

LEGISLATIVE SUMMARY SHEET

Tracking No. **0042-21**

DATE: March 10, 2021

TITLE OF RESOLUTION: AN ACT RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAA'BIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; APPROVING SUPPLEMENTAL FUNDING FROM THE UNRESERVED, UNDESIGNATED FUND BALANCE IN THE AMOUNT OF TWO MILLION DOLLARS (\$2,000,000) FOR THE NAVAJO NATION DEPARTMENT OF JUSTICE WATER RIGHTS LITIGATION UNIT TO CONTINUE LITIGATING ON BEHALF OF THE NAVAJO NATION AND TO PROTECT THE NAVAJO NATION'S WATER RIGHTS; WAIVING 12 N.N.C. §§ 820(E), (F), AND (N)

PURPOSE: The purpose of this resolution is for the Navajo Nation to approve a supplemental appropriation of \$2,000,000 out of the Unreserved Undesignated Fund Balance for the Water Rights Litigation Unit of the Navajo Nation Department of Justice,

5-DAY BILL HOLD PERIOD:

Website Posting Time/Date:

Posting End Date:

Eligible for Action:

VSP/ANCISE
03-11-21 4:43 PM
03-16-2021
03-17-2021

Resources & Development Committee

Thence

Budget & Finance Committee

Thence

Naabik'iyáti' Committee

Thence

Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

24th NAVAJO NATION COUNCIL – Third Year, 2021

INTRODUCED BY

 **Elmer P. Begay**

(Prime Sponsor)

TRACKING NO. **0042-21**

AN ACT

RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAA'BIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; APPROVING SUPPLEMENTAL FUNDING FROM THE UNRESERVED, UNDESIGNATED FUND BALANCE IN THE AMOUNT OF TWO MILLION DOLLARS (\$2,000,000) FOR THE NAVAJO NATION DEPARTMENT OF JUSTICE WATER RIGHTS LITIGATION UNIT TO CONTINUE LITIGATING ON BEHALF OF THE NAVAJO NATION AND TO PROTECT THE NAVAJO NATION'S WATER RIGHTS; WAIVING 12 N.N.C. §§ 820(E), (F), AND (N)

BE IT ENACTED:

SECTION 1. AUTHORITY

A. The Navajo Nation established the Resources and Development Committee ("RDC") as a Navajo Nation Council standing committee, and as such gave RDC oversight over matters involving the Navajo Nation's water resources. 2 N.N.C. §§ 164(A)(9), 501(C)(1).

B. The Navajo Nation established the Budget and Finance Committee ("BFC") as a Navajo Nation Council standing committee, and as such empowered BFC to review and recommend to the Navajo Nation Council the management of all funds. 2 N.N.C. §§ 164(A)(9), 300(A), and 301(B)(2).

C. The Navajo Nation Council established the Naabik'iyáti' Committee as a Navajo

1 Nation standing committee, and proposed legislation requiring final action by the
2 Navajo Nation Council shall be assigned to the Naabik'íyáti' Committee. 2 N.N.C. §§
3 164(A)(9) and 700(A).

4 D. The Navajo Nation Council is the governing body of the Navajo Nation, with the
5 authority to approve supplemental appropriations. 2 N.N.C. § 102(A), 12 N.N.C. §
6 820(L).

7 E. Pursuant to 12 N.N.C. § 820(L), "[t]he Navajo Nation Council may adopt and approve
8 supplemental appropriations to the Annual Comprehensive Budget during the fiscal
9 year. Supplemental appropriations of General Funds within the current fiscal year are
10 permitted, if and when additional sources of revenues above and beyond the initial or
11 current revenue projections are projected and which are also in excess of the reserve
12 amount set forth at § 820(J)."

13 F. The Title 12 Supplemental Appropriation requirements include:

14 1. All requests for annual operating funds and supplemental funds shall be submitted
15 to the Office of Management and Budget (OMB) for budget impact analysis. 12
16 N.N.C. § 820(M).

17 2. When the Controller identifies additional sources of revenues above and beyond
18 the initial or current revenue projections, supplemental appropriations may be
19 approved by the Navajo Nation Council. 12 N.N.C. § 820(L).

20 3. Supplemental Appropriations made from non-recurring revenues shall only be
21 made for non-recurring operations or purposes, as set forth at § 820(F). The
22 Controller of the Navajo Nation shall be responsible for the designation of recurring
23 and non-recurring revenues. 12 N.N.C. § 820(L).

24 4. The Nation shall budget all recurring operating expenses, including capital
25 maintenance, from recurring revenues. Long term debt shall not be used to finance
26 recurring operating expenses. 12 N.N.C. § 820(E).

27 5. The Navajo Nation Code provides, "[t]he Nation shall restrict non-recurring
28 revenues to budget non-recurring expenditures. In addition, non-recurring revenues
29 will be budgeted only after an examination by the Controller to determine whether
30 or not the revenues are subsidizing an imbalance between recurring revenues and

1 expenditures, and expenditures may be authorized only if a long-term (three-five
2 year) forecast shows that the operating deficit will not continue. Otherwise, non-
3 recurring revenues will be added to the Unreserved, Undesignated Fund balance.
4 This provision may be amended or waived by a two-thirds vote of the full Navajo
5 Nation Council." 12 N.N.C. § 820(F).
6

7 **SECTION 2. FINDINGS**

- 8 A. This request for supplemental funding seeks the amount of two million dollars
9 (\$2,000,000) out of the Unreserved, Undesignated Fund Balance, to assist the Navajo
10 Nation Department of Justice Water Rights Unit in its water rights litigation efforts on
11 behalf of the Navajo Nation. The supplemental funding proposal, budget forms and
12 related documents, including Appendix K "Supplemental Funding Proposal
13 Summary," for the Water Rights Unit are attached hereto as **Exhibit 1**. *NOTE: all*
14 *documents in Exhibit 1 have been designated CONFIDENTIAL by the Navajo Nation*
15 *Attorney General pursuant to 2 N.N.C. § 164 (A) (6).*
- 16 B. The Water Rights Unit of the Navajo Nation Department of Justice oversees the water
17 rights litigation efforts on behalf of the Navajo Nation and the Navajo People.
- 18 C. In recognition of Tó'éí'íiná (water is life), the Navajo Nation Council has determined
19 that water is essential "to provide for a permanent homeland for the Navajo People."
20 22 N.N.C. § 1101.
- 21 D. The waters of the Navajo Nation are defined as: "(1) all waters reserved at any time
22 for any purpose to the Navajo Nation, and to Navajo Indian lands by the Navajo Nation
23 or by the United States including any waters which, in the course of nature or as the
24 result of artificial works or artificial streamflow enhancement or weather modification
25 methods, flow into or otherwise enhance such waters; (2) all waters held by the Navajo
26 Nation through prior or existing use, appropriation, purchase, contract, gift, bequest
27 or other means of acquisition; (3) all surface and groundwaters which are contained
28 within hydrologic systems located exclusively within the lands of the Navajo Nation;
29 and (4) all groundwaters located beneath the surface of the lands held in trust by the
30 United States of America for the Navajo Nation." 22 N.N.C. § 1104.

- 1 E. Navajo Nation communities have severe water infrastructure deficiencies that impact
2 the health, economy, and welfare of the Navajo people.
- 3 F. In Resolution No. CMY-47-02, the Navajo Nation Council determined that “water
4 rights claims of the Navajo Nation must be placed as a top priority of the Navajo
5 government. Water is one of the fundamental aspects of Navajo customs and must be
6 protected. Without the assurance that Navajo water rights claims is a top priority, the
7 Navajo Nation stands to lose its rightful claim to the allocation of wet water from the
8 Little Colorado River . . .” and further found that “it is in the best interest of the Navajo
9 Nation that funding for the pursuit of Navajo Nation Water Rights should be afforded
10 the highest priority in future budget development actions by the Navajo Nation and
11 therefore believes such funding should be made available to pursue Water Rights
12 Claims in a special fund.”
- 13 G. To comply and sustain the mandate in Resolution No. CMY-47-02, the Navajo Nation
14 Council enacted the Navajo Nation Water Rights Claim Fund and appropriated a
15 minimum of two million dollars (\$2,000,000) into the Fund for the purpose of
16 providing annual funding for the protection of the Nation’s water rights in the states
17 of Arizona, Utah, and New Mexico, and delegated to the Water Rights Commission
18 the authority to approve the Fund’s budget.
- 19 H. The annual budget for the Water Rights Claim Fund consists of allocations to the
20 Navajo Nation Department of Water Resources – Water Management Branch, which
21 provides technical work regarding the Nation’s water rights; to the Water Rights
22 Commission, which provides public education regarding the Nation’s water rights
23 efforts; and to the Water Rights Unit of the Department of Justice, which provides
24 legal representation for the Nation’s water rights claims. Due to the increased
25 litigation costs, the reserves within the Water Rights Claims Fund, specifically
26 reserved for outside counsel and expert witnesses, will be fully depleted in Fiscal Year
27 2021.
- 28 I. If Water Rights Unit funds are exhausted, the Navajo Nation will be forced to rely on
29 the United States, as trustee, to protect Navajo Nation interests; this could be severely
30 detrimental to the Nation’s best interest as the United States is also currently serving

1 as trustee for other tribes for commonly held water resources.

2 J. The Executive Branch has completed its Section 164 review of the supplemental
3 appropriation request; the review is attached hereto as **Exhibit 2**. *NOTE: all*
4 *documents in Exhibit 2 have been designated CONFIDENTIAL by the Navajo Nation*
5 *Attorney General pursuant to 2 N.N.C. § 164 (A) (6).*

6 K. The Office of the Controller issued a memorandum dated February 8, 2021, to satisfy
7 the requirements in 12 N.N.C. § 820 (L), attached as **Exhibit 3**. *NOTE: all documents*
8 *in Exhibit 3 have been designated CONFIDENTIAL by the Navajo Nation Attorney*
9 *General pursuant to 2 N.N.C. § 164 (A) (6).*

10 L. The Office of Management and Budget issued a memorandum dated February 18,
11 2021, to satisfy the requirements in 12 N.N.C. § 820 (M), attached as **Exhibit 4**.
12 *NOTE: all documents in Exhibit 4 have been designated CONFIDENTIAL by the*
13 *Navajo Nation Attorney General pursuant to 2 N.N.C. § 164 (A) (6).*
14

15 **SECTION 3. APPROVING SUPPLEMENTAL FUNDING FROM THE**
16 **UNRESERVED, UNDESIGNATED FUND BALANCE**

17 A. The Navajo Nation hereby approves supplemental funding from the Unreserved,
18 Undesignated Fund Balance in the amount of two million dollars (\$2,000,000) for the
19 Water Rights Litigation Unit of the Navajo Nation Department of Justice, Business
20 Unit No. N01372, to fund the litigation costs necessary to further protect and secure
21 the Navajo Nation's water rights.

22 B. This supplemental appropriation of \$2,000,000 shall be from that amount of funds that
23 exceeds the minimum fund balance of the Unreserved, Undesignated Fund Balance as
24 determined by the Office of the Controller.
25

26 **SECTION 4. WAIVING 12 N.N.C. §§ 820(E), (F), AND (N)**

27 The Navajo Nation Council hereby waives 12 N.N.C. §§ 820 (E), (F) and (N) in order to
28 allow UUFB funds to be used for recurring expenditures and government operations.
29
30

1
2 **SECTION 5. SAVING CLAUSE**

3 Should any provision(s) of this Act be determined invalid by the Navajo Nation
4 Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo
5 Nation Supreme Court, the remainder of the Act shall remain the law of the Navajo
6 Nation.

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8 **SECTION 6. EFFECTIVE DATE**

9 The provisions of this Act shall become effective in accordance with 2 N.N.C. § 221(A).
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NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

DOREEN N. McPAUL
Attorney General

KIMBERLY A. DUTCHER
Deputy Attorney General

MEMORANDUM

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

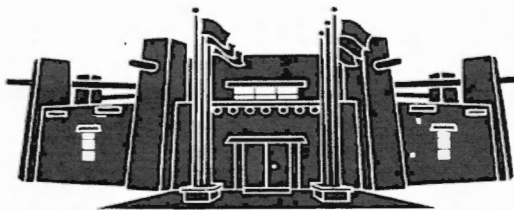
FROM: Doreen N. McPaul
Doreen N. McPaul, Attorney General
Navajo Nation Department of Justice

DATE: February 23, 2021

SUBJECT: **Exhibits for Doc. 15686: Proposed Legislation Seeking FY2021 Supplemental Funding for the Water Rights Unit**

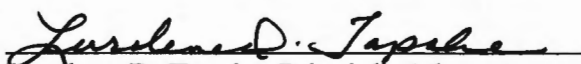
Generally, exhibits to legislation are posted online for public view. However, pursuant to 2 N.N.C. §164(A)(6), "[a]ny matters or exhibits determined by the Navajo Nation Department of Justice to be confidential shall be properly marked 'confidential' and shall not be placed on the website or otherwise released." The attachments to the above referenced legislation, which DOJ deems confidential, should be kept from public view. Under 2 N.N.C. §1964(G), only the Attorney General is authorized to waive the confidential and attorney-client privileged communication. Since these exhibits contain such sensitive information, the Attorney General maintains the confidentiality of these documents.

If you have any questions concerning this memorandum, please contact the Office of the Attorney General office at (928) 871-6345. Thank you.



MEMORANDUM

TO : Honorable Elmer P. Begay, Delegate
24th Navajo Nation Council

FROM : 
Luralene D. Tapahe, Principle Advocate
Office of Legislative Counsel

DATE : March 10, 2021

SUBJECT : AN ACT RELATING TO RESOURCES AND DEVELOPMENT,
BUDGET AND FINANCE, AND NAA'BIK'ÍYÁTI' COMMITTEES,
AND THE NAVAJO NATION COUNCIL; APPROVING
SUPPLEMENTAL FUNDING FROM THE UNRESERVED,
UNDESIGNATED FUND BALANCE IN THE AMOUNT OF TWO
MILLION DOLLARS (\$2,000,000) FOR THE NAVAJO NATION
DEPARTMENT OF JUSTICE WATER RIGHTS LITIGATION UNIT TO
CONTINUE LITIGATING ON BEHALF OF THE NAVAJO NATION
AND TO PROTECT THE NAVAJO NATION'S WATER RIGHTS;
WAIVING 12 N.N.C. §§ 820(E), (F), AND (N)

I have prepared the above referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. The resolution drafted is legally sufficient. However, as with any legislation, it can be subject to review by the courts in the event of a proper challenge. Also, please understand that the Speaker is authorized to refer this proposed resolution to other committees than those stated in the title.

You are advised and encouraged to review the proposed resolution to ensure 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 legislation 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. Ahe'he'.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0042-21_

SPONSOR: Elmer Begay

TITLE: An Act Relating to Resources and Development, Budget and Finance, and Naa'bik'iyáti' Committees, and the Navajo Nation Council; Approving Supplemental Funding from the Unreserved, Undesignated Fund Balance in the Amount of Two Million Dollars (\$2,000,000) for the Navajo Nation Department of Justice Water Rights Litigation Unit to Continue Litigation on Behalf of the Navajo Nation and to Protect the Navajo Nation's Water Rights; Waiving 12 N.N.C. §§ 820 (E), (F), and (N)

Date posted: March 11, 2021 at 4:43PM

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.: 0042-21

SPONSOR: Honorable Elmer P. Begay

TITLE: An Act Relating to Resources and Development, Budget and Finance, and Naabik'iyáti' Committees, and the Navajo Nation Council; Approving Supplemental Funding from the Unreserved, Undesignated Fund Balance in the Amount of Two Million Dollars (\$2,000,000) for the Navajo Nation Department of Justice Water Rights Litigation Unit to Continue Litigation on Behalf of the Navajo Nation and to Protect the Navajo Nation's Water Rights; Waiving 12 N.N.C. §§ 820 (E), (F), and (N)

Posted: March 11, 2021 at 4:43 PM

5 DAY Comment Period Ended: March 16, 2021

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	<i>None</i>
Comments/Recommendations	<i>None</i>


**Legislative Tracking Secretary
Office of Legislative Services**

03/17/21 9:58 Am
Date/Time

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

LEGISLATION NO.: 0042-21

SPONSOR: Honorable Elmer P. Begay

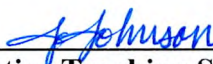
TITLE: An Act Relating to Resources and Development, Budget and Finance, and Naabik'iyáti' Committees, and the Navajo Nation Council; Approving Supplemental Funding from the Unreserved, Undesignated Fund Balance in the Amount of Two Million Dollars (\$2,000,000) for the Navajo Nation Department of Justice Water Rights Litigation Unit to Continue Litigation on Behalf of the Navajo Nation and to Protect the Navajo Nation's Water Rights; Waiving 12 N.N.C. §§ 820 (E), (F), and (N)

Posted: March 11, 2021 at 4:43 PM

5 DAY Comment Period Ended: March 16, 2021

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	<i>None</i>
Comments/Recommendations	1) Percy Deal 2) Herb Yazzie



**Legislative Tracking Secretary
Office of Legislative Services**

03/17/21 11:13AM

Date/Time

Legislation 0042-21, Water Rights

Percy Deal <deal.percy@gmail.com>

Tue 3/16/2021 4:57 PM

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

The Honorable Members of the Navajo Nation Council. Please accept and consider the following comment regarding Legislation 0042-21 by the Honorable Delegate Elmer Begay.

- This legislation is proposing to approve appropriation of \$2,000,000 from the unreserved, undesignated fund balance to continue litigation and to protect the Navajo Nation's water rights.
- Under Section 2 A, it talks about "litigation" and not "negotiation" the funds will not be used for negotiation, right? I recommend the Council also consider negotiation and perhaps increase the fund accordingly.
- Under Section 2 D, it talks about rights to and protecting all ground water located beneath the surface of lands held in trust by the United States for the Navajo people. I strongly recommend this includes the N-aquifer under Black Mesa, Peabody and Black Meas mines having been using this aquifer for more than 50 years. The level of the water table is now lower and polluted and there is no plan for providing a recharge system or reclamation by Peabody. Reclamation and clean up are in the original 1969 Agreement. Peabody is at the verge of walking off, litigation must include protecting the N-aquifer of Black Mesa.
- Under 2 I, If no tribal funds are available the Nation will have to rely on the United States, who is also the trustee, this presents a conflict of interest for the United States. For example; the Department of Interior, Bureau of Land Management was a part owner of the Navajo Generating Station which held the rights to 34,000 AFY from the Colorado River to support the NGS operation. The tribal fund must be used to claim rights to 50,000 AF or more of the Upper Colorado River basin and 100,000 AF or more of the Lower Colorado River basin as called for in the 2017 Extension Agreement.
- Under Section 2 F, it mentions funds to be used for expert witnesses for the Little Colorado River. Expert witnesses must also include Dine' elderly with historical, cultural and religious knowledge about the river and water. This also applies to the Colorado River claims.

Thank you. Percy Deal, Big Mountain, P.O. Box Kykotsmovi, Az. 86039.

WARNING: External email. Please verify sender before opening attachments or clicking on links.

Legislation 0042-21

herb yazzie <hyazzie2003@yahoo.com>

Wed 3/17/2021 11:08 AM

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

Cc: Nicole Horseherder <nhorseherder@gmail.com>; Percy Deal <deal.percy@gmail.com>; Elmer P. Begay <elmerbegay@navajo-nsn.gov>; Jimmy Yellowhair <jyellowhair@navajo-nsn.gov>; Otto Tso <otso@navajo-nsn.gov>;

I wish to comment on this proposed legislation to fund the Department of Justice's Water Rights Claim Fund. There is a need for the Navajo Nation to address the depletion of the Navajo Aquifer by Peabody's strip mining operation. The Navajo Aquifer was depleted and polluted primarily by pumping billions of gallons for the slurry line transporting coal out to Nevada. Now that mining has ceased, there is a crying need for aggressive oversight of Peabody's obligation to reclaim what they have destroyed, disturbed and polluted. Unless the Navajo Nation takes all actions necessary to hold Peabody and the federal government responsible, Peabody and the federal government will walk away without ensuring the Navajo People have water for future generations. The funds being appropriated should be used for this purpose.

I suggest that the following language be added to two sections of the resolution, as follows:

Section 1 (E). , including the severe depletion of the Navajo Aquifer beneath Black Mesa caused by the pumping of the aquifer by Peabody Coal Company for its mining operation and using the water to slurry coal to Nevada for many years.

Section 3 (A). ,including the demand for recharging the Navajo Aquifer beneath Black Mesa.

Thank you
Herb Yazzie

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RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council

THIRD YEAR 2021


ROLL CALL
VOTE TALLY SHEET

Legislation # 0042-21: An Act Relating to Resources and Development, Budget and Finance and Naabik'Iyati Committees, and the Navajo Nation Council; Approving Supplemental Funding from the Unreserved, Undesignated Fund Balance in the Amount of Two Million Dollars (\$2,000,000) For the Navajo Nation Department of Justice Water Rights Litigation Unit to Continue Litigating on Behalf of the Navajo Nation and to Protect the Navajo Nation's Water Rights; Waiving 12 N.N.C. §§ (E), (F), and (N). *Sponsor: Honorable Elmer P. Begay.*

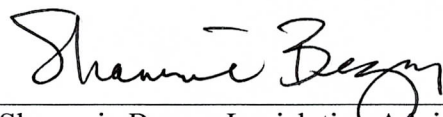
Date: March 17, 2021 – Regular Meeting (Teleconference)
Meeting Location: (RDC members called in via teleconference from their location within the boundary of the Navajo Nation.)

Main Motion:

Motion: Mark A. Freeland S: Kee Allen Begay, Jr. Vote: 5-0-1 (CNV)
In Favor: Mark A. Freeland, Wilson C. Stewart, Jr., Kee Allen Begay, Jr., Herman M. Daniels and Thomas Walker, Jr.
Excuse: NONE
Not Voting: Presiding Chairperson Rickie Nez



Honorable Rickie Nez, Presiding Chairperson
Resources and Development Committee



Shammie Begay, Legislative Advisor
Office of Legislative Services