LEGISLATIVE SUMMARY SHEET
Tracking No. 0052-23

DATE: March 31, 2023

TITLE OF RESOLUTION: AN ACT RELATING TO THE LAW AND ORDER, RESOURCES AND DEVELOPMENT, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; AMENDING 2 N.N.C §104 AND 11 N.N.C. § 8(B) TO PROHIBIT COUNCIL DELEGATES FROM SERVING AS BOARD MEMBERS AND SHAREHOLDER REPRESENTATIVES FOR NAVAJO NATION-OWNED INSTRUMENTALITIES

PURPOSE: This resolution, if approved, will prohibit Council Delegates from serving on the governing boards, management committees or commissions of any Navajo Nation-owned instrumentality and from serving as Shareholder Representatives or Member Representatives to any Navajo Nation-owned instrumentality.

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

5-DAY BILL HOLD PERIOD: A Johnson
Website Posting Time/Date: 7:56pm; 04-04-23
Posting End Date: 04-09-23
Eligible for Action: 04-10-23

Law & Order Committee
Thence
Resources & Development Committee
Thence
Naabik'íyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

25th NAVAJO NATION COUNCIL – First Year, 2023

INTRODUCED BY

(Prime Sponsor)

TRACKING NO. 0052-23

AN ACT

RELATING TO THE LAW AND ORDER, RESOURCES AND DEVELOPMENT, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; AMENDING 2 N.N.C §104 AND 11 N.N.C. § 8(B) TO PROHIBIT COUNCIL DELEGATES FROM SERVING AS BOARD MEMBERS AND SHAREHOLDER REPRESENTATIVES FOR NAVAJO NATION-OWNED INSTRUMENTALITIES

BE IT ENACTED:

SECTION ONE. AUTHORITY

A. The Law and Order Committee is a standing committee of the Navajo Nation Council with the delegated authority to review and make recommendations to the Navajo Nation Council on proposed amendments to and enactments to the Navajo Nation Code. 2 N.N.C. § 601 (B)(14).

B. The Resources and Development Committee is a standing committee of the Navajo Nation Council with the delegated authority to periodically receive reports and review the operations of the Navajo Nation enterprises, authorities, and industries. 2 N.N.C. § 501 (B)(4)(e).

C. Pursuant to 2 N.N.C. § 164 (A)(9), "a proposed resolution that requires final action by the Navajo Nation Council [must] be assigned to standing committee(s) having authority over the subject matter at issue and the Naabik'íyáti Committee."

D. The Navajo Nation Council is the governing body of the Navajo Nation and is responsible for the enactment and establishment of Navajo Nation law and policy. 2 N.N.C. § 102 (A) and 164 (A).

SECTION TWO. FINDINGS

A. The *Navajo Ethics in Government Law*, 2 N.N.C. 3741 *et seq.*, includes a general prohibition that "public officials and employees of the Navajo Nation avoid any action, whether or not specifically prohibited by the Standards of Conduct [ERC-08-001], which could result in, or create the appearance of . . . adversely affecting the confidence of the people in the integrity of the government of the Navajo Nation." 2 N.N.C. § 3745 (B)(6).

B. The *Navajo Ethics in Government Law* also includes specific prohibitions that elected officials "shall not ... [h]ave direct or indirect financial or other economic interests nor engage in such other employment or economic activity which ... necessarily involve inherent substantial conflict, or appears to have such substantial conflict, with their responsibilities and duties as public officials ... of the Navajo Nation." 2 N.N.C. § 3747(A), *Restrictions Against Incompatible Interests or Employment.*

B. Due to the potential for conflicts of interest, the Navajo Nation Code specifically prohibits Council Delegates from serving as an elected official of the federal or state government, from being an employee of the federal or state government, from engaging in the private practice of law or from serving simultaneously as a school board member while serving as a delegate. *See* 2 N.N.C. § 104.

C. The *Regulations and Standards of Conduct for Elected Officials of the Navajo Nation*, ERC-O8-001, further clarify that "[m]ultiple duties arise to create conflicts when elected officials hold other governmental or non-governmental positions that impose duties upon the elected official in their other roles.

Members of Boards of Directors have duties to the entity whose board they serve on. A Board Member who is also an elected official should refrain from actions involving that entity while performing functions as an elected official. . . . An elected official shall not participate or vote on any before any entity of which the elected official is a member by virtue of or her status as an elected official. . . ." ERC-O8-001, Section Four (B)(3) and (C).

D. Under statutory plans of operations, articles of incorporation, operating agreements, corporate charters, and/or by-laws, Council Delegates may, by virtue of serving as members of the Navajo Nation Council, be appointed to the Boards, Commissions, or Management Committees governing specific Navajo Nation-owned instrumentalities, i.e., enterprises, companies, corporations, authorities, entities, etc. (hereinafter "instrumentalities").

E. Under statutory plans of operations, articles of incorporation, operating agreements, corporate charters, and/or by-laws, Council Delegates, by virtue of serving as members of the Navajo Nation Council, may also be appointed as Shareholder Representatives or Member Representatives to specific Navajo Nation-owned instrumentalities.

F. The *Ethics in Government Law* expressly states that "[i]t is the intention of the Navajo Nation Council that the provisions of this Navajo Nation Ethics in Government Law be construed and applied in each instance, so as to accomplish its purposes of protecting the Navajo People from government decisions and actions resulting from, or affected by, undue influences or conflicts of interest." 2 N.N.C. § 3742 (B).

G. The duties and responsibilities of Navajo Nation Council Delegates should be limited to appropriations and establishing the laws and policies for the Navajo Nation. Council Delegates should *not* serve on the governing boards, management committees or commissions of any Navajo Nation-owned instrumentality. Council Delegates should also *not* serve as Shareholder Representatives or Member Representatives to any Navajo Nation-owned instrumentality.

SECTION THREE. AMENDING 2 N.N.C. § 104

The Navajo Nation Council hereby amends 2 N.N.C. §104 as follows:

TITLE 2. NAVAJO NATION GOVERNMENT

CHAPTER 3. LEGISLATIVE BRANCH

SUBCHAPTER 2. NAVAJO NATION COUNCIL MEETINGS

****

§ 104. Incompatible service

A. No person shall serve as a delegate if he or she is in the permanent employment of the United States or any state or any subdivisions thereof; nor shall an elected official of the United States or the several states thereof serve as a delegate. This Section shall not apply to service ~~on a school board or~~ in an elective county office.

B. No person shall be eligible for election to the Navajo Nation Council if that person is permanently employed or an elected official as described in § 104(A).

C. If any delegate, after his/her election, enters such service, the delegate shall immediately forfeit his/her office as a Council Delegate.

D. No Council Delegate shall engage in the private practice of law while serving as a Navajo Nation Council Delegate.

E. No Council Delegate shall serve as a Shareholder Representative or Member Representative or member of the governing Board, Management Committee, or Commission of any Navajo Nation-owned instrumentality, which includes all Navajo Nation-owned enterprises, companies, corporations, authorities, and entities.

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SECTION FOUR. AMENDING 11 N.N.C. §8(B)

The Navajo Nation hereby amends the Election Code at 11 N.N.C. § 8(B) as follows:

TITLE 11. ELECTIONS

CHAPTER 1. NAVAJO NATION ELECTION CODE OF 1990

SUBCHAPTER 1. GENERAL PROVISIONS

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§8. Qualifications for office

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B. Qualifications for Delegate to the Navajo Nation Council:

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9. Must not, if elected, serve in any other elected Navajo Nation Office ~~with the exception of the office(s) of the school board(s)~~.

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11. Must not be in the permanent employment of the United States or any state or subdivision thereof, or be an elected official of the United States or any state or subdivision thereof, with the exception of ~~service on a school board or~~ elective county office.

12. Elected candidates who serve as members of boards of directors, management committees or commissions that govern a Navajo Nation-owned instrumentality, enterprise, corporation, company, authority, or entity shall resign from such positions before taking the Council Delegate oath of office.

13. Once sworn into office, Council Delegates shall not simultaneously serve as:

    a. members of boards of directors, management committees or commissions that govern a Navajo Nation-owned instrumentality, enterprise, corporation, company, authority, or entity members of Navajo Nation boards or commissions; or

b. Shareholder Representatives or Management Representatives for any Navajo Nation-owned instrumentality, enterprise, corporation, company, authority, or entity

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SECTION FIVE. EFFECTIVE DATE; DIRECTIVE

A. The amendments enacted herein shall become effective pursuant to 2 N.N.C. § 221(B).

B. All Navajo Nation-owned instrumentalities, enterprises, companies, corporations, authorities, and entities shall immediately amend their governing documents, e.g., articles of incorporation, operating agreements, by-laws, corporate charters, etc., to reflect the amendments enacted herein and shall provide copies of such amendments to the Resources and Development Committee within sixty (60) days after the effective date of this legislation.

SECTION SIX. CODIFICATION

These amendments of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate these amendments in the next codification of the Navajo Nation Code.

SECTION SEVEN. SAVINGS CLAUSE

Should any provision of these amendments be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation without appeal to the Navajo Nation Supreme Court, those amendments that are not determined invalid shall remain the law of the Nation.

Office of Legislative Counsel
Telephone: (928) 871-7166
Fax # (928) 871-7576



Honorable Crystalyne Curley
Speaker
25th Navajo Nation Council

MEMORANDUM

TO: Honorable Amber Kanazbah Crotty (Sponsor)
25th Navajo Nation Council

FROM: Dana Bobroff
Dana L. Bobroff, Chief Legislative Counsel
Office of Legislative Counsel

DATE: March 31, 2023

SUBJECT: **AN ACT RELATING TO THE LAW AND ORDER, RESOURCES AND DEVELOPMENT, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; AMENDING 2 N.N.C §104 AND 11 N.N.C. § 8(B) TO PROHIBIT COUNCIL DELEGATES FROM SERVING AS BOARD MEMBERS AND SHAREHOLDER REPRESENTATIVES FOR NAVAJO NATION-OWNED INSTRUMENTALITIES**

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 as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

Please ensure that his particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION

LEGISLATION NO: _0052-23__ **SPONSOR:** Amber Kanazbah Crotty

TITLE: An Act Relating to the Law and Order, Resources and Development, and Naabik'íyáti' Committees and the Navajo Nation Council; Amending 2 N.N.C. § 104 and 11 N.N.C. § 8(B) to Prohibit Council Delegates from Serving as Board Members and Shareholder Representatives for Navajo Nation-Owned Instrumentalities

Date posted: April 04, 2023 7:56 PM

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

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

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0052-23

SPONSOR: Honorable Amber Kanazbah Crotty

TITLE: An Act Relating to the Law and Order, Resources and Development, and Naabik'íyáti' Committees and the Navajo Nation Council; Amending 2 N.N.C. § 104 and 11 N.N.C. § 8(B) to Prohibit Council Delegates from Serving as Board Members and Shareholder Representatives for Navajo Nation-Owned Instrumentalities

Posted: April 04, 2023 at 7:56 PM

5 DAY Comment Period Ended: April 09, 2022

Digital Comments received:

Comments Supporting	*None*
Comments Opposing	*None*
Comments/Recommendations	*None*

Policy Analyst
Office of Legislative Services

April 10, 2023; 8:15 AM
Date/Time

LAW AND ORDER COMMITTEE
25TH NAVAJO NATION COUNCIL

FIRST YEAR 2023

COMMITTEE REPORT

Madam Speaker,

The **LAW AND ORDER COMMITTEE** to whom has been assigned:

Legislation No. 0052-23: An Act Relating to the Law and Order, Resources and Development, and Naabik'iyati' Committees and the Navajo Nation Council; Amending 2 N.N.C. §104 and 11 N.N.C. § 8(B) to Prohibit Council Delegates from Serving as Board Members and Shareholder Representatives for Navajo Nation-Owned Instrumentalities – *Sponsor: Honorable Amber Kanazbah Crotty*

Has had it under consideration and reports a DO PASS with no amendment.

And thereafter the legislation was referred to Resources and Development Committee.

Respectfully submitted,

Steven R. Arviso, Pro Tem Chairperson
Law and Order Committee
25th Navajo Nation Council

Date: April 10, 2023

Main Motion:
Motion : Honorable Eugenia Charles-Newton
Second : Honorable Herman M. Daniels, Jr.
Vote : 2-0-3

LAW AND ORDER COMMITTEE

Regular Meeting
April 10, 2023

Legislation No. 0052-23: An Act Relating to the Law and Order, Resources and Development, and Naabik'iyati' Committees and the Navajo Nation Council; Amending 2 N.N.C. §104 and 11 N.N.C. § 8(B) to Prohibit Council Delegates from Serving as Board Members and Shareholder Representatives for Navajo Nation-Owned Instrumentalities – *Sponsor: Honorable Amber Kanazbah Crotty*

(CONSENT ITEM)

VOTE TALLY SHEET:

Main Motion:
Motion: Honorable Eugenia Charles-Newton
Second: Honorable Herman M. Daniels, Jr.
Vote: 2-0-3

Yea: Hon. Eugenia Charles-Newton/Hon. Herman M. Daniels, Jr.
Nay: None
Not Voting: Hon. Steven R. Arviso, Pro Tem Chairperson
Excused: Hon. Nathan Notah
Absent: Hon. Cherilyn Yazzie

Steven R. Arviso, Pro Tem Chairperson
Law and Order Committee
25th Navajo Nation Council

Laureen Spencer, Legislative Advisor
Office of Legislative Services