

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: 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'iyáti' 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).

- 1 C. Pursuant to 2 N.N.C. § 164 (A)(9), "a proposed resolution that requires final
2 action by the Navajo Nation Council [must] be assigned to standing committee(s)
3 having authority over the subject matter at issue and the Naabik'íyátí Committee."
4 D. The Navajo Nation Council is the governing body of the Navajo Nation and is
5 responsible for the enactment and establishment of Navajo Nation law and policy.
6 2 N.N.C. § 102 (A) and 164 (A).
7

8 **SECTION TWO. FINDINGS**

- 9 A. The *Navajo Ethics in Government Law*, 2 N.N.C. 3741 *et seq.*, includes a general
10 prohibition that "public officials and employees of the Navajo Nation avoid any
11 action, whether or not specifically prohibited by the Standards of Conduct [ERC-
12 08-001], which could result in, or create the appearance of . . . adversely affecting
13 the confidence of the people in the integrity of the government of the Navajo
14 Nation." 2 N.N.C. § 3745 (B)(6).
15 B. The *Navajo Ethics in Government Law* also includes specific prohibitions that
16 elected officials "shall not ... [h]ave direct or indirect financial or other economic
17 interests nor engage in such other employment or economic activity which ...
18 necessarily involve inherent substantial conflict, or appears to have such
19 substantial conflict, with their responsibilities and duties as public officials ... of
20 the Navajo Nation." 2 N.N.C. § 3747(A), *Restrictions Against Incompatible*
21 *Interests or Employment*.
22 B. Due to the potential for conflicts of interest, the Navajo Nation Code specifically
23 prohibits Council Delegates from serving as an elected official of the federal or
24 state government, from being an employee of the federal or state government,
25 from engaging in the private practice of law or from serving simultaneously as a
26 school board member while serving as a delegate. *See* 2 N.N.C. § 104.
27 C. The *Regulations and Standards of Conduct for Elected Officials of the Navajo*
28 *Nation*, ERC-O8-001, further clarify that "[m]ultiple duties arise to create
29 conflicts when elected officials hold other governmental or non-governmental
30 positions that impose duties upon the elected official in their other roles.

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

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

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

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

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

1
2 **SECTION THREE. AMENDING 2 N.N.C. § 104**

3 The Navajo Nation Council hereby amends 2 N.N.C. §104 as follows:
4
5

6 TITLE 2. NAVAJO NATION GOVERNMENT
7 CHAPTER 3. LEGISLATIVE BRANCH
8 SUBCHAPTER 2. NAVAJO NATION COUNCIL MEETINGS
9

10 ****

11 **§ 104. Incompatible service**

- 12 A. No person shall serve as a delegate if he or she is in the permanent employment of
13 the United States or any state or any subdivisions thereof; nor shall an elected
14 official of the United States or the several states thereof serve as a delegate. This
15 Section shall not apply to service ~~on a school board or in an~~ elective county office.
- 16 B. No person shall be eligible for election to the Navajo Nation Council if that person
17 is permanently employed or an elected official as described in § 104(A).
- 18 C. If any delegate, after his/her election, enters such service, the delegate shall
19 immediately forfeit his/her office as a Council Delegate.
- 20 D. No Council Delegate shall engage in the private practice of law while serving as a
21 Navajo Nation Council Delegate.
- 22 E. No Council Delegate shall serve as a Shareholder Representative or Member
23 Representative or member of the governing Board, Management Committee, or
24 Commission of any Navajo Nation-owned instrumentality, which includes all
25 Navajo Nation-owned enterprises, companies, corporations, authorities, and
26 entities.

27 ****
28
29

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

1 The Navajo Nation hereby amends the Election Code at 11 N.N.C. § 8(B) as follows:
2
3

4 TITLE 11. ELECTIONS

5 CHAPTER 1. NAVAJO NATION ELECTION CODE OF 1990

6 SUBCHAPTER 1. GENERAL PROVISIONS
7

8 ****

9 §8. Qualifications for office

10 ****

11 B. Qualifications for Delegate to the Navajo Nation Council:

12 ****

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

15 ****

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

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

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

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

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

4 ****
5 _____
6

7 **SECTION FIVE. EFFECTIVE DATE; DIRECTIVE**

8 A. The amendments enacted herein shall become effective pursuant to 2 N.N.C. §
9 221(B).

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

16
17 **SECTION SIX. CODIFICATION**

18 These amendments of the Navajo Nation Code shall be codified by the Office of
19 Legislative Counsel. The Office of Legislative Counsel shall incorporate these
20 amendments in the next codification of the Navajo Nation Code.
21

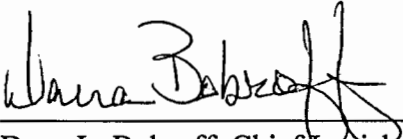
22 **SECTION SEVEN. SAVINGS CLAUSE**

23 Should any provision of these amendments be determined invalid by the Navajo Nation
24 Supreme Court, or the District Courts of the Navajo Nation without appeal to the Navajo
25 Nation Supreme Court, those amendments that are not determined invalid shall remain
26 the law of the Nation.
27
28
29
30



MEMORANDUM

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

FROM: 
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'iyáti' 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

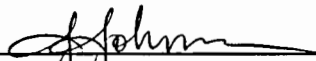
TITLE: An Act Relating to the Law and Order, Resources and Development, and Naabik'íyáti' Committees and the Navajo Nation Council; Amending 2 N.N.C. § 104 and 11 N.N.C. § 8(B) to Prohibit Council Delegates from Serving as Board Members and Shareholder Representatives for Navajo Nation-Owned Instrumentalities

Posted: April 04, 2023 at 7:56 PM

5 DAY Comment Period Ended: April 09, 2022

Digital Comments received:

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



**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

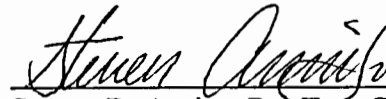
Yea: Hon. Eugenia Charles-Newton/Hon. Herman M. Daniels, Jr.

Nay: None

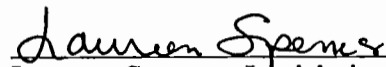
Not Voting: Hon. Steven R. Arviso, Pro Tem Chairperson

Excused: Hon. Nathan Notah

Absent: Hon. Cherilyn Yazzie



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



Lauren Spencer, Legislative Advisor
Office of Legislative Services

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

LEGISLATION NO.: 0052-23

SPONSOR: Honorable Amber Kanazbah Crotty

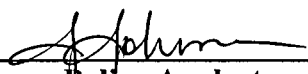
TITLE: An Act Relating to the Law and Order, Resources and Development, and Naabik'iyáti' Committees and the Navajo Nation Council; Amending 2 N.N.C. § 104 and 11 N.N.C. § 8(B) to Prohibit Council Delegates from Serving as Board Members and Shareholder Representatives for Navajo Nation-Owned Instrumentalities

Posted: April 04, 2023 at 7:56 PM

5 DAY Comment Period Ended: April 09, 2022

Digital Comments received:

Comments Supporting	1) Veronica Johnson 2) Kce Begay Junior 3) Shannon Platero 4) Stella Keams 5) Emmeline P. Thompson 6) George John 7) Carolene Bitsui
Comments Opposing	<i>None</i>
Comments/Recommendations	1) Stefanie Haswood



**Policy Analyst
Office of Legislative Services**

April 12, 2023; 9:00 AM

Date/Time

Legislation #0052-23

Veronica Johnson <bubbagun1@gmail.com>

Mon 4/10/2023 12:20 PM

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

I support Honorable Amber Kanazbah Crotty's legislation to prohibit council delegates from serving as board members & shareholder representatives for Navajo Nation Owned Instrumentalities.

Veronica Johnson
Registered with Shiprock Chapter.

Sent from my iPhone

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

legislation 52-23

Kee Begay <jayaredot_9086@yahoo.com>

Mon 4/10/2023 1:23 PM

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

I support legislation 0052-23, prohibiting Council Delegates from being board members and/or shareholder representatives of NN-owned instrumentalities.

If not a complete prohibition, may be at least don't allow delegates to get additional compensation if they are board members or shareholder representatives. If an entity's By Laws or some other document says that council delegate(s) are to be board members or representatives, then such membership should be considered as "..other duties assigned.." for delegates. In the "normal" workplace, if an individual is required to do tasks that fall under "other duties assigned," they are not given extra pay. The same should be true for council delegates being board members or shareholder representatives.

Kee Begay Junior

PO Box [REDACTED]

St. Michaels, AZ 86511

505 [REDACTED]

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Legislation #0052-23

Shannon Platero <snow3746@yahoo.com>

Tue 4/11/2023 7:52 AM

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

Hello,

I support legislation 0052-23. I believe Council Delegates serving as Board Members and Shareholders can lead to self gain and it doesnt help the people. It becomes a conflict of interest.

Shannon Platero
Registered Voter at Nageezi Chapter

LEGISLATION NUMBER

0052-23

LEGISLATION TITLE

An Act Relating to the Law and Order, Resources and Development, and Naabik'iyáti' 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

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Legislation 0052-23

Stella Keams <skeams10@gmail.com>

Tue 4/11/2023 7:52 AM

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

My name is Stella Keams, I vote at Forest Lake chapter. I support, Legislation 0052-23

Thank you

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I support Legislation 0052-23

Emmeline Thompson <eblackgoat928@hotmail.com>

Tue 4/11/2023 7:52 AM

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

Name: Emmeline P. Thompson
Chapter: Fort Defiance Chapter
I SUPPORT Legislation #0052-23

Thank you!

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

SUPPORT - Legislation 0052-23

GEORGE JOHN <george_nleta@yahoo.com>

Tue 4/11/2023 7:52 AM

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

I am in support of the passage of Legislation No. 0052-23 as it addresses potential conflict of interestsw and undue influence by Navajo Nation Council Delegate by serving on Navajo Nation-owned enterprises, corporations, companies, or entities.

George John
Indian Wells Chapter

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

Legislation 0052-23 (SUPPORT)

Lene Bitsui <lenebitsui@gmail.com>

Tue 4/11/2023 9:24 AM

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

Yá'át'ééh,

My name is Carolene Bitsui, I am an Enrolled Member of this Beautiful Diné Tribe and registered with Kayenta.

I, 100% support this Legislation # 0052-23.

There have been too many conflicts of interest with Delegates acting as Shareholders & Board Members.

Thank you,

-Carolene Bitsui (Lene Bitsui).

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Legislation # 0052-23

Stefanie Haswood <stefanie86045@gmail.com>

Tue 4/11/2023 7:52 AM

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

Good Morning,

Please consider including all Navajo Nation Elected Officials, at the Chapter Level, including the Administration staff. We in Tuba City, have a really big problem with our Elected Officials and Administration at the To'Nanees'Dizi Local Government making unknown investments with tax dollars.

Regards,
Stefanie Haswood

Tuba City Resident and Registered Voter

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**RESOURCES AND DEVELOPMENT COMMITTEE
25th NAVAJO NATION COUNCIL**

FIRST YEAR 2023

COMMITTEE REPORT

Madam Speaker,

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

LEGISLATION #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. *Sponsor: Honorable Amber Kanazbah Crotty Co-Sponsor: Honorable Seth Damon*

Has had it under consideration and reports a **TABLE** with no amendments.

And thereafter the legislation was referred to the Naabik'íyáti' Committee.

Respectfully submitted,



Brenda Jesus, *Chairperson*
Resources and Development Committee of
the 25th Navajo Nation Council

Date: April 12, 2023 – Regular Meeting (St. Michaels, Arizona and Teleconference)
Location: Navajo Nation Land Department – 2B Taylor Road, Building #8966 – St. Michaels, Arizona.
Resources and Development Committee called in via teleconference from their location within the boundary of the Navajo Nation.

Table Motion:

M: Danny Simpson **S:** Casey Allen Johnson **V:** 4-0-1 (CNV)
In Favor: Shawna Ann Claw; Casey Allen Johnson; Rickie Nez; Danny Simpson
Opposition: None
Excused: Otto Tso
Not Voting: Brenda Jesus, *Chairperson*

Main Motion:

M: Danny Simpson

S: Casey Allen Johnson

V: __-__-__ (CNV)

In Favor:

Opposition: None

Excused: None

Not Voting: Brenda Jesus, *Chairperson*

(NOTE: VOTE TALLY attached hereto)

Rodney L. Tahe

Rodney L. Tahe, *Legislative Advisor*
Office of Legislative Services

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

LEGISLATION NO.: 0052-23

SPONSOR: Honorable Amber Kanazbah Crotty

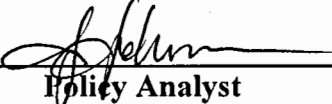
TITLE: An Act Relating to the Law and Order, Resources and Development, and Naabik'iyáti' Committees and the Navajo Nation Council; Amending 2 N.N.C. § 104 and 11 N.N.C. § 8(B) to Prohibit Council Delegates from Serving as Board Members and Shareholder Representatives for Navajo Nation-Owned Instrumentalities

Posted: April 04, 2023 at 7:56 PM

5 DAY Comment Period Ended: April 09, 2022

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	1) James R. McClure
Comments/Recommendations	<i>None</i>



**Policy Analyst
Office of Legislative Services**

April 12, 2023; 3:20 PM

Date/Time

NAVAJO NATION OIL & GAS COMPANY

A Federal Corporation
P.O. 4439 Window Rock, Arizona 86515
Telephone: (928) 871-4880 Fax (928) 871-4882



April 11, 2023

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

Via Email to: comments@navajo-nsn.gov

Re: Comments of Navajo Nation Oil and Gas Company **OPPOSING** Legislation No. 0052-23

Dear Sir/Madam:

I am writing on behalf of Navajo Nation Oil and Gas Company ("NNOGC") and its Board of Directors to emphasize NNOGC's adamant **opposition** to Legislation No. 0052-23, titled "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" (the "Legislation"). As discussed below, the Legislation is contrary to Navajo Nation and federal law and would have paralyzing effects on NNOGC if passed by the Navajo Nation Council and not vetoed by the President. The Legislation also makes no findings that there is any conflict of interest for a Council delegate in putting on a shareholder representative "hat" in representing the rights and interests of the Navajo Nation, NNOGC's sole shareholder. The Legislation should therefore be rejected in its entirety. However, in the event that the Council does not reject the Legislation outright, NNOGC and its shareholder representatives should be exempted entirely from the Legislation.

NNOGC is a wholly owned instrumentality of the Navajo Nation organized under Section 17 of the Indian Reorganization Act, 25 U.S.C. § 5124 (formerly 25 U.S.C. § 477). NNOGC's Federal Charter of Incorporation was first ratified by the Navajo Nation Council in 1998 pursuant to 25 U.S.C. § 477 after approval by the Secretary of the Interior's designee in December of 1997. *See* 25 U.S.C. § 5124 (formerly 25 U.S.C. § 477) ("The Secretary of the Interior may, upon petition by any tribe, issue a charter of incorporation to such tribe: Provided, That such charter shall not become operative until ratified by the governing body of such tribe."). NNOGC's Charter was later amended by the Navajo Nation Council pursuant to 25 U.S.C. § 477 by the Council's ratification of NNOGC's Restated Charter of Incorporation ("Restated Charter") on October 5, 2015 by Resolution No. CO-40-15, after approval of the amendments by the Secretary of Interior's Designee in August of 2014. In addition to being a creature of federal law, NNOGC's Charter is also "the law of the Navajo Nation due to Council ratification." *Navajo Nation Oil and Gas Co.*

v. *Window Rock Dist. Ct.*, No. SC-CV-25-14, slip op. at 10 (Nav. Sup. Ct. June 20, 2014). A copy of the Restated Charter is enclosed.

Pursuant to NNOGC's Restated Charter, the Navajo Nation is the sole shareholder of NNOGC: "All shares in the Corporation shall be owned by the Navajo Nation for the benefit of the Nation and its enrolled members. No individual or legal entity other than the Navajo Nation shall acquire any shares in the Corporation." Restated Charter Art. V(B). The Restated Charter further provides that:

All rights of shareholder of the Corporation shall be exercised by the appointed shareholder representatives, composed of one member of each of the standing committees of the Navajo Nation Council or their successor committees, in accordance with this Charter and the applicable tribal law; provided that the Directors of the Corporation shall be elected as provided in Article XI of the Charter. Each standing committee shall select its own shareholder representative. At the meetings of the shareholder representatives, the shareholder representatives shall, in all instances subordinate their personal interest and political interest as members of the Navajo Nation Council to those of the company in acting in their capacity as the shareholder representatives of the sole shareholder and interest holder and owner, the Navajo Nation.

Restated Charter Art. V(D).

NNOGC's Restated Charter, which is Navajo Nation law, *Navajo Nation Oil and Gas Co.*, *supra*, No. SC-CV-25-14, slip op. at 10, provides the sole mechanism for amending the foregoing requirement that the Navajo Nation exercise its rights as NNOGC's shareholder through shareholder representatives from the standing committees of the Navajo Nation Council:

The authority to petition for amendments to this Charter is vested in the Navajo Nation Council, and such amendments shall be presented for approval by the Secretary of the Interior and ratified by the Navajo Nation Council in accordance with 25 U.S.C. § 477, as amended, and in accordance with applicable tribal law.

Restated Charter Art. XIX(A). The Legislation, which would purport to amend NNOGC's Charter by amending 2 N.N.C. § 104 and 11 N.N.C. § 8(B), and not by following the strict process required under Article XIX of NNOGC's Restated Charter and 25 U.S.C. § 5124, is therefore contrary to Navajo Nation and federal law and would be invalid if approved by Council. *See* Restated Charter Art. XIX(A); 25 U.S.C. § 5124; *Navajo Nation Oil and Gas Co.*, *supra*, No. SC-CV-25-14, slip op. at 10; *Judy v. White*, 8 Nav. R. 510 (Nav. Sup. Ct. 2004) (requirements for amending Navajo law strictly followed to be valid). The Legislation should be rejected for that reason alone.

However, in addition, under the Restated Charter, NNOGC's shareholder representatives carry out important functions for NNOGC and the Navajo Nation, including the critical function of confirming the nomination of directors to NNOGC's Board of Directors pursuant to Article XI(C)

of the Restated Charter. Indeed, the terms of two directors on NNOGC's Board expired on March 31, 2023, and NNOGC's Nominations Committee has been actively recruiting, interviewing, and screening potential candidates for those positions as required by the Restated Charter. *See id.* Unless shareholder representatives are appointed by the standing committees of the Navajo Nation Council to perform the critical function of considering and confirming Board nominations, members of NNOGC's Board of Directors would hold over in perpetuity, and could never be replaced at all, a fact that the Legislation fails to ever address in its findings.

Moreover, the Legislation fails to make any findings that there is or could be any conflict of interest for a Council delegate to put on his or her shareholder representative "hat" in making decisions in the best interest of NNOGC and its sole shareholder, the Navajo Nation, because there simply is no economic, financial, or other significant interest for such delegates acting as shareholder representatives. *See id.* Art. V(D) ("At the meetings of the shareholder representatives, the shareholder representatives shall, in all instances subordinate their personal interest and political interest as members of the Navajo Nation Council to those of the company in acting in their capacity as the shareholder representatives of the sole shareholder and interest holder and owner, the Navajo Nation."); *compare* Legislation (quoting 2 N.N.C. § 3747(A), which states 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."). The Legislation's failure to make any such findings or otherwise provide a legitimate explanation for severing the Navajo Nation Council's oversight functions over Navajo Nation instrumentalities should be fatal to the legislation. *See Off. of Navajo Nation President & Vice-President v. Navajo Nation Council*, 9 Nav. R. 325, 332 (Nav. Sup. Ct. 2010) ("It is the settled expectation of the People that government actions must be explained. Without specific findings, the purpose of any government action will be questioned.").

Finally, pursuant to NNOGC's Restated Charter, Council delegates *already* cannot serve on NNOGC's Board of Directors, and only the Board exercises direct governance over the Company, not shareholder representatives. *See* Restated Charter Art. XI(E)(2) ("No Director shall be: (a) a public official of the Navajo Nation as defined in 2 N.N.C. § 3743, as amended (including but not limited to Council delegates, Chapter officials, grazing committee members, commissioners, and members of land, farm, and school boards)"); *id.* Art. XI(A) ("The Board of Directors shall provide governance and oversight of the Corporation, Corporation, subject to the restrictions of this Charter and applicable law. The Navajo Nation shall have no authority to direct the business affairs of the Corporation, except through its status as the sole shareholder of the Corporation and as provided in this Charter."). The prohibition in the Legislation for Council delegates to serve on boards of instrumentalities is thus superfluous under Navajo law, at least as to NNOGC.¹

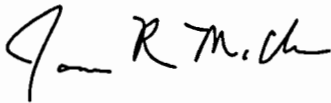
¹Even if shareholder representatives exercised board like functions, which they do not, the Council's standards of conduct only require recusal in the event of a conflict, and do not require a blanket prohibition from such dual roles as proposed by the Legislation. *See* Resolution of the Ethics and Rules Committee No. ERC-08-001 (Jan. 4, 2008) (amending the Regulations and Standards of Conduct for Elected Officials of the Navajo Nation).

For the foregoing reasons, Legislation No. 0052-23 should be rejected in its entirety as contrary to Navajo Nation and federal law, as contrary to good governance of NNOGC, and as not based in any competent findings that a conflict of interest exists for Council delegates by their putting on a NNOGC shareholder representative "hat." Nonetheless, in the event that the Legislation is still considered by the Council at all, NNOGC and its shareholder representatives should be exempted entirely from the Legislation.

Thank you for your consideration of NNOGC's comments.

Sincerely,

NAVAJO NATION OIL AND GAS COMPANY

A handwritten signature in black ink, appearing to read "J. R. McClure".

James R. McClure
Chief Executive Officer

Enclosure

c: file

25th NAVAJO NATION COUNCIL NAABIK'ÍYÁTI' COMMITTEE REPORT First Year 2023

The **NAABIK'ÍYÁTI' COMMITTEE** to whom has been assigned:

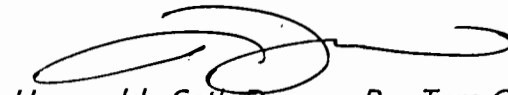
NAVAJO LEGISLATIVE BILL #0052-23

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

*Sponsored by: Honorable Amber Kanazbah Crotty
Co-Sponsored by: Honorable Seth Damon*

Has had it under consideration and reports the same that the legislation **PASSED AND REFERRED TO THE NAVAJO NATION COUNCIL.**

Respectfully Submitted,



*Honorable Seth Damon, Pro Tem Chairperson
NAABIK'ÍYÁTI' COMMITTEE*

13 April 2023

MAIN MOTION

Motioned by: Honorable Casey Allen Johnson

Seconded by: Honorable Danny Simpson

Vote: 16 In Favor, 2 Opposed (Chairperson Pro Tem Seth Damon Not Voting)

NAVAJO NATION

68

4/13/2023

Naa'bik'iyati' Committee Regular Meeting

12:31:57 PM

Amd# to Amd#	New Business: Item A.	PASSED
MOT Johnson, C	CONSENT AGENDA	
SEC Simpson, D	(25) Legislations	

Yeas : 16

Nays : 2

Excused : 4

Not Voting : 1

Yea : 16

Arviso, S	Claw, S	Johnson, C	Simonson, G
Begay, H	Curley, C	Nez, A	Simpson, D
Begay, N	Daniels, H	Nez, R	Tolth, G
Charles-Newton, E	James, V	Notah, N	Yanito, C

Nay : 2

Yazzie, C	Crotty, A
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Excused : 4

Slater, C	Aseret, L	Jesus, B	Tso, O
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Not Voting : 1

Parrish, S

Presiding Speaker: Damon, S