

LEGISLATIVE SUMMARY SHEET

Tracking No. 0113-15

DATE: March 24, 2015

TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION;
AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE,
RECOMMENDING AMENDING 5 N.N.C. § 204(A) THE NAVAJO BUSINESS
OPPORTUNITY ACT TO CLASSIFY NAVAJO NATION OWNED BUSINESSES AND
ENTERPRISES AS PRIMARY ONE NAVAJO OWNED BUSINESSES

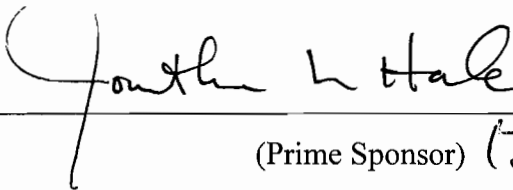
PURPOSE: The purpose of this proposed resolution is for the Resources and Development Committee to recommend the amendment of the Navajo Business and Opportunity Act to classify Navajo Nation owned and enterprises as “Primary One Navajo Owned Businesses.”

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: Latomia Burbank
Website Posting Time/Date: 10:30am 4.1.15
Posting End Date: 4.6.15
Eligible for Action: 4.7.15

PROPOSED STANDING COMMITTEE RESOLUTION
23rd NAVAJO NATION COUNCIL -- First Year, 2015

INTRODUCED BY


(Prime Sponsor) (Jonathan L. Hale)

TRACKING NO. 0113-15

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE,
RECOMMENDING AMENDING 5 N.N.C. § 204(A) THE NAVAJO BUSINESS
OPPORTUNITY ACT TO CLASSIFY NAVAJO NATION OWED BUSINESSES AND
ENTERPRISES AS PRIMARY ONE NAVAJO OWNED BUSINESSES

BE IT ENACTED:

Section One. Findings and Purposes

- A. The Resources and Development Committee, pursuant to 5 N.N.C. § 215 may recommend to the Navajo Nation Council amendments to the Navajo Business Opportunity Act.
- B. The Navajo Nation Council created the Navajo Engineering and Construction Authority (NECA), The Navajo Times Publishing Company, Inc. (NTPC), Navajo Agricultural Products Industry (NAPI), Navajo Tribal Utility Authority (NTUA), Navajo Oil and Gas Company, Inc., (NOGC), Navajo Nation Hospitality Enterprises (NNHE) and other businesses as wholly owned Navajo Nation owned business enterprises and corporations.
- C. The Navajo Nation business enterprises and corporations were created as instrumentalities of the Navajo Nation and granted all powers and authorities necessary and proper for the purpose of improving the economic, financial, and social

1 conditions of the Navajo Nation and Navajo People, and improving and enhancing
2 the Nation's natural, human, and economic resources.

3 D. The Navajo Nation owned enterprises and corporations have provided employment
4 opportunities for Navajo workers, business opportunities for Navajo owned
5 businesses, trained Navajo workers, helped to deliver government services to the
6 Navajo Nation, return to the Navajo Nation taxes and dividends, and generally have
7 improved the economic condition of the Navajo People and the Navajo Nation.

8 E. The Navajo Nation Business Opportunity Act, 5 N.N.C. § 204(A)(1) and (2) has
9 unintentionally created a barrier that threatens the Navajo Nation business
10 enterprises' continued contribution and critical role in nation building and moving the
11 Navajo Nation toward a self-sustaining economy and economic independence
12 sovereignty.

13 F. Navajo Nation Business Opportunity Act, 5 N.N.C. § 204(A)(1) and (2), have
14 classified all Navajo Nation owned business enterprises as Priority Two for the
15 purpose of bidding and bid openings.

16 G. As Priority Two Navajo-owned businesses, Navajo Nation business enterprises and
17 corporations are placed in a competitive disadvantage that seriously threatens the
18 financial vitality of the Navajo Nation business enterprises and corporations. In bid
19 openings, the business enterprises and corporations' bids are never opened if there is
20 a Navajo owned business that is classified as Priority One Navajo-owned business. In
21 many cases, the Navajo Nation business enterprise or corporation was the low bidder
22 and has demonstrated capacity, expertise, and experience for the project.

23 H. The governing boards for the Navajo Engineering and Construction Authority
24 (NECA), The Navajo Times Publishing Company, Inc. (NTPC), the Navajo
25 Agricultural Products Industry (NAPI), the Navajo Tribal Utility Authority (NTUA),
26 the Navajo Oil and Gas Company, Inc. (NOGC), the Navajo Nation Hospitality
27 Enterprises (NNHE), wholly owned Navajo Nation owned businesses and
28 corporations, have passed resolutions supporting and urging amendment of Navajo
29 Nation Business Opportunity Act, 5 N.N.C. § 204(A)(1) and (2). The Resolutions are
30 attached hereto and incorporated herein as Exhibit A through F, respectively.

1 I. It is in the best interest of the Navajo Nation that Navajo Nation owned enterprises,
2 corporations and business be classified as Priority One Navajo-owned businesses.
3 Classification as Priority One Navajo-owned businesses will further allow the Navajo
4 Nation enterprises, corporations and business to provide for financial growth of the
5 Navajo Nation.

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7
8 **Section Two. Recommended Amendments to Title Five, 5 N.N.C. § 204(A)(1) & (2)**
9

10 The Resources and Development Committee hereby recommends amendment of Title 5,
11 Navajo Nation Code Navajo Nation Business Opportunity Act, 5 N.N.C. § 204(A)(1) and
12 (2) as follows:

13
14 *****

15 NAVAJO NATION CODE ANNOTATED
16 TITLE 5. COMMERCE AND TRADE
17 CHAPTER 2. NAVAJO NATION BUSINESS OPPORTUNITY ACT
18

19 *****

20
21 § 204. Required Business and Contracting Preference Priorities; Certification
22 Requirements
23

24 A. Preference Priorities. The Navajo Nation shall certify all businesses pursuant to
25 the following Navajo business opportunity priority classification:

26
27 1. Priority #1. Certification shall be granted to any one hundred percent
28 (100%) Navajo-owned and controlled business, having its principal place of business
29 on or off the Navajo Nation or one hundred percent (100 %) Navajo Nation owned
30

1 and controlled enterprises and corporations having their principal place of business on
2 or off the Navajo Nation.

3 2. Priority #2. Certification shall be granted to any fifty-one percent (51%) to
4 ninety-nine percent (99%) Navajo or fifty-one percent (51%) to one hundred percent
5 (100%) other Indian owned and controlled business ~~or one hundred percent (100%)~~
6 ~~Navajo Nation owned and controlled economic enterprise~~ having its principal place
7 of business on or off the Navajo Nation.

8
9 B. Obtaining a Priority Certification and Required Compliance. To receive a priority
10 certification under this Act, the business must satisfactorily demonstrate that the business
11 meets the requirements of § 204(A)(1) or (2).

12
13 ****



NECA12-4-13

**RESOLUTION OF THE NAVAJO ENGINEERING
AND CONSTRUCTION AUTHORITY BOARD OF DIRECTORS**

**Approving and Recommending the Amendment of the
Navajo Business Opportunity Act, 5 N.N.C. § 204(A), to Classify Navajo
Engineering
and Construction Authority as a Priority One (1) Navajo-Owned Business; and
Related Actions.**

WHEREAS:

1. On June 13, 1972 by Resolution CJN-56-72, the Navajo Tribal Council created and established the Navajo Engineering and Construction Authority (NECA) as a wholly Navajo-owned business enterprise of the Navajo Nation for the benefit of the Navajo People; and
2. The Navajo Engineering and Construction Authority (NECA) is created and established to "engage in the general engineering and heavy construction industry," 5 N.N.C. § 1972 (A) (1), as amended; and
3. The NECA Board of Directors is delegated the authority and responsibility for the management and operation of NECA, 5 N.N.C. § 1972 (B) (1), as amended; and
4. The NECA is established to "engage in general engineering and heavy construction industry, to train Navajo People in the engineering and construction industry, including training in the management ... , to provide employment to the Navajo Nation, its enterprises and individual members, in engineering and construction and related businesses, and to be the premier heavy construction contractor serving the Navajo Nation and the public sector of the Four Corners area, emphasizing the values of excellence, service and employee development, ...", 5 N.N.C. §§ 1971, et seq.; and
5. Pursuant to 5 N.N.C. § 1972 (B)(12), as amended, the NECA is authorized by the Navajo Nation and therefore has the authority and responsibility to " enter into, make, perform, and carry out, or cancel, or rescind contracts for any lawful proposes set forth in 5 N.N.C. § 1972 including contracting for funds from whatever source without prior or subsequent approval or authorization by the Navajo Nation and to delegate so much of this authority as may be advisable to the General Manager or to the Chairman of the Board of Directors"; and
6. Pursuant to the authorization contained in 5 N.N.C. § 1972 (B)(12), as amended, the NECA has contracted federal highway construction projects on the Navajo Nation through the Bureau of Indian Affairs, Navajo Regional Office, Office of Highway Programs, Gallup, New Mexico, on an exclusive basis; and

7. As directed by the Navajo Nation Council at 5 N.N.C. §§ 1972, as amended, the NECA has become the premier heavy construction contractor in the Four Corners area with a substantial investment portfolio, unlimited bonding capacity, has trained countless Navajos in the construction fields, has an annual average work force of 400 employees, provided scholarships to Navajo college students, and has returned millions of dollars as a return on investment to the Navajo Nation; and

8. The NECA has met and exceeded the purposes for which the Navajo Tribal Council created it in 1972. NECA has proven to be extremely beneficial to the Navajo Peoples and a critical player in the Navajo Nation's nation building efforts. The NECA continues to be beneficial and critical to the Navajo Nation; and

9. By Navajo Nation Council Resolution CAP-13-13 (April 16, 2013) and signed into law on April 26, 2013, the Navajo Nation Council established the Navajo Division of Transportation (NDOT) as a division of the Navajo Nation government; and

10. The NDOT is created to "exclusively administer the Navajo Nation transportation programs within the Navajo Nation, to ensure an effective and efficient transportation operation to promote the improvement of the transportation system and to provide the necessary resources to accomplish the objectives..." 2 N.N.C. §§ 1371, et seq, as amended; and

11. The United States government recently approved and authorized NDOT as a direct recipient of the Federal Highway Trust Fund money for highway construction on the Navajo Nation; and

12. The NDOT can and has by-passed the BIA Navajo Regional Office for receipt of the Federal Highway Trust Fund designated for highway construction on the Navajo Nation; and

13. Pursuant to the Navajo Business Opportunity Act, 5 N.N.C. §§ 201, et seq., (hereinafter "NBOA") and in particular 2 N.N.C. § 205, as amended, the NDOT has begun to bid out highway construction projects on the Navajo Nation without regard to the 5 N.N.C. § 1972 (B)(12), as amended, and the NECA's highway construction contracting Opportunity law stated therein; and

14. The NDOT Executive Director is specifically authorized and directed to "Negotiate contracts, grants, and agreements appurtenant to the Navajo Nation Division of Transportation and subject to Navajo Nation laws, rules, and regulations" (*Emphasis added*); and

15. The NECA contracting authority on an exclusive basis codified at 5 N.N.C. § 1972 (B)(12), as amended, has not been amended or rescinded therefore is and

remains applicable Navajo Nation law with which the NDOT Executive Director must comply; and

16. Pursuant to 5 N.N.C. § 204, as amended, the NBOA classifies the NECA and all Navajo Nation owned enterprises as Priority 2 for purposes of bidding and bid opening; and

17. As a Priority 2 classified Navajo-owned business, the NECA can and does submit bids but NECA bids are not given consideration and are not even opened if there is a Priority 1 Navajo-owned company who submits a bid for the highway construction project; and

18. Recently, NDOT put out to bid a highway construction project on the Navajo Nation and awarded that project construction contract to an alleged Priority 1 Navajo-owned highway construction company even though NECA's bid was lower than that company's bid. The NECA's bid was not even opened because of NECA's classification as a Priority 2 under the NBOA; and

19. The NDOT's application of the NBOA bidding requirement puts NECA's business operation and financial viability in jeopardy and frustrates and undermines the purposes for which the Navajo Tribal Council created NECA in 1972; and

20. There is an obvious conflict and resulting uncertainty between the mandates contained in the NDOT's Plan of Operation, the NECA's Plan of Operation, and the NBOA.

21. The conflict in Navajo law needs to be resolved to give direction and certainty to the NDOT and NECA; and

22. Federal Highway Trust Fund moneys appropriated for highway construction on the Navajo Nation need to be committed and expended in an expeditious and efficient manner; and

23. The NECA is a competent Navajo-owned company that has demonstrated experience and history of constructing high quality highways and waterline/sewerlines and, further, has the capacity such as skilled employees, experienced management, unlimited bonding, and necessary equipment to build highways and construct waterlines/sewerline on the Navajo Nation; and

24. The NECA is the only Navajo Nation-owned business that relies on contracting in a competitive heavy construction industry market, consequently, the NECA is vastly different and unique from other Navajo Nation-owned business enterprises; and

25. It is in the best interest of the NECA that the Navajo Business Opportunity Act, 5 N.N.C. § 204(A), is amended to classify NECA as a Priority 1 Navajo-owned business to allow NECA to compete on a level playing field with all highway construction contractors consistent with the NBOA; and

26. Pursuant to 5 N.N.C. § 1981, as amended, the NECA Board of Director may amend the NECA Plan of Operation with the approval by the appropriate oversight committee of the Navajo Nation Council and final approval by the Navajo Nation Council.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Engineering and Construction Authority Board of Directors hereby approves and recommends to the Navajo Nation the amendment of the Navajo Business Opportunity Act, 5 N.N.C. § 204(A)(1) and (2), to classify Navajo Engineering and Construction Authority as a Priority 1 Navajo-owned and controlled business.

2. The Navajo Engineering and Construction Authority Board of Directors further approves and recommends the amendment of the Navajo Business Opportunity Act, 5 N.N.C. § 204(A)(1) and (2), as follows:

A. Preference Priorities. The Navajo Nation shall certify all businesses pursuant to the following Navajo business opportunity priority classification:

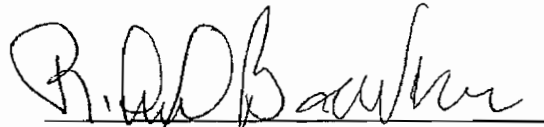
1. Priority #1. Certification shall be granted to any one hundred percent (100%) Navajo-owned and controlled business, having its principal place of business on or off the Navajo Nation including the Navajo Engineering and Construction Authority.

2. Priority #2. Certification shall be granted to any fifty-one percent (51%) to ninety-nine percent (99%) Navajo or fifty-one percent (51%) to one hundred percent (100%) other Indian owned and controlled business or with the exception provided in § 204(A)(1), one hundred percent (100%) Navajo Nation owned and controlled economic enterprise having its principal place of business on or the Navajo Nation.

3. The NECA Board of Directors further authorizes and directs the NECA General Manager and the NECA General Counsel to do any and all things necessary and proper to carry out the intent and purpose of this resolution including presentation to the appropriate oversight Committee of the Navajo Nation Council and to the Navajo Nation Council, if necessary.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Engineering and Construction Authority Board of Directors at a duly called meeting held in Talking Sticks - Scottsdale, Arizona, at which a quorum was present, and the same was adopted by a vote of 4 in favor, 0 opposed, 1 abstentions, and 1 no vote this 14th day of December 2013.



Richard Bowman, President
NECA Board of Directors

Motion by: Pete Ken Atcitty

Seconded by: Richard Begaye



**RESOLUTION OF THE
BOARD OF DIRECTORS
OF THE
NAVAJO TIMES PUBLISHING COMPANY, INC.**

No. BDMY-14-02

Recommending Amendments to the Navajo Business Opportunity Act, 5 N.N.C. § 205(A), to Classify the Navajo Times Publishing Company, Inc. and other Wholly Owned Navajo Nation Corporations, Enterprises, Authorities, Industries and Limited Liability Companies as a Priority One Businesses

WHEREAS:

1. Pursuant to "Resolved" & 1 of Navajo Nation Council Resolution No. CO-68-03 (Oct. 23, 2003), the Navajo Nation Council approved the incorporation of the Navajo Times Publishing Company, Inc., (the "NTPC") as a wholly owned corporation of the Navajo Nation under the Navajo Nation Corporation Code, 5 N.N.C. " 3100-3186, and the Navajo Nation issued a certificate of incorporation to the NTPC on November 20, 2003;

2. Pursuant to Resolution CO-68-03 (Oct. 23, 2003), the Navajo Nation Council established NTPC to "own and operate, directly or indirectly through the establishment of subsidiary operations, joint ventures, partnerships, or other business arrangements, a publishing company providing news/media in both print and electronic media, as well as other commercial printing and publication services that serve the interest of the community";

3. Pursuant to Resolution CJA-07-05 (Jan. 28, 2005), the Navajo Nation Council amended the Navajo Business Opportunity Act (the "NBOA"), 5 N.N.C. §§ 201-216;

4. Section 201 of the NBOA states among other things that the purpose of the NBOA is to: grant the first opportunity for contracting to Navajo and/or Indian owned and operated business; promote competitive bidding and contracting opportunities among Navajo businesses; develop a dynamic and self sustaining private sector for the Navajo Nation; and increase Navajo business and employment opportunities for the Navajo people;

5. Section 204(A)(2) of the NBOA provides two preference priorities to businesses, with Priority #1 being granted to any 100% Navajo owned and controlled business regardless of the location of their principal place of business; and Priority #2 being granted to "any 51% to 99% Navajo or 51% to 100% other Indian owned and controlled business or 100% Navajo Nation owned and controlled economic enterprise" regardless of the location of their principal place of business;

6. The Navajo Nation created many wholly owned corporations, enterprises, authorities, industries and limited liability companies (collectively, "Navajo Nation Enterprises") with specific mandates to develop the Nation's resources and capitalize on opportunities on the Navajo Nation that small business could not readily access or develop;

7. Those Navajo Nation Enterprises are now important components of the Navajo Nation economy and provide many benefits to Navajo individuals, including employment and small business contracting opportunities;

8. Providing the Navajo Nation Enterprises with a Priority #2 classification is inconsistent the Navajo Nation Council's mandates given to the Navajo Nation Enterprises to develop the Nation's resources and with the goals of full development of the Navajo Nation economy; and

9. It is in the best interest of all Navajo Nation Enterprises, including NTPC, that the NBOA be amended to classify all such Navajo Nation Enterprises as Priority #1 businesses, so that each can more fully satisfy the goals and objectives established for them by the Navajo Nation Council and participate in the full development of the Navajo Nation economy.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Board of Directors of the Navajo Times Publishing Company, Inc. hereby recommends to the Navajo Nation Council that the Navajo Business Opportunity Act, 5 N.N.C. § 204(A)(1) and (2) be amended as follows:

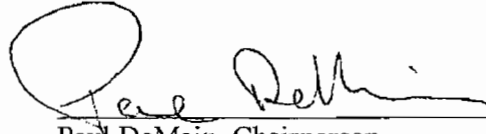
A. Preference Priorities. The Navajo Nation shall certify all businesses pursuant to the following Navajo business opportunity priority classification:

1. Priority #1. Certification shall be granted to any 100% Navajo-owned and controlled business and 100% Navajo Nation-owned corporations, enterprises, authorities, industries and limited liability companies, having its principal place of business on or off the Navajo Nation.
2. Priority #2. Certification shall be granted to any 51% to ~~99%~~ Navajo or 100% Navajo or other Indian owned and controlled business ~~or 100% Navajo Nation-owned and controlled economic enterprise~~ having its principal place of business on or off the Navajo Nation.

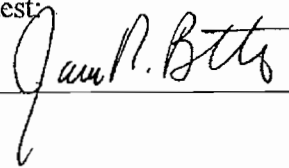
2. The Publisher/Chief Executive Officer is hereby authorized to take any and all necessary and proper steps to effect the letter and intent of this resolution, including collaborating with other similarly situated Navajo Nation-owned corporations, enterprises, authorities, industries and limited liability companies, and presentation to the appropriate oversight committees of the Navajo Nation Council and to the full Navajo Nation Council, if necessary.

CERTIFICATION

I hereby certify that the foregoing resolution was considered at a duly called meeting of the Board of Directors of the Navajo Times Publishing Company, Inc., at Albuquerque, NM on May 1, 2014, at which a quorum was present and that the same passed by vote of 4 in favor, 0 opposed, and 0 abstaining.


Paul DeMain, Chairperson

Attest:


Jan R. Butts



**NAVAJO
PRIDE**



BDAP-14-14

**RESOLUTION OF THE
NAVAJO AGRICULTURAL PRODUCTS INDUSTRY
BOARD OF DIRECTORS**

Recommending Amendments to the Navajo Business Opportunity Act, 5 N.N.C. § 204(A) To Classify NAPI and other Wholly-Owned Navajo Nation Enterprises and Corporations as Priority One Navajo-Owned Businesses

WHEREAS:

1. The Navajo Agricultural Products Industry ("NAPI") is a wholly owned enterprise of the Navajo Nation charged with operating and managing a commercial farm on land held in trust by the United States for the Navajo Nation under legislation authorizing the Navajo Indian Irrigation Project ("NIIP"); and
2. The NAPI Board of Directors is specifically authorized "to perform such acts as are necessary, proper and lawful to accomplish the business purposes of NAPI," Plan of Operation Art. 7(A), and to engage in lobbying efforts to achieve the purposes of NAPI, *id.* Art. 7(B); and
3. NAPI's Enabling Legislation provides that NAPI's purposes include the promotion of the use of agricultural and related resources and of agribusiness development and the multiplier effect. 5 N.N.C. § 1603(A), (C) (2005); and
4. As NAPI not only produces crops for resale in the Navajo Nation but also expands its value-added capabilities, NAPI would benefit from the marketing and sales benefits that would result from its classification as a Priority 1 business under the Navajo Business Opportunity Act ("NBOA"), 5 N.N.C. § 201 *et seq.* (2005); and
5. Other Navajo Nation wholly-owned enterprises and corporations operating in unique competitive environments and demonstrating extraordinary experience and expertise (including without limitation the Navajo Engineering and Construction Authority or "NECA") would similarly benefit from such classification; and
6. It is in the best interest of NAPI and the Navajo Nation that the NBOA be amended to classify NAPI, NECA and similar wholly-owned Navajo Nation enterprises and corporations be classified as Priority 1 businesses so that each can more fully satisfy the goals and objectives established for them by the Navajo Nation Council.

NOW THEREFORE BE IT RESOLVED THAT:

1. The NAPI Board of Directors hereby recommend to the Navajo Nation Council the amendment to the Navajo Business Opportunity Act, 5 N.N.C. § 204(A)(1) and (2), to classify NAPI and NECA as Priority 1 Navajo-owned and controlled businesses, as follows:

A. Preference Priorities. The Navajo Nation shall certify all businesses pursuant to the following Navajo business opportunity priority classification:

1. Priority # 1. Certification shall be granted to any one hundred percent (100%) Navajo-owned and controlled business, having its principal place of business on or off the Navajo Nation including the Navajo Agricultural Products Industry and the Navajo Engineering and Construction Authority.
2. Priority # 2. Certification shall be granted to any fifty-one percent (51%) to ninety-nine percent (99%) Navajo or fifty-one percent (51%) to one hundred percent (100%) other Indian owned and controlled business or subject to the exceptions provided in § 204(A)(1), one hundred percent (100%) Navajo Nation owned and controlled economic enterprise having its principal place of business on or off the Navajo Nation.

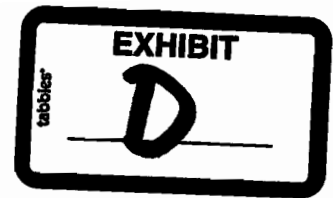
2. The Chief Executive Officer is authorized to take any and all necessary and proper steps to effect the letter and intent of this resolution, including collaborating with other similarly situated Navajo Nation enterprises and corporations, and presentation to the appropriate oversight Committee of the Navajo Nation Council and to the full Navajo Nation Council, if necessary.

CERTIFICATION

I hereby certify that the foregoing resolution was considered by the Navajo Agricultural Products Industry Board of Directors at a regularly called meeting at which a quorum was present at NAPI headquarters near Farmington, New Mexico, and that the same was passed by vote of 5 in favor, 0 opposed, and 0 abstained, this 7th day of April, 2014.

Motion: Ervin Chavez
Second: Elfonzo Nephew


Edward T. Begay, Chairman
Board of Directors



**RESOLUTION
OF THE MANAGEMENT BOARD
OF THE NAVAJO TRIBAL UTILITY AUTHORITY**

NTUA-29-14

**Recommending Amendments to the Navajo Business Opportunity Act, 5 N.N.C. §204(A) to
Classify Navajo Tribal Utility Authority and other Navajo Nation-Owned Enterprises and
Corporations as Priority One (1) Navajo-Owned Businesses**

WHEREAS:

1. The Management Board ("Board") of the Navajo Tribal Utility Authority ("NTUA" or "Authority") is delegated authority and responsibility for the management and operation of NTUA pursuant to 21 N.N.C. § 7(a)(1); and

2. NTUA's Plan of Operation provides that NTUA's purposes include the operation, maintenance, and promotion of existing utility systems furnishing electric, gas, water, sewer services, generation, telecommunications and information services. 21 N.N.C. § 5(A)(1); and

3. As NTUA not only furnishes utility services to all areas of the Navajo Nation but has also expanded into the competitive communications industry, NTUA would benefit from the marketing and sales benefits that would result from its classification as Priority 1 business under the Navajo Business Opportunity Act ("NBOA"), 5 N.N.C. §201 *et. seq.* (2005); and

4. Other Navajo Nation wholly-owned enterprises and corporations operating in competitive environments and offering unique expertise and experience within the Navajo Nation would similarly benefit from such classification; and

5. NTUA Management deems it in the best interest of NTUA that the NBOA be amended to classify the NTUA and similar wholly-owned Navajo Nation enterprises and corporations as Priority 1 businesses so that the NTUA and other Navajo Nation enterprises and corporations can use their expertise and experience to competitively bid on projects which follow and are governed by the NBOA.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Management Board of the Navajo Tribal Utility Authority hereby recommends to the Navajo Nation Council the amendment to the Navajo Business Opportunity Act, 5 N.N.C. §204(A)(1) and (2), to classify the NTUA and similar wholly-owned Navajo Nation enterprises and corporations as Priority 1 Navajo-owned and controlled business as follows:


A. Preference Priorities. The Navajo Nation shall certify all businesses pursuant to the following Navajo business opportunity priority classification:

1. Certification shall be granted to any one hundred percent (100%) Navajo-owned and controlled business, having its principal place of business on or off the Navajo Nation or one hundred percent (100%) Navajo Nation owned and controlled enterprises and corporations having its principal place of business on or off the Navajo Nation.
2. Certification shall be granted to any fifty one percent (51%) to ninety-nine percent (99%) Navajo or fifty-one percent (51%) to one hundred percent (100%) other Indian owned and control business, having its principal place of business on or off the Navajo Nation.

2. The Management Board of the NTUA further authorizes the General Manager, or appropriate NTUA personnel, to take any and all necessary and proper steps to effect the intent contemplated under this resolution.

CERTIFICATION

I certify that the foregoing resolution was duly considered by the Management Board of the Navajo Tribal Utility Authority at a duly called meeting held in Fort Defiance, Arizona, at which a quorum was present and the same was approved by a vote of 5 in favor, 0 opposed, and 0 abstaining this 27th day of October, 2014.


Arash N. Moalemi, Secretary



**RESOLUTION OF THE
NAVAJO NATION OIL AND GAS COMPANY
BOARD OF DIRECTORS**

No. 253 Recommending Amendments to the Navajo Business Opportunity Act, 5 N.N.C. § 204(A) To Classify NNOGC and other Wholly-Owned Navajo Nation Enterprises and Corporations as Priority One Navajo-Owned Businesses and Urging that the Navajo Nation Council Consider Legislation Granting NNOGC a Right of First Refusal to Assume Certain Easements and Business Site Leaseholds upon Their Expiration or Other Termination

WHEREAS:

1. The Navajo Nation Oil and Gas Company ("NNOGC") is a wholly owned corporation of the Navajo Nation organized under section 17 of the Indian Reorganization Act, as amended, and charged with developing and operating a profitable integrated oil company for the benefit of the Navajo Nation; and

2. The NNOGC Board of Directors is specifically authorized to "engage in any lawful business with the powers permitted to a corporation organized pursuant to 25 U.S.C. § 477, NNOGC Charter of Incorporation ("Charter"), Art. VII(D); and

3. NNOGC's Charter states the purpose of the Company is to "own and operate, directly or through subsidiary corporations, joint ventures, associations, partnerships or otherwise, any oil and/or gas production, operating, refining, drilling, or marketing business; and any motor or fossil fuel, distributing, trucking, jobber, wholesale, or retailing and related business," Charter, Art. VII(A); and

4. NNOGC conducts all phases of the oil and gas industry either within or outside of Navajo Indian Country and would benefit from the marketing and sales benefits that would result from its classification as a Priority 1 business under the Navajo Business Opportunity Act ("NBOA"), 5 N.N.C. § 201 *et seq.* (2005), including contracting with other Navajo Nation enterprises and the Nation's own programs for mutual benefit; and

5. Other Navajo Nation wholly-owned enterprises and corporations operating in unique competitive environments and demonstrating extraordinary experience and expertise (including without limitation the Navajo Engineering and Construction Authority or "NECA" and the Navajo Agricultural Products Industry or "NAPI") would similarly benefit from such classification; and

6. Such classification would have the effect of facilitating cooperation among and mutual support from and for the Nation's enterprises and corporations and to enhance the ability of NNOGC to market fuel throughout the Navajo Nation under its "Navajo Petroleum" brand, consistent with the policy preferences expressed by the Resources and Development Committee of the Navajo Nation Council; and

7. It is in the best interest of NNOGC and the Navajo Nation that the NBOA be amended to classify NNOGC, NAPI, NECA and similar wholly-owned Navajo Nation enterprises and corporations as Priority 1 businesses so that each can more fully satisfy the goals and objectives established for them by the Navajo Nation Council; and

8. NNOGC has prospered in part by use of the right of first refusal ("ROFR") when mineral leases are proposed to be conveyed under 18 N.N.C. § 605, and NNOGC and the Navajo Nation as NNOGC's sole shareholder would be similarly benefitted if legislation were enacted granting NNOGC a similar ROFR with regard to oil and gas pipeline easements and expired or otherwise terminated gas station/convenience store business site leases held by non-members.

NOW THEREFORE BE IT RESOLVED THAT:

1. The NNOGC Board of Directors hereby recommend to the Navajo Nation Council the amendment to the Navajo Business Opportunity Act, 5 N.N.C. § 204(A)(1) and (2), to classify NNOGC, NAPI and NECA as Priority 1 Navajo-owned and controlled businesses, as follows:

A. Preference Priorities. The Navajo Nation shall certify all businesses pursuant to the following Navajo business opportunity priority classification:

1. Priority # 1. Certification shall be granted to any one hundred percent (100%) Navajo-owned and controlled business, having its principal place of business on or off the Navajo Nation including the Navajo Nation Oil and Gas Company, the Navajo Agricultural Products Industry and the Navajo Engineering and Construction Authority.
2. Priority # 2. Certification shall be granted to any fifty-one percent (51%) to ninety-nine percent (99%) Navajo or fifty-one percent (51%) to one hundred percent (100%) other Indian owned and controlled business or subject to the exceptions provided in § 204(A)(1), one hundred percent (100%) Navajo Nation owned and controlled economic enterprise having its principal place of business on or off the Navajo Nation.


2. The Navajo Nation Council is respectfully urged to consider legislation to accord NNOGC a right of first refusal and other rights to acquire easements and related pipeline infrastructure in a manner similar to that accorded to the Nation and exercised in conjunction with NNOGC under 18 N.N.C. § 605, and to accord NNOGC similar rights related to expired or otherwise terminated gas station/convenience store business site leases previously owned by non-members.

3. The Chief Executive Officer is authorized to take any and all necessary and proper steps to effect the letter and intent of this resolution, including collaborating with other similarly situated Navajo Nation enterprises and corporations, and presentation to the appropriate

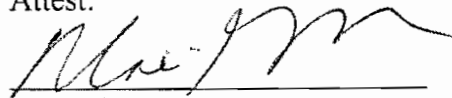
oversight Committee of the Navajo Nation Council and to the full Navajo Nation Council, if appropriate or necessary.

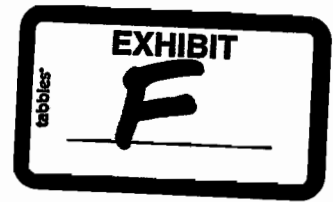
CERTIFICATION

I hereby certify that the foregoing resolution was considered by the Board of Directors of the Navajo Nation Oil and Gas Company, at a duly called meeting at which a quorum was present in Twin Arrows, Arizona, and that the same was passed by vote of 6 in favor, 0 opposed, and 0 abstained, this 26th day of October, 2014.


Lennard Eltsosie, Chairman
Board of Directors

Attest:


Mae-Gilene Begay
Secretary



**RESOLUTION OF THE
MANAGEMENT BOARD OF THE
NAVAJO NATION HOSPITALITY ENTERPRISE
Resolution No. 2014-2**

Recommending Amendments to the Navajo Business Opportunity Act, 5 N.N.C. 204 (A) to Classify Navajo Nation Hospitality Enterprise and other Navajo Nation-Owned Enterprises and Corporations as Priority One (1) Navajo-Owned Business.

WHEREAS:

1. The Management Board ("Board") of the Navajo Nation Hospitality Enterprise ("NNHE") is delegated authority and responsibility for the management and operation off NNHE
2. NNHE's purpose as outlined in their Plan of Operation, Section 1842, is for the conducting of hospitality operations. NNHE professionally and profitably operates the Quality Inn–Window Rock, Quality Inn–Tuba City, Quality Inn–Page and Navajo Travel Center, in the best interests of the Navajo Nation. NNHE possesses specialized experience in the tourism industry and tourism business performance as evidenced by its track record.
3. As NNHE owns and operates the hospitality operations, NNHE would benefit from the marketing and sales benefits that would result from its classification as Priority 1 business under the Navajo Business Opportunity Act ("NBOA"), 5 N.N.C. 201
4. Other Navajo Nation wholly-owned enterprises and corporations operating in competitive environments and offering unique expertise and experience with in the Navajo Nation would similarly benefit from such a classification.
5. NNHE Management deems it in the best interest of NNHE that the NBOA be amended to classify the NNHE and similar wholly-owned Navajo Nation enterprises and corporations as Priority 1 businesses so that the NNHE and other Navajo Nation enterprises and corporations can use their expertise and experience to competitively bid on projects which follow and are governed by NBOA.

WHEREFORE, BE IT HEREBY RESOLVED:

1. The Management Board of NNHE hereby recommends to the Navajo Nation Council the amendment to the Navajo Business Opportunity Act, 5 N.N.C. 204 (A)(1) and (2), to classify the NNHE and similar wholly-owned Navajo Nation enterprises and corporations as Priority 1 Navajo-owned and controlled business as follows:
 - A. Preference Priorities. The Navajo Nation shall certify all business pursuant to the following Navajo business opportunity priority classification:

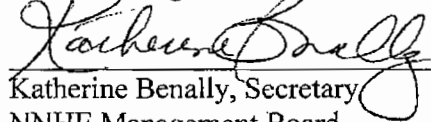
- i. Certification shall be granted to any one hundred percent (100%) Navajo – owned and controlled business, having its principal place of business on or off the Navajo Nation or one hundred percent (100%) Navajo Nation owned and controlled enterprises and corporations having its principal place on or off the Navajo Nation.
- ii. Certification shall be granted to any fifty one percent (51%) to ninety-nine percent (99%) Navajo or fifty one percent (51%) to one hundred percent (100%) other Indian owned controlled business, having its principal place of business on or off the Navajo Nation.

CERTIFICATION:

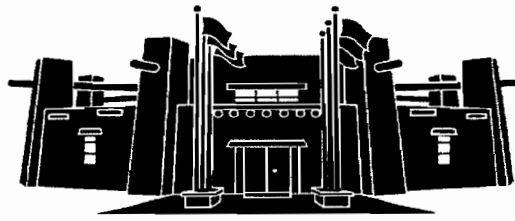
I hereby certify that the foregoing resolution adopted by the Navajo Nation Hospitality Enterprise Management Board at a duly called meeting at which a quorum was present the 24th Nov., 2014, in Glendale (Arizona), by vote of 4 in favor, 0 opposed and 0 abstaining.



Lorenzo Max, Chairman
NNHE Management Board



Katherine Benally, Secretary
NNHE Management Board



MEMORANDUM

To : Honorable Jonathan Hale
St. Michaels and Oaksprings Chapters

From : Mariana Kahn
Mariana Kahn, Attorney
Office of Legislative Counsel

Date : March 24, 2015

Re : PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION
RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE,
RECOMMENDING AMENDING 5 N.N.C. § 204(A) THE NAVAJO
BUSINESS OPPORTUNITY ACT TO CLASSIFY NAVAJO NATION
OWNED BUSINESSES AND ENTERPRISES AS PRIMARY ONE NAVAJO
OWNED BUSINESSES

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution drafted is legally sufficient. However, as with all legislation, it is subject to review by the courts in the event of challenge. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

If you are satisfied with the proposed resolution, please sign it as "sponsor" and submit it to the Office of Legislative Services where it will be given a tracking number and sent to the Office of the Speaker for assignment. If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution.

Thank you for your service to the Navajo Nation.

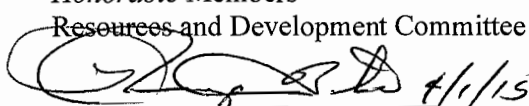
15-293-1



March 30, 2015

MEMORANDUM

TO : *Honorable Members*
Resources and Development Committee

FROM :  4/1/15
Hon. LoRenzo C. Bates, Speaker
23rd 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 Resources and Development Committee;

Legislation No. 0113-15

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; RECOMMENDING AMENDING 5 N.N.C. § 204(A) THE NAVAJO BUSINESS OPPORTUNITY ACT TO CLASSIFY NAVAJO NATION OWNED BUSINESSES AND ENTERPRISES AS PRIMARY ONE NAVAJO OWNED BUSINESSES.

As the Committee assigned to consider the legislation, Legislation No. 0113-15 must be placed on the Resources and Development Committee's agenda at the next regular meeting for final consideration.

ATTACHMENT: Legislation No. 0113-15

xc: Hon. Ben Shelly, *President*
The Navajo Nation
Harrison Tsosie, *Attorney General*
Robert Willie, *Controller*
Dominic Beyer, *Executive Director, OMB*
Honorable Jonathan L. Hale, Council Delegate (*Prime Sponsor*)

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0113-15_____

SPONSOR: Jonathan Hale

TITLE: An Action Relating To Resources and Development Committee; Recommending Amending 5 N.N.C. § 204(A) The Navajo Nation Business Opportunity Act to Classify Navajo Nation Owned Businesses and Enterprises as Primary One Navajo Owned Businesses

Date posted: April 1, 2015 at 10:30am

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) 871-7590**

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.*

**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY**

LEGISLATION NO.: 0113-15

SPONSOR: Honorable Jonathan L. Hale

TITLE: Relating To Resources And Development Committee; Recommending Amending 5 N.N.C. § 204(A) The Navajo Nation Business Opportunity Act To Classify Navajo Nation Owned Businesses And Enterprises As Primary One Navajo Owned Businesses.

Posted: April 1, 2015 at 10:30 am

5 DAY Comment Period Ended: April 6, 2015

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing (2)	1. Sylvia Laughter 2. Cal Nez
Inclusive Comments	<i>None</i>

1711

**Executive Director
Office of Legislative Services**

4/7/2015 - 8:35 am

Date/Time

Please vote NO to Legislation 0113 - 15 by Jonathan Hale

SL <navajostaterep@hotmail.com>

Mon 4/6/2015 5:02 PM

To: comments <comments@navajo-nsn.gov>;

April 6, 2015

The Honorable Council Delegates,
Resources and Development Committee,
The Honorable Jonathan Hale,

I am respectfully asking that you vote NO on the legislation to add a new classification of The Navajo Nation owned Enterprises as "priority One" for the following reasons:

- The Enterprises already get funding from the Navajo Nation, so therefore there is no need for this piece of Legislation.
- Navajo owned businesses need start up capital and funding for their businesses more than these Enterprises
- The Navajo Nation has limited financial resources and sharing funds with the Enterprises will make it very difficult for the sole businesses to compete against Enterprises for funding, for the following reasons:
 - They have established and hired assistance with submitting proposals for funding, creating a disadvantage for Navajo business owners to properly prepare and submit competing proposals for funding.

Please submit my opposition to this legislation on this day of April 6, 2015 at 3:13 pm.

Thank you,

Sylvia Laughter
Sent from my iPad

NO TO LEGISLATION #0113-15

Cal Nez Design <calnezdesign@gmail.com>

Mon 4/6/2015 7:44 PM

To: comments <comments@navajo-nsn.gov>;

Please submit my opposition to this legislation on this day of April 6, 2015 at 3:13 pm.

April 6, 2015

Dear: The Honorable Council Delegates,
Resources and Development Committee, The Honorable Jonathan Hale,

I am respectfully asking that you vote NO on the legislation to add a new classification of The Navajo Nation owned Enterprises as "priority One" for the following reasons:

1. The Navajo Nation or any of it's entities should never compete with it's private sector and/or entrepreneurs,
2. The Enterprises are currently subsidized by the Navajo Nation, so therefore there is no need for this piece of Legislation.
3. Navajo entrepreneurs need start up capital and funding for their businesses more than these Enterprises.
4. The Navajo Nation should prioritize it's fiscal responsibilities because of the limited financial resources and the shared funds with the Enterprises will make it very difficult for the sole businesses to compete against Enterprises for funding, for the following reasons:
 - a. They have established and hired assistance with submitting proposals for funding, creating a disadvantage for Navajo business owners to properly prepare and submit competing proposals for funding.
5. How many private Navajo entrepreneurs were sitting the table during these revision discussions?
6. Lastly if there are any NBOA revisions consideration it should be the enforcement of NBOA and a better tracking system of each departments by utilizing 100% Navajo-owned businesses by awarding Navajo entrepreneurs with contracts and loans.

Sincerely,

Cal Nez
Navajo businessman of 28 years

Cal Nez Design
Post Office Box 900698
Sandy, Utah. 84090
Telephone: 801-688-9297

**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY**

LEGISLATION NO.: 0113-15

SPONSOR: Honorable Jonathan L. Hale

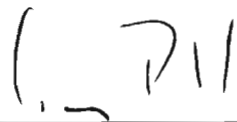
TITLE: Relating To Resources And Development Committee; Recommending Amending 5 N.N.C. § 204(A) The Navajo Nation Business Opportunity Act To Classify Navajo Nation Owned Businesses And Enterprises As Primary One Navajo Owned Businesses.

Posted: April 1, 2015 at 10:30 am

5 DAY Comment Period Ended: April 6, 2015

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing (5)	<ol style="list-style-type: none"> 1. Dine Development Corporation 2. Business Regulatory Commission 3. Jefferson Begay – TPM Construction Consultant 4. Tom Nells – Powerline Technologies 5. Dine Truckers
Inclusive Comments	<i>None</i>



**Executive Director
Office of Legislative Services**

7/29/2015 - 10:30 am

Date/Time



DINÉ DEVELOPMENT CORPORATION

April 14, 2015

Mr. Tom Platero, Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515

Subject: Legislation No: 0113-15

Dear Mr. Platero:

The Diné Development Corporation (DDC) supports the proposed legislation that would amend the Navajo Business Opportunity Act to classify Navajo Nation – owned enterprises and corporations as “Priority One” Navajo Owned Businesses.

The Navajo Nation created enterprises and corporations for the purpose of strengthening the Navajo Nation economy by improving financial, employment, and social conditions for the Navajo people. Typically, these NN-owned businesses are created because they bring capability to the Navajo Nation that is not generally available through the reservation-based private sector. When NN-owned enterprises are well qualified and submit the best proposals, it is in the Nation’s best interest to utilize them because of the multiplier effect of Navajo dollars recirculating through the economy.

Unfortunately, under the current system, it is common for individual Navajo-owned business to partner with large non-Navajo firms, thereby sending more money off the reservation. The current system protects individual Navajo businesses from having to compete with NN – owned businesses, but often the results do not lead to the best value for the Navajo people.

Navajo Nation – owned businesses should be first in line for consideration for NN contract opportunities. The proposed legislation evens the playing field and allows them to compete.

Sincerely,

Tom Teegarden, CEO

Arthur P. Allison, Board Chairman

xc: Board of Directors



THE NAVAJO NATION

March 30, 2015
(Revised July 10, 2015)

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

Resources and Development Committee
Of the Navajo Nation Council

RE: Navajo Nation Legislation 0113-15 Amending 5 N.N.C. §204 A, B, The Navajo Business Opportunity Act to Classify a Navajo Nation owned Business and Enterprises a Primary 1 Navajo Owned Businesses.

The Business Regulatory Department (BRD) was recently given notice that the Legislative Branch is amending the Navajo Business Opportunity Act (NBOA), in particular the provision of re-classifying Navajo Enterprises as Priority One businesses. Priority One businesses have the highest rank for preference in bidding for all contracts within the Navajo Nation. The small 100% Navajo owned businesses are the only business entities with the status of priority one, and are now equally competing among themselves and creating competition between equally ranked small businesses. The proposed Legislation 0113-15 will establish the Enterprises to have equal status as the smaller Navajo owned businesses.

Presently, the NBOA does not consider a Navajo Owned Enterprise as a Priority #One, due to the fact that large companies with subsidizing financial advantages will continually defeat small businesses in bidding competitions. This will drive many *small and privately owned Navajo companies* out of business.

The BRD has in the past been involved with other amendments that were done at the request of the *business community*, are the sponsors of this amendment responding to information, data or opinions from the ***small business community's standpoint?*** The Business Regulatory Department has a concern with this amendment, that it perceives our government to favor "*big business*". While small privately owned Navajo companies are left out. The following comments are concerns regarding the proposed amendments.

LEGISLATION NO: 0113-15

SPONSOR: Jonathan Hale

Section One. Findings and Purpose:

E. & F. The Navajo Business Opportunity Act §204 did *intentionally* classify all Navajo business enterprises as Priority Two, for the purpose of not allowing enterprises to compete against the small Navajo owned businesses. The purpose of the Act is to; Promote competitive bidding and contracting opportunities among Navajo Businesses. The intent is to create *competitive bidding between equally ranked small businesses* and to accelerate the *development of privately owned Navajo businesses*. The original Law passed in 1985 was to promote the small Navajo business person but, this new amendment will deviated from the original intent and now favors big businesses.

G. If there are priority one bidders, then the priority two bids are not opened. How can the statement be made that *"in many cases the enterprise or corporation was the low bidder"*?

H. The Navajo Business Opportunity Act **does allow** 100% wholly owned Navajo corporations and businesses to be classified as Priority Ones. **It is only the Navajo owned enterprises that are classified as Priority Two.**

Other concerns:

Finding and Purpose of the proposed amendment does not include or offer any legislative history to research the *intent* of the original Navajo Business Preference Law which intentionally classified 100% Navajo owned enterprises as priority twos. (See Exhibit B)

Prior to the original 1985 Preference Law, the Navajo Tribal Council in 1978, passed a Resolution CD-84-78 as amended by CF-12-80, which declared a policy; Tribal Departments were to use small Navajo owned businesses, vendors and suppliers for Tribal contracts. This later evolved and became the 1985 Navajo Business Preference Law.

In the 1985 Preference Law, it classified 100% tribally owned enterprises as Priority Two which clearly indicate the intent to favor small Navajo businesses. This is evident when the 1985 Law stated; **Navajo-owned and controlled private economic entities will be classified as Priority One.** *The originators of this amendment did not research the legislative history, which shows, this amendment was once proposed beginning in April through November 2002.* (See attached documents Exhibit A).

If the original concept of this NBOA was to *accelerate privately owned businesses*, then the proposed Legislation 0113-115 amendment will change the whole purpose of the Act. If the purpose is lost the NBOA is defeated and there is almost no opportunity to increase the development of privately owned Navajo businesses.

Periodic Review and Amendments are done only by the Navajo Nation Council *upon recommendation of the Resources and Development Committee* (RDC), 5 N.N.C. §215. Past amendments were in response to the *business community's request*. The BRD has direct communication with the businesses on the BRD Source List but, has yet to hear privately owned Navajo businesses express this concern. Any concerns with enough interest BRD usually forwards it to the RDC for future amendments.

Many Navajo Owned enterprises do not enhance employment opportunity because they *have-and-use* their own workforce that are on salary. This contradicts the findings of the NBOA, 5 N.N.C. §201, B, 4.

This unfair competition of *"huge enterprises"* vs. *"small privately owned Navajo businesses"*, will seriously threaten the economic and financial stability of Navajo small businesses providing subsistence for their families.

Navajo owned enterprises very seldom bid on projects. There are not many reasons for Navajo Owned Enterprises to bid on small projects.

Highways – BIA, FHWA Funded, Chapter Parking Lots?	1972 Estab.	NECA
News Papers?	2003	Navajo Times Publishing
Agriculture Services?		NAPI
Power Line Extensions – but not housing or individual facilities,	1959	NTUA
Sewer & Water Main Extensions – but not individual housing or facilities,		NTUA
Oil & Gas Services	1998	NOGC
Hospitality Services,		Navajo Hospitality Enterprises

This amendment: N.N. Legislation No. 0113-15, should **not** be considered unless the *Navajo business community* has their input and show a favorable interest in allowing Enterprises to compete alongside the privately owned businesses.

Respectfully,
Business Regulatory Department
Division of Economic Development



Navajo Engineering & Construction Authority

Phone (505) 368-5151

P. O. Box 969

SHIPROCK, NEW MEXICO 87420

(EXHIBIT A)

August 29, 2002

K. Begay 9502

The Honorable Kelsey Begaye
The Navajo Nation
Office of the President and Vice President
P. O. Box 9000
Window Rock, Arizona 86515



- R. Allen
- E. Richards

Dear President Begaye:

At the April meeting of the Navajo Engineering and Construction Authority, the Board of Directors passed the enclosed resolution. This resolution regards the classification of Enterprises of the Navajo Nation as "Priority 2" under the recently enacted Business Opportunity Act. The enclosed resolution proposes that Enterprises be granted "Priority 1" status for the purposes of competing for business activities subject to the requirements of the Business Opportunity Act. Your support of this effort is appreciated.

If you have questions concerning this resolution, I would be happy to discuss it with you, as well as any related questions that you may have. Please feel free to contact me at (505) 368-5151.

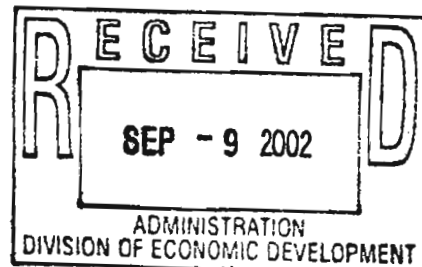
Sincerely,

Curtis Broughton

Curtis Broughton
General Manager

Enclosure

Xc: Chrono



(EXHIBIT A)

NECA4-2-02

RESOLUTION OF THE NAVAJO ENGINEERING AND CONSTRUCTION AUTHORITY

Recommending Amendment of the Navajo Business Preference Act, 5 N.N.C. § 608 (B) thereby Classify Navajo Nation Owned Business Enterprises as Priority One Business Entities and Related Actions

WHEREAS:

1. The Navajo Engineering and Construction Authority (NECA) is a duly established enterprise of the Navajo Nation, 5 N.N.C. § 1971; and
2. The NECA is created to "engage in the general engineering and heavy construction industry", 5 N.N.C. § 1972 (A)(1), and further, the NECA Board of Directors is authorized to have responsibility for the management and operation of NECA, 5 N.N.C. § 1972 (b)(1); and
3. On October 18, 2002, the Navajo Nation Council enacted the Navajo Nation Sales Tax Act by Resolution No. CO-84-01. The Sales Tax Act, 24 N.N.C. §§ 601, et. seq., was signed into law by the Navajo Nation President on November 1, 2002; and
4. The Sales Tax Act will impose a sales tax on Navajo Nation owned business enterprises such as NECA. Pursuant to 24 N.N.C. § 608 (B), the sales tax will be phased-in so that the enterprises will pay 25% of the tax during calendar year 2003, 50% during calendar year 2004, 75% during calendar year 2005, and 100% of the tax during calendar year 2006. A copy of Section 608 (B) is attached hereto and incorporated herein as Exhibit A; and
5. Navajo Nation owned business enterprises are classified as Priority No. 2 for purpose of business and contracting preference under the Navajo Nation Business Preference Law, 5 N.N.C. § 204. A copy of 5 N.N.C. § 204 is attached hereto and incorporated herein as Exhibit B; and
6. As a Priority 2 business entity, NECA's bids on construction projects are opened only if there is no bid from a Priority 1 qualified business entity. The Priority 2 classification places NECA and other Navajo Nation owned enterprises at a competitive disadvantage; and
7. The imposition of the sales tax will place NECA at a further competitive disadvantage and may lead to the potential demise of an otherwise profitable business enterprise; and
8. NECA is a business enterprise owned and operated by the Navajo Nation and the Navajo People for purpose of training, employment, and return on investment. NECA has fulfilled and exceeded these goals and employs an average of nearly 500

(EXHIBIT A)

Navajos annually, and since 1995 has returned \$1,000,000 annually to the Navajo Nation; and

9. To level the playing field and provide a business atmosphere in which Navajo Nation owned enterprises can compete, the NECA Board of Directors recommends that the Navajo Nation amend the Navajo Nation Business Preference Law, 5 N.N.C. § 204. The NECA Board of Directors' recommended amendment of 5 N.N.C. § 204 is attached hereto and incorporated herein as Exhibit C: and

10. It is in the best interest of NECA and the Navajo Nation that 5 N.N.C. § 204 be amended as recommended and that the Navajo Nation ensure the success of business enterprises owned by the Navajo People by adopting the recommended amendment.

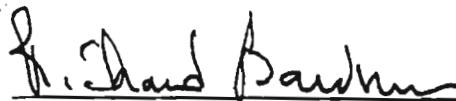
NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Engineering and Construction Authority Board of Directors hereby recommends that the Navajo Nation amend 5 N.N.C. § 608 (B), the Navajo Business Preference Act, thereby classifying Navajo Nation owned business enterprises as Priority One Business Entities, as provided in Exhibit C attached hereto and incorporated herein.

2. The Navajo Engineering and Construction Authority Board of Directors further authorizes and directs the President of the Board, the NECA General Manager and the General Counsel to do any and all things necessary and proper to execute the intent and purpose of this resolution, including presentation of the same to other Navajo Nation owned business enterprises for support, the Economic Development Committee, the Navajo Nation Council and the appropriate officials and offices of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Engineering and Construction Board of Directors at a duly called meeting held at Albuquerque, New Mexico, at which a quorum was present and the same was adopted by a vote of 8 in favor, 0 opposed and 0 abstention, this 26th day of April, 2002.



Richard Bowman, President
NECA Board of Directors

Motion by Tom Tso

Seconded by Kenneth Begay

DEC 3 - 2002

ADMINISTRATION
DIVISION OF ECONOMIC DEVELOPMENT

DEC 2002

25225

e by the Major
be obtained by

The Legislative Branch • Post Office Box 3390 • Window Rock, Arizona 86515 • Telephone (928) 871-7254/6380/6381/6382/6383/6887 • Fax: (928) 871-7259

EXHIBIT A

DIVISION OF ECONOMIC DEVELOPMENT
Business Regulatory Department
18 April 2003

DRAFT #2
Delete. Albert was
at a previous meeting!

SUBJECT: Directive from the Economic Development Committee of the Navajo Nation Council to analyze and determine the impact on the business community if NECA is granted a Priority 1 status, per the Navajo Business Opportunity Act, Title 5, NNC.

PARTICIPANTS: Mr. Curtis Broughton and ~~Mr. Albert Hale~~ of NECA; Mr. Frank D. Nez, Jr. and Ernie Pahe of Business Regulatory Department.

PURPOSE: After several attempts to meet with no success, BRD and NECA representatives finally met on Tuesday, 11 March 2003 to discuss the nature of the EDC Directive and to develop a preliminary Plan of Action. This would allow BRD and NECA to formally seek the resources necessary to develop this study. Needless to say, this Directive is requesting an analytic assessment be developed to further determine if this request from NECA is worth further pursuing. Mr. Broughton, Mr. Pahe and Mr. Frank Nez met for approximately 2 1/2 hours. This meeting resulted with the following statements and/or recommendations, as follows;

1. NECA is a Navajo Nation government owned economic enterprise established in 1971.
2. NECA is defined and classified as a Priority 2 business firm in accordance with the Navajo Business Opportunity Act, Title 5, NNC.
3. NECA is created to "engage in the general engineering and heavy construction industry, primarily road and infrastructure construction. There is \$20 million worth of equipment owned by NECA.
4. NECA receives an annual funding allocation directly from the BIA under PL 93-638 authority. No other NN entity exercises this privileged. There was adequate flexibility allowed with the spending requirements.
5. NECA provides the NN a substantial return of monetary investments for academic and scholarly pursuits.
6. NECA does provide employment for 500 people, of which 97% are Navajos. The remaining employees are non-Navajos. This complies with the Navajo Employment Preference Act.

EXHIBIT A

7. NECA and other NN owned enterprises are now subject to a 3% sales tax, which was never assessed in the past.
8. NECA has received contract work from AML, NTUA and IHS in the past, but on a very limited basis. Contracting opportunities from the state and federal governments are very minimal. In FY 2003, \$20 million out of \$70 million were from this source.
9. NECA, as an Owner, has awarded sub-contracts to certified NN firms, such as supplies, trucking, stripping, grading work and culverts. But the sub-contracts are very minimal and on a case-by-case basis. NECA has become a successful heavy highway construction contractor.
10. NECA acts in the capacity of a General Contractor, Sub Contractor and also solicits bid proposals as an Owner, depending upon the nature of the project being advertised and solicited.
11. NECA is defined as a government owned and operated economic enterprise and is granted a Priority 2 status, per the NBOA. Private Navajo/Indian owned and operated economic enterprises are granted Priority 1 status, per the NBOA.
12. Projects performed by NECA have no significant or substantial impact on the private owned and operated businesses. In fact, they support each other.

CONCLUSION.

1. NECA shall remain a Priority 2 status by virtue of being a government owned and operated economic enterprise. This prevents the government from competing against the private sector in the procurement industry.
2. NECA shall continue to utilize Navajo/Indian owned businesses that are certified in accordance with the NBOA on all contracts awarded by the Navajo Nation, federal and/or state governments.
3. NECA shall seek and acquire certification as an Indian and/or Minority owned and operated economic enterprise from the federal and state governments, such as the 8-A Certification program, etc.
4. The management of NECA agrees with the rationale of BRD/NN granting a Priority 2 status.

EXHIBIT A

5. NECA and BRD agree that a “formal study” to assess the impact of NECA’s operation on small businesses is necessary and prudent, but where are the resources to prepare and develop a comprehensive assessment?

END OF REPORT.

Frank D. Nez, Jr. Department Manager
Business Regulatory Department/DED

Curt Broughton, General Manager
Navajo Engineering/Construction Authority

Chrono/file.

THE NAVAJO NATION



NAVAJO NATION BUSINESS PREFERENCE LAW

[CJY-59-85]

Title 5, CH. 2 - Sections 201 - 218

BUSINESS REGULATORY DEPARTMENT
DIVISION OF ECONOMIC DEVELOPMENT
P. O. Box 663 - Window Rock, Arizona 86515

Telephone No's
(602) 871-6714, 6715, 6718 & 6287

§ 204. Required business and contracting preference priorities; business certification, requirements

(a) *Preference Priorities.* Application for or award of any business preference as provided under this chapter of the Navajo Nation is conditioned upon and constitutes submission by any entity, firm or other organization to the jurisdiction and laws of the Navajo Nation with respect to any business activity conducted thereby. All references to levels of Navajo Business Preference under this chapter shall refer to the following ranking of preference-eligible entities, beginning with the highest priority level:

(1) *Priority #1.* Wholly (100%) Navajo-owned and controlled private economic entity, firm or organization, which is an established business principally located, and with a substantial portion of its business activity being conducted, within the jurisdiction of the Navajo Nation.

(2) *Priority #2.* Any other (at least 51%) Navajo-owned or wholly (100%) Navajo Tribal-owned and controlled economic enterprise, firm or organization, which is an established business principally located, and with a substantial portion of its business activity being conducted, within the jurisdiction of the Navajo Nation.

(3) *Priority #3.* Any other wholly (100%) Navajo-owned and controlled private economic entity, firm or organization, which is an established business located outside of the jurisdiction of the Navajo Nation but with a substantial portion of its business activity being conducted within and under the jurisdiction of the Navajo Nation.

(4) *Priority #4.* Any other (at least 51%) Navajo or other Indian-owned and controlled private economic entity, firm or organization, which is an established business located outside of the jurisdiction of the Navajo Nation but with a substantial portion of its business activity being conducted within and under the jurisdiction of the Navajo Nation.

(b) *Required Compliance with Navajo Employment Preference Laws.* To be certified as eligible for any Navajo Nation Business Preference as provided by this chapter, any business individual, organization, firm, enterprise or other economic entity must also, as a condition to the award of such preference, demonstrate full compliance with all applicable requirements of the Navajo Employment Preference laws, rules and regulations of the Navajo Nation.

0113-15

Jefferson Begay <jlbegay@cox.net>

Tue 4/7/2015 11:52 AM

To: comments <comments@navajo-nsn.gov>;

Cc: 'TP ENT' <tpenterprises09@gmail.com>; Patty Dimitriou via LinkedIn <cdf6208e-ff80-46bf-9522-82a8412a90ab@reply.linkedin.com>; CJARVISON@NCAIED.ORG <CJARVISON@NCAIED.ORG>; Cindy Yurth <jo@navajotimes.com>; Loren Tapahe <LTapahe@aol.com>; 'Aaron Shorty' <rockspring@sisna.com>; ahec01@gmail.com <ahec01@gmail.com>;

I AM CHAIRMAN OF THE DINEH CHAMBER OF COMMERCE, AN ORGANIZATION FORMULATED TO ADVOCATE FOR THE NAVAJO SMALL BUSINESS AND THE PROMOTION OF A NAVAJO PRIVATE SECTOR ECONOMY. THIS LEGISLATION TO ALLOW NAVAJO NATION ENTERPRISES TO COMPETE WITH THE NAVAJO SMALL BUSINESSES IS WRONG. THE NAVAJO GOVERNMENT AND ITS ENTERPRISES NEED TO STAY OUT OF THE PRIVATE SECTOR BUSINESS ENVIRONMENT. THEY ARE TO LEGISLATE POLICY THAT SUPPORTS AND MAINTAINS THE PROMOTION OF NAVAJO SMALL BUSINESSES AND NOT COMPETE WITH THEM. IT IS THE PRIVATE SECTOR THAT GROWS THE ECONOMY NOT THE GOVERNMENT. IF THE NAVAJO GOVERNMENT RUNS EVERYTHING WE BECOME A TOTALITARIAN NATION. WE KNOW THAT ONLY LEADS TO DISASTER. ENOUGH CONTROL OUT OF WINDOW ROCK PLEASE. YOU DO NOT NEED TO "REGULATE" AND HINDER NAVAJO BUSINESSES.

I STRONGLY OPPOSE THIS LEGISLATION 0113-15 FOR THIS REASON.

JEFF BEGAY

TPM

CONSTRUCTION CONSULTANT

1836 N. STAPLEY DRIVE, UNIT 33

MESA, ARIZONA 85203

P: 602.499.8878

E-MAIL: JLBEGAY@COX.NET

Voting "NO"

DELETE

REPLY

REPLY ALL

FORWARD

Tom Nells <tnells@powerlinetechnologies.com>

mark as unread

Tue 4/7/2015 3:51 PM

To: comments;

1 attachment

Legislative~.
pdf

Voting "NO" – to legislation #0113-15.

Thank you,

TOM NELLS



Office Phone (505) 863-5560

Office Phone (505) 863-8125

tnells@powerlinetechnologies.comwww.powerlinetechnologies.com

A Native American Owned Co.

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I strongly oppose this legislation 0113-15 for this reason.

DELETE

REPLY

REPLY ALL

FORWARD

Dine <dinetruckersassociation12@gmail.com>

mark as unread

Tue 4/7/2015 10:39 PM

To: comments;

Cc: Transport Rockspring <rockspring@sisna.com>; begay lester <lesterb43@gmail.com>;

As being part of Board Member, why should Navajo Enterprises compete with small business, Navajo nation government needs to understand that we're seeking help to better Improvement for Private Navajo Business with NBOA, not to throw us under the bus, that's my Opinion, I OPPOSED TO THIS !!! Help us don't work against us!!

Dine Truckers

Geneva (TP Enterprises)

Sent from my iPhone

**RESOURCES AND DEVELOPMENT COMMITTEE
23rd NAVAJO NATION COUNCIL**

FIRST YEAR 2015

COMMITTEE REPORT

Mr. Speaker,

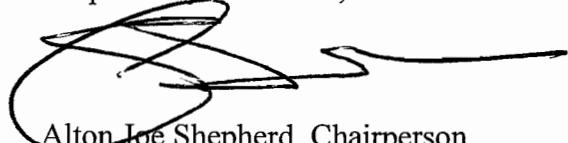
The **RESOURCES AND DEVELOPMENT COMMITTEE** to whom has been assigned:

Legislation # 0113-15: An Action Relating to the Resources and Development Committee; Recommending Amending 5 N.N.C. §204(A) The Navajo Business Opportunity Act to Classify Navajo Nation Owned Businesses and Enterprises As Primary One Navajo Owned Businesses. *Sponsor: Honorable Jonathan L. Hale*

Has had it under consideration and report the same TABLED with the following directives to schedule a work session with 60-days with the NECA and all the enterprises mentioned in the legislations and other tribal programs NDOT, DED, NNDOJ and OLC. Topics for the work session to include the bidding process, bid opening and review of plan of operations of all the enterprises list on the legislation.

and thereafter on TABLED status.

Respectfully submitted,



Alton Joe Shepherd, Chairperson
Resources and Development Committee of
the 23rd Navajo Nation Council

Date: April 13, 2015
Motion: Leonard Tsosie
Second: Walter Phelps
Vote:

TABLE MOTION: Benjamin Bennett
Second: Walter Phelps
Vote: 4-0 (Leonard Tsosie, Walter Phelps, Benjamin Bennett and Leonard Pete voting in favor of tabling motion.) Chair not voting.

RESOURCES AND DEVELOPMENT COMMITTEE
23rd NAVAJO NATION COUNCIL

FIRST YEAR 2015

COMMITTEE REPORT

Mr. Speaker,

The **RESOURCES AND DEVELOPMENT COMMITTEE** to whom has been assigned:

Legislation # 0113-15: An Action Relating to the Resources and Development Committee; Recommending Amending 5 N.N.C. §204(A) The Navajo Business Opportunity Act to Classify Navajo Nation Owned Businesses and Enterprises As Primary One Navajo Owned Businesses. *Sponsor: Honorable Jonathan L. Hale*

- Has had it under consideration on April 13, 2014 and report the same TABLED with a directive to schedule a work session within 60-days with the NECA and all the enterprises mentioned in the legislations and other tribal programs NDOT, DED, NNDOJ and OLC. Topics for the work session to include the bidding process, bid opening and review of plan of operations of all the enterprises list on the legislation.
- RDC held a work session with NECA and all of the enterprises and tribal entities and discussed the pros and cons of the intent of the legislation.
- Legislation recalled for RDC's consideration on August 18, 2015.

and thereafter reports the legislation FAILED with a vote of 0-3-1. (Chair not voting. Committee members voting Against Legislation was: Walter Phelps, Benjamin Bennett and Leonard Pete. Davis Filfred did not vote.)

Respectfully submitted,



Alton Joe Shepherd, Chairperson
Resources and Development Committee of
the 23rd Navajo Nation Council

Date: August 13, 2015

MAIN MOTION: Leonard Tsosie

Second: Walter Phelps

Vote: **FAILED (FINAL VOTE: 0-3-1. Chair Not Voting)**

TABLE MOTION: Benjamin Bennett

Second: Walter Phelps

Vote: 4-0 (Leonard Tsosie, Walter Phelps, Benjamin Bennett and Leonard Pete voting in favor of tabling motion.) Chair not voting.

RECALL MOTION: Davis Filfred

Second: Leonard Pete

VOTE: 4-0-0 (CNV)