

## LEGISLATIVE SUMMARY SHEET

Tracking No. 0108-21

**DATE:** July 6, 2021

**TITLE OF RESOLUTION:** AN ACT RELATING TO LAW AND ORDER AND NAABIK'ÍYATI' COMMITTEES AND NAVAJO NATION COUNCIL; AMENDING 2 N.N.C. §§ 1973 (A) AND (C), REMOVING THE DOMICILE AND TRIBAL MEMBERSHIP REQUIREMENTS FOR THE CHIEF PROSECUTOR POSITION; OFFICE OF THE PROSECUTOR

**PURPOSE:** An action related to the Law and Order and Naabik'iyati' Committees; and Navajo Nation Council, amending 2 N.N.C. §§ 1973(A) and (C), removing the domicile and tribal membership requirements for the Chief Prosecutor position within the Office of the Prosecutor.

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 VSPLANASE  
Website Posting Time/Date 07-06-2021 11:15 PM  
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Eligible for Action: 07-12-2021

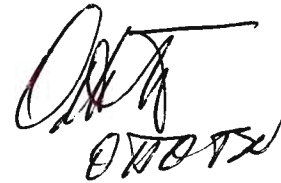
## PROPOSED NAVAJO NATION COUNCIL RESOLUTION

24<sup>th</sup> NAVAJO NATION COUNCIL – Third Year 2021

INTRODUCED BY

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(Prime Sponsor)

TRACKING NO. 0108-21

## AN ACT

**RELATING TO LAW AND ORDER AND NAABIK'ÍYATI' COMMITTEES AND  
NAVAJO NATION COUNCIL; AMENDING 2 N.N.C. §§ 1973 (A) AND (C),  
REMOVING THE DOMICILE AND TRIBAL MEMBERSHIP REQUIREMENTS  
FOR THE CHIEF PROSECUTOR POSITION**

**BE IT ENACTED:****SECTION ONE. AUTHORITY**

- A. The Law and Order Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 600. The Committee has the authority to review and make recommendations to the Navajo Nation Council regarding proposed amendments and enactments to the Navajo Nation Code. 2 N.N.C. § 601(B)(14).
- B. The Law and Order Committee has the enumerated powers to serve as the oversight Committee for the Department of Justice, unless otherwise designated by Navajo Nation law, and to approve and amend Plans of Operation thereto. 2 N.N.C. § 601(C)(2).
- C. The Naabik'iyati' Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 700. A proposed resolution that requires final action by the Navajo Nation Council [must] be assigned to the standing committee(s) having authority over the subject matter at issue and to the Naabik'iyati' Committee. 2 N.N.C. § 164(A)(9).

1 D. The Navajo Nation Council is the governing body of the Navajo Nation, empowered  
2 to promulgate policy and enact laws of the Navajo Nation. 2 N.N.C. §§ 102 (A) and  
3 164 (A).  
4

## 5 **SECTION TWO. FINDINGS**

6 A. The Office of the Prosecutor was created in 1979 by the Navajo Nation Council by  
7 Resolution No. ACF-9-79, and codified as 2 N.N.C. §§ 1171 – 1183 and subsequently  
8 amended and re-codified as 2 N.N.C. §§ 1971 – 1983.

9 B. Pursuant to 2 N.N.C. § 1973(A), the Office of the Prosecutor shall be headed by a Chief  
10 Prosecutor, who shall be a member of the Navajo Nation and have domicile upon the  
11 Navajo Reservation, or land under the jurisdiction of the Navajo Nation Courts for a  
12 term of six months immediately preceding his or her appointment as Chief Prosecutor.

13 C. The Chief Prosecutor's position has been vacant since 2019. Since this time, the Navajo  
14 Nation Department of Justice ("DOJ") has advertised the Chief Prosecutor position  
15 without receiving any qualified applicants.

16 D. Prior to 2019, there were ongoing challenges in filling the Chief Prosecutor position.  
17 Over time, the Office has had long stretches of time when it has been led by an *Acting*  
18 Chief Prosecutor.

19 E. This reality has prompted the DOJ to reconsider the statutory requirements for the Chief  
20 Prosecutor position as set forth in 2 N.N.C. § 1973. Statutory provisions, unlike job  
21 vacancy requirements, are difficult to change or update to keep up with the changing  
22 needs of departments.

23 F. Statutory requirements created the lack of flexibility and have inhibited DOJ's ability  
24 to fill the Chief Prosecutor position.

25 G. The lack of a permanent, full time Chief Prosecutor contributes to internal instability  
26 in the Office of the Prosecutor, and has had a negative impact on the ability of the  
27 Office to function effectively and meet its vital public safety responsibilities.

28 H. The domicile and tribal membership requirements precede the enactment of the Navajo  
29 Preference in Employment Act ("NEPA") at 15 N.N.C. § 601 *et. seq.*, which otherwise  
30 requires that a qualified Navajo tribal member is afforded preference in hiring.

- 1 I. Removing the statutory requirements regarding domicile and tribal membership may  
2 enlarge the pool of applicants and result in a qualified applicant hired as Chief  
3 Prosecutor.
- 4 J. The Chief Legislative Counsel, Navajo Nation Attorney General, and Deputy Attorney  
5 General positions have been held by non-Navajos in the past.
- 6 K. It is critical to fill the Chief Prosecutor position with a qualified candidate who has the  
7 necessary education, experience, and skills to fulfill the duties, responsibilities, and  
8 authority of the Chief Prosecutor, as outlined in 2 N.N.C. § 1974.
- 9 L. Removal of the statutory domicile and tribal membership requirement would expand  
10 the pool of potential qualified applicants and better enable the DOJ to fill this critical  
11 position.
- 12 M. Internal DOJ memorandum dated June 28, 2021, justifying support for amending the  
13 statutory requirements and qualifications for the Chief Prosecutor's position are attached  
14 as **Exhibits A**.

15  
16 **SECTION THREE. AMENDING TITLE 2, CHAPTER 5, SUBCHAPTER 39**

17 A. The Navajo Nation hereby amends the Title 2 as follows:

18  
19 **NAVAJO NATION CODE**  
20 **TITLE 2. NAVAJO NATION GOVERNMENT**  
21 **CHAPTER 5. EXECUTIVE BRANCH**  
22 **SUBCHAPTER 39. DEPARTMENT OF JUSTICE**  
23

24 \* \* \* \*

25 **§ 1973. Chief Prosecutor**

- 26 A. The Office of the Prosecutor shall be headed by a Chief Prosecutor., ~~who shall be~~  
27 ~~a member of the Navajo Nation and have domicile upon the Navajo Reservation,~~  
28 ~~or land under the jurisdiction of the Navajo Nation Courts for a term of six~~  
29 ~~months immediately preceding his or her appointment as Chief Prosecutor.~~  
30

1 B. The Chief Prosecutor shall be appointed by the Attorney General and he or she  
2 shall serve at ~~his or her~~ the pleasure of the Attorney General.

3 ~~C. The Chief Prosecutor shall serve until his or her successor is appointed.~~

4 E. Any attorney/prosecutor/advocate positions within the Office of the Prosecutor,  
5 other than the Chief Prosecutor's position, shall be appointed by the Chief  
6 Prosecutor and shall serve at the pleasure of the Chief Prosecutor. All other  
7 personnel shall be hired and compensated pursuant to the Navajo Nation  
8 Personnel Policies and Procedures.

9  
10 \* \* \* \*

11 \_\_\_\_\_  
12  
13 **SECTION FOUR. EFFECTIVE DATE**

14 The amendments enacted herein shall be effective pursuant to 2 N.N.C. § 221 (B).  
15

16 **SECTION FIVE. CODIFICATION**

17 The provisions of these amendments of the Navajo Nation Code shall be codified by  
18 the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate  
19 such amendments in the next codification of the Navajo Nation Code.  
20

21 **SECTION SIX. SAVINGS CLAUSE**

22 Should any provision of these amendments, be determined invalid by the Navajo  
23 Nation Supreme Court, or the District Courts of the Navajo Nation without appeal to  
24 the Navajo Nation Supreme Court, those amendments that are not determined invalid  
25 shall remain the law of the Nation.  
26  
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28  
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30

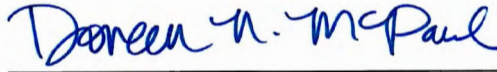


**NAVAJO NATION DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

DOREEN N. MCPAUL  
Attorney General

KIMBERLY A. DUTCHER  
Deputy Attorney General

To: Honorable Members of the Law and Order Committee

From:   
Doreen N. McPaul, Attorney General

Date: June 28, 2021

Subject: Recommending Changes to the Chief Prosecutor Statute and Requesting LOC Support

The Department of Justice (DOJ) has advertised the Chief Prosecutor position since 2019 without any qualified applicants. Prior to 2019, there were ongoing challenges to filling the Chief Prosecutor position and, over time, the office has had long stretches of time where the office has been led by an Acting Chief Prosecutor.

This reality has prompted DOJ to evaluate the statutory requirements for the Chief Prosecutor position outlined in 2 N.N.C. § 1973. Statutory provisions, unlike Job Vacancy Announcement (JVA) requirements, are more difficult to change or update to keep up with the needs of the Department. Statutory requirements and the lack of flexibility with the Chief Prosecutor position have inhibited DOJ's ability to fill the Chief Prosecutor position, which in turn contributes to instability in the Office of the Prosecutor (OTP) and has a direct impact on the ability of OTP to function effectively and meet its vital public safety responsibilities.

To better serve the needs of OTP and to more effectively fill the Chief Prosecutor position, DOJ proposes the following changes to the Chief Prosecutor statute:

### § 1973. Chief Prosecutor

A. The Office of the Prosecutor, as established by this article, shall be headed by a Chief Prosecutor, ~~who shall be a member of the Navajo Nation and have original domicile upon the Navajo Reservation, or land under the jurisdiction of the Navajo Nation Courts for a term of six months immediately preceding his or her appointment as Chief Prosecutor.~~

B. The Chief Prosecutor shall be appointed by the Attorney General and he or she shall serve at his or her pleasure.

~~C. The Chief Prosecutor shall serve until his or her successor is appointed.~~

D. Any attorney/~~prosecutor~~/advocate positions within the Office of the Prosecutor, other than the Chief Prosecutor's position, shall be appointed by the Chief Prosecutor and shall serve at the pleasure of the Chief Prosecutor. All other personnel shall be hired and compensated pursuant to the Navajo Nation Personnel Policies and Procedures.

A narrative of DOJ's recommendations and the rationale follows:

#### 1. **Remove the domicile and tribal membership requirements in subsection (A).**

Rationale: The domicile and tribal membership requirements severely limit the available pool of applicants. These requirements precede the enactment of the Navajo Preference in Employment Act, 15 N.N.C. § 601 *et. seq.*, which otherwise requires that a qualified Navajo tribal member is afforded preference in hiring.

In the absence of a qualified Navajo tribal member, however, removing the statutory requirements would allow a qualified non-Navajo to be appointed as Chief Prosecutor, if needed. This would be similar to the Chief Legislative Counsel position, for example, which allows for hiring of a non-Navajo in the event that a qualified Navajo candidate cannot be found. *See* 2 N.N.C. § 963(C) ("A non-Navajo licensed attorney may be hired only if a licensed Navajo attorney cannot be found to fill the position of Chief Legislative Counsel."). Both the Attorney General and Deputy Attorney General positions have also been held by non-Navajos in the past – there is no similar statutory requirement for these positions to be filled by a Navajo tribal member.

It is critical to fill the Chief Prosecutor position with a qualified candidate who has the necessary education, experience, and skills to fulfill the duties, responsibilities, and authority of the Chief Prosecutor as outlined in 2 N.N.C. § 1974. These requirements are set forth in the JVA for the Chief Prosecutor position. Removal of the statutory domicile and tribal membership requirement would expand the pool of potential qualified applicants and better enable DOJ to fill this critical position. DOJ would still strive to fill the position with a qualified Navajo candidate consistent

with the NPEA. But in the absence of such applicants, DOJ would have the flexibility to appoint any qualified candidate to stabilize and lead OTP.

Without a permanent Chief Prosecutor, the Office of the Prosecutor lacks overall direction and consistency, staff morale suffers, personnel challenges ensue, and coverage issues arise and burn out is inevitable as the functions are assumed by another prosecuting attorney with a full time case load. All of these issues directly affect the ability of the OTP to perform its essential public safety functions.

2. **Remove the requirement in 2 subsection (C) that the Chief Prosecutor shall serve until a successor is appointed.**

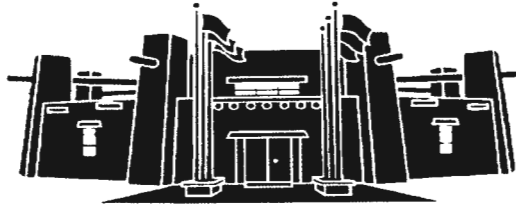
Rationale: The requirement that a Chief Prosecutor must serve until a successor is appointed is both legally and practically impossible to enforce.

3. **Add “Prosecutor” to Subsection (D).**

Rationale: Subsection (D) currently only includes “attorney” and “advocate” positions, however OTP has “prosecutor” positions. Adding “prosecutor” to the statutory language clarifies that prosecutors are similarly appointed by and serve at the pleasure of the Chief Prosecutor.

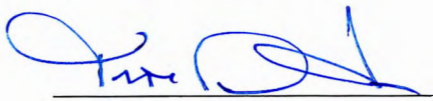
**For the reasons explained herein, DOJ respectfully requests support from LOC to address the ongoing challenges in implementing the Chief Prosecutor statute.**





## MEMORANDUM

TO : Hon. Eugene Tso, Delegate  
Navajo Nation Council

FROM :   
Troy D. Cook, Senior Court Advocate  
Office of Legislative Counsel

DATE : July 6, 2021

RE : **AN ACTION RELATING TO LAW AND ORDER AND  
NAABIK'ÍYATI' COMMITTEES AND NAVAJO NATION COUNCIL;  
AMENDING 2 N.N.C. §§ 1973 (A) AND (C), REMOVING THE  
DOMICILE AND TRIBAL MEMBERSHIP REQUIREMENTS FOR  
THE CHIEF PROSECUTOR POSITION; OFFICE OF THE  
PROSECUTOR**

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. As to format, the resolution as drafted is legally sufficient. Regarding substance, as with any legislation, it can be subject to review by the courts in the event of proper challenge. Please ensure that this particular resolution request is precisely what you want.

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. Ahéhee'.

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0108-21\_

SPONSOR: Eugene Tso

**TITLE: An Act Relating to Law and Order and Naabik'iyáti' Committees and Navajo Nation Council; Amending 2 N.N.C. §§ 1973 (A) and (C), Removing the Domicile and Tribal Membership Requirements for the Chief Prosecutor Position; Office of the Prosecutor**

***Date posted:*** July 06, 2021 at 11:15PM

Digital comments may be e-mailed to [comments@navajo-nsn.gov](mailto: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.**

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