Window Rock, and such court  
12    shall have jurisdiction to restrain such violation, require compliance, assess civil  
13    penalties, collect any fees or noncompliance penalties owed the Navajo Nation under  
14    this chapter, and award any other appropriate relief.

15    C. Other Enforcement. If a person or entity transports Products on or across Navajo  
16    Nation Lands or otherwise over, under or across Navajo Indian Country in violation  
17    of this Act or any regulations or orders issued thereunder, or without an agreement  
18    in place with the Navajo Nation, the person or entity may be escorted off the Navajo  
19    Nation by the Navajo Nation Department of Public Safety or the Navajo Nation  
20    Rangers, to ensure the health and safety of Navajo citizens and guests and visitors  
21    alike and the welfare of the Navajo Nation.

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24     **SECTION FOUR. EFFECTIVE DATE**

25     The provisions of these amendments shall become effective in accordance with 2 N.N.C.  
26     § 221 (B).

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28     **SECTION FIVE. CODIFICATION**

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

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**SECTION SIX. SAVING CLAUSE**

If any provision of this legislation is held invalid by the Navajo Nation Supreme Court, or unappealable order of any court of competent jurisdiction, those portions of this Act which are not determined invalid shall remain in full force and effect.