

LEGISLATIVE SUMMARY SHEET

Tracking No. 0243-22

DATE: December 7, 2022

TITLE OF RESOLUTION: AN ACT RELATING TO LAW AND ORDER AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; APPROVING AMENDMENTS TO 2 N.N.C. §§ 501, 600, 601, 602, 603, 700, 701, 1551, 1553, 1554, 1555; 7 N.N.C. §§ 201, 251, 351, 352, 353, 354, 355, 357, 401, 412, 413, 422, 424, 852, 1052, 1053, 1722; 12 N.N.C. § 2805, AND 1554; TRANSFERING LEGISLATIVE OVERSIGHT OF THE JUDICIAL BRANCH, NAVAJO NATION DEPARTMENT OF JUSTICE, AND NAVAJO NATION WATER RIGHTS COMMISSION FROM THE LAW AND ORDER COMMITTEE AND THE RESOURCES AND DEVELOPMENT COMMITTEE TO THE NAABIK'ÍYÁTI' COMMITTEE

PURPOSE: The legislation, if approved, will establish the Naabik'íyáti' Committee as legislative oversight for the Judicial Branch, Department of Justice, and Water Rights Commission. The Office of the Prosecutors oversight will remain with the Law and Order Committee.

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: Johnson
Website Posting Time/Date: _____
Posting End Date: 12-12-22
Eligible for Action: 12-13-22

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

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL - FOURTH YEAR, 2022
INTRODUCED BY

(Primary Sponsor)

TRACKING NO. 0243-22

AN ACT

RELATING TO LAW AND ORDER AND NAABIK'ÍYÁTI' COMMITTEES AND
THE NAVAJO NATION COUNCIL; APPROVING AMENDMENTS TO 2 N.N.C.
§§ 501, 600, 601, 602, 603, 700, 701, 1551, 1553, 1554, 1555; 7 N.N.C. §§ 201, 251, 351,
352, 353, 354, 355, 357, 401, 412, 413, 422, 424, 852, 1052, 1053, 1722; 12 N.N.C. §
2805, AND 1554; TRANSFERING LEGISLATIVE OVERSIGHT OF THE
JUDICIAL BRANCH, NAVAJO NATION DEPARTMENT OF JUSTICE, AND
NAVAJO NATION WATER RIGHTS COMMISSION FROM THE LAW AND
ORDER COMMITTEE AND THE RESOURCES AND DEVELOPMENT
COMMITTEE TO THE NAABIK'ÍYÁTI' COMMITTEE

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Law and Order Committee is a standing committee of the Navajo Nation Council and is empowered with the authority to review and make recommendations to the Navajo Nation Council on amendments to and enactments in the Navajo Nation Code. 2 N.N.C. §§ 164(A)(1), 600(A), and 601(B)(14).
- B. The Law and Order Committee is also the legislative oversight committee for the Navajo Nation Judicial Branch and the Navajo Nation Department of Justice. 2 N.N.C. §§ 600, and 601(C)(1).

1 C. The Resources and Development Committee is a standing committee of the Navajo
2 Nation Council and is empowered with legislative oversight for the Navajo Nation
3 Water Rights Commission. 2 N.N.C. §§ 500 and 501(B)(9.)

4 D. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council
5 and is empowered with authority to reviews proposed legislation which requires final
6 action by the Navajo Nation Council. 2 N.N.C. § 164 (A) (9).

7 E. The Navajo Nation Council must review and approve enactments or amendments of
8 positive law. 2 N.N.C. § 164(A).

9
10 **SECTION TWO. FINDINGS**

11 A. The Naabik'íyáti' Committee serves as the legislative oversight for the Legislative
12 Branch and Office of the President and Vice-President. As a co-equal branch, the
13 Judicial Branch should be under the same legislative oversight committee as the
14 Legislative and Executive Branches, i.e., the Naabik'íyáti' Committee

15 B. The civil side of the Navajo Nation Department of Justice ("NNDJOJ") represents all
16 activities and all branches/divisions/departments/programs/chapters within the Navajo
17 Nation government. NNDJOJ also litigates the full array of civil matters on behalf of
18 the Navajo Nation, including, but not limited to ICWA issues, tort claims, contract
19 appeals, water rights cases, etc. The execution of NNDJOJ's authorities and
20 responsibilities affect every Council Delegate's constituents and land base. Therefore,
21 NNDJOJ, not including the Office of the Prosecutor, should be under the legislative
22 oversight of the committee with the widest delegate representation, i.e., Naabik'íyáti'
23 Committee.

24 C. Water and water rights are an issue that affects all Navajo communities without
25 exception. Therefore, water rights and the Water Rights Commission should be under
26 the legislative oversight of the committee with the widest delegate representation, i.e.,
27 Naabik'íyáti' Committee.

28
29 **SECTION THREE. AMENDMENT TO TITLES 2, 7 AND 12**

30 The Navajo Nation Council hereby approves the following amendments to Titles 2, 7 and 12:

1 _____
2 **Navajo Nation Code**

3 **Title 2. Navajo Nation Government**

4 **Chapter 3. Legislative Branch**

5 **Article 3. Resources and Development Committee**
6

7 * * *

8 **§ 501. Powers**

9 A. The Committee shall have all powers necessary and proper to exercise its
10 purposes set forth at § 500(C).

11 B. The Committee shall have the following enumerated powers:

12 9. To grant final confirmation of appointments to enterprise boards; Navajo Nation
13 ~~Water Rights Commission~~; and entities under the authority of the Committee requiring
14 appointments.
15

16 * * *

17 **Article 4. Law and Order Committee**

18 **§ 600. Establishment; membership; purposes**

19 A. The Law and Order Committee is hereby established as a standing committee of
20 the Navajo Nation Council.

21 B. The Committee shall consist of five members.

22 C. The Committee shall use Nitsáhákees, Nahat'á, Iiná and Siihásin in exercising
23 legislative oversight over ~~courts~~, administrative legal tribunals, criminal defense, legal defense
24 of the indigent, ~~juvenile justice~~, corrections, law enforcement, emergency management, for the
25 following purposes:

26 1. ~~To improve the administration of justice on the Navajo Nation by ensuring~~
27 ~~a justice system that is independent from political influence and that is accountable and~~
28 ~~responsible to the Navajo Nation in its administration and operations. Justice system~~
29 ~~includes the Judiciary Branch and all administrative legal tribunals.~~

30 2. ~~To protect the rights and interests of the Navajo People by improving the~~

1 ~~quality and effectiveness of the justice system within the Navajo Nation.~~

2 ~~3.——To establish and develop the Navajo Nation justice system infrastructure~~
3 ~~including justice system facilities and to promote institutional planning and coordination~~
4 ~~among and between justice system-related entities.~~

5 ~~4.——To enhance cooperation and coordination between Navajo Nation courts~~
6 ~~and courts of the various states and the federal government including their administrative~~
7 ~~legal tribunals.~~

8 ~~5.——To enhance the operations and coordination of all departments within the~~
9 ~~Navajo Division of Public Safety in order to increase the availability, quality, and~~
10 ~~effectiveness of public safety services on the Navajo Nation.~~

11 6. To enable the Navajo Nation to more effectively provide efficient public
12 safety services on the Navajo Nation.

13 7. To support effective cooperation and coordination between Navajo
14 Nation law enforcement agencies and that of the various states and federal government
15 law enforcement agencies.

16 ~~8.——To enhance juvenile justice programs through coordination with~~
17 ~~appropriate Committees, the Judicial Branch, Executive Branch programs, and federal,~~
18 ~~state, tribal and local governmental agencies.~~

19
20 **§ 601 Powers**

21 A. The Committee shall have all prudent powers necessary and proper to exercise its
22 purposes set forth above.

23 B. The Committee shall have the following enumerated powers:

24 1. To grant final approval for:

25 a. Agreements negotiated by ~~justice systems entities~~, administrative
26 legal tribunals and public safety programs with other federal, state, international,
27 tribal, regional, and local governmental agencies, subject to Naabik'íyáti'
28 Committee approval when required by law.

29 b. Qualification standards for judges and justices of all courts and
30 administrative tribunals of the Navajo Nation and the application process to

1 determine the most qualified candidate.

2 2. To delegate responsibilities and authorities as appropriate for efficiency
3 and streamlining of government processes to the Division, local government units, and
4 appropriate entities provided that the Committee first approves rules and regulations
5 governing such delegations and to rescind such delegations.

6 ~~3. To review and evaluate the performance of probationary and permanent~~
7 ~~judges and justices.~~

8 4. To review and approve plans of operation for all divisions, departments
9 and programs under the Committee's oversight authority and to amend or rescind such
10 plans of operation.

11 3.5. To review and make recommendations to the Navajo Nation Council for
12 final approval:

13 a. ~~Removal of a permanent judge or justice.~~

14 b. ~~Resolutions Legislation requiring Council approval to accomplish~~
15 ~~or impact the Committee purposes.~~

16 ~~6. To determine, with the approval of the Navajo Nation Council,~~
17 ~~qualifications to be required of judges and justices of the Navajo Nation.~~

18 ~~7. To provide a process for accepting applications for judicial positions and~~
19 ~~for determining the most qualified candidates.~~

20 a. ~~Upon screening all eligible applicants; the Committee shall~~
21 ~~recommend to the President of the Navajo Nation a panel of qualified candidates~~
22 ~~for appointment as Probationary Chief Justice, Associate Justices of the Supreme~~
23 ~~Court and Probationary Judges of the lower courts, and all other judicial positions~~
24 ~~within the Navajo Nation may create.~~

25 b. ~~The President shall appoint probationary Justices and Judges only~~
26 ~~from among those named in the panel submitted by the Committee. Probationary~~
27 ~~Justices or Judges shall be confirmed by the Navajo Nation Council.~~

28 ~~8. To review and evaluate the performance of probationary and permanent~~
29 ~~Justices and judges.~~

30 9. ~~To recommend to the President of the Navajo Nation the removal of~~

1 Probationary Justices and Judges prior to their permanent appointment.

2 ~~10. To recommend to the President the permanent appointment of~~
3 ~~Probationary Justices and Judges.~~

4 a. ~~The President shall not appoint to a permanent position any Justice~~
5 ~~or Judge not recommended by the Judiciary Committee.~~

6 b. ~~The appointment of permanent Justices and Judges shall be~~
7 ~~confirmed by the Navajo Nation Council.~~

8 ~~11. To present directly to the Navajo Nation Council the issue of permanent~~
9 ~~appointment of any Probationary Justice or Judge whom the committee and the Chief~~
10 ~~Justice have recommended for permanent appointment and which recommendation the~~
11 ~~President of the Navajo Nation has failed to convey to the Navajo Nation Council within~~
12 ~~sixty (60) days of receiving the recommendation.~~

13 ~~12. To recommend to the Navajo Nation Council the removal of permanent~~
14 ~~Justices or Judges.~~

15 ~~4.13.~~ To represent the Navajo Nation, at local, state, and federal levels, in
16 coordination with the President of the Navajo Nation, appropriate committee of the
17 Navajo Nation Council and the Chief Justice in advocating for legislation, funding or
18 actions relating to ~~the justice systems~~, administrative legal tribunals and public safety
19 activities.

20 ~~5.14.~~ To review and make recommendations to the Navajo Nation Council on
21 proposed amendments to and enactments in the Navajo Nation Code.

22 ~~6.15.~~ To review, amend, recommend and submit the annual budget for
23 programs under the oversight of the Committee to the Budget and Finance Committee
24 and to the Navajo Nation Council.

25 ~~7.16.~~ To prepare and recommend approval of a committee budget each fiscal
26 year.

27 ~~8.17.~~ To recommend to the Navajo Nation Council the creation of any Division
28 or Department intended to be under the Committee's oversight by adoption of its Plan of
29 Operation; and to rescind that Plan of Operation or an existing Plan of Operation for any
30 Division or Department under the Committee's oversight.

1 C. Oversight.

2 1. ~~————~~To serve as the oversight committee for the Judicial Branch of the Navajo
3 Nation, all administrative legal tribunals including but not limited to the Navajo Nation
4 Labor Commission and the Office of Hearings and Appeals, Office of the Public
5 Defender, Office of the Prosecutor, Division of Public Safety, and Office of Ethics and
6 Rules.

7 2. ~~To serve as the oversight committee for the Department of Justice, unless~~
8 ~~otherwise designated by Navajo Nation law, and to approve and amend Plans of~~
9 ~~Operation thereto.~~

10 3. ~~————~~The Committee shall periodically review the overall function of the
11 programs over which it has oversight.

12
13 **§ 602. Advisors**

14 Advisors to the Committee shall include Executive Director for Division of Public
15 Safety, Department of Justice, Legislative Counsel, Auditor General, Chief Prosecutor and
16 Chief Public Defender.

17
18 **§ 603. Meetings**

19 Meetings shall be held on Monday of each week

20 * * *

21 **Article 5. Naabik'íyáti' Committee**

22
23 **§ 700. Establishment; purposes**

24 A. Naabik'íyáti' Committee is hereby established as a standing committee and it shall
25 use Nitsáhákees, Nahat'á, Iiná and Siihasin in exercising oversight authority (including the
26 authority to promulgate rules and regulations): to the Judicial Branch, to the Navajo Nation
27 Department of Justice, to the Navajo Nation Water Rights Commission, to confirm all
28 appointments to boards and commissions, to approve the plan of operation for the Legislative
29 Branch, Judicial Branch, Navajo Nation Water Rights Commission and the Navajo Nation
30 Department of Justice, to coordinate with all committees the appearance and testimony before

1 non-Navajo government federal, state or other entities, to provide for the compilation and
2 publication of all Navajo Nation laws, rules and regulations, to appoint directors of legislative
3 offices not otherwise provided for by law, and other related matters, and for the following
4 judicial purposes:

5 1. To improve the administration of justice on the Navajo Nation by ensuring
6 a justice system that is independent from political influence and that is accountable and
7 responsible to the Navajo Nation in its administration and operations. Justice system
8 includes the Judiciary Branch.

9 2. To protect the rights and interests of the Navajo People by improving the
10 quality and effectiveness of the justice system within the Navajo Nation.

11 3. To establish and develop the Navajo Nation justice system infrastructure
12 including justice system facilities and to promote institutional planning and coordination
13 among and between justice-system-related entities.

14 4. To enhance cooperation and coordination between Navajo Nation courts
15 and courts of the various states and the federal government including their administrative
16 legal tribunals.

17 5. To enhance juvenile justice programs through coordination with
18 appropriate Committees, the Judicial Branch, Executive Branch programs, and federal,
19 state, tribal and local governmental agencies.

20 B. The Chairperson of the committee shall be the Speaker of the Navajo Nation
21 Council. In the absence of the Speaker, the members shall nominate and vote on a chairperson
22 pro tern to conduct the meeting and to sign only the documents or legislation approved by the
23 committee while presiding.

24 C. The Naabik'iyáti' Committee shall meet at least once per month at the call of the
25 Chairperson on the second and fourth Thursday of each month until such time as the
26 Committee adopts an annual meeting schedule and posts such schedule on the Council's
27 website.

28 D. A quorum of the committee shall be satisfied by the presence of two (2) members
29 of each Standing Committee or a majority of delegates of the Navajo Nation Council. The
30 physical presence of a quorum is only required to call the meeting to order and for any vote

1 affecting resolution. A quorum is not required for committee vote on acceptance of a report(s).

2 E. All vetoed resolutions, upon the request of a sponsor for an override vote, shall
3 be referred to Naabik'íyáti' Committee, and the committee may invite the President to discuss
4 his reasons for the veto. Upon consensus with the President, a new resolution may be ordered.

5 F. Proposed amendments may be developed in the committee to reach consensus
6 before a formal Council action.

7 G. A recorded vote may be taken to determine if a resolution shall proceed to the
8 Council or be referred back to a standing committee.

9
10 **§ 701. Powers**

11 A. The Committee shall have the following enumerated powers:

12 1. To give final confirmation of appointments to boards, commissions, and
13 colleges, unless otherwise provided by law.

14 2. To oversee the conduct and operations of entities of the Navajo Nation
15 not otherwise under the oversight authority of other standing committees, except that
16 such oversight shall not interfere with the prerogative or business decisions of
17 management and governing boards.

18 3. To recommend resolutions legislation to Navajo Nation Council on
19 matters within the Committee's jurisdiction.

20 4. To coordinate all federal, county and state programs with other standing
21 committees and branches of the Navajo Nation government to provide the most efficient
22 delivery of services to the Navajo Nation.

23 5. To serve as the oversight committee for the Office of Legislative Services
24 and other offices, programs, commissions, boards or task forces under the Legislative
25 Branch of the Navajo Nation government, unless otherwise designated by Navajo Nation
26 law, and to approve and amend plans of operation thereto.

27 6. To assist and coordinate all requests for information, appearances and
28 testimony relating to proposed county, state and federal legislation impacting the Navajo
29 Nation.

30 7. To review and continually monitor the programs and activities of federal

1 and state departments and to assist development of such programs designed to serve the
2 Navajo People and the Navajo Nation through intergovernmental relationships between
3 the Navajo Nation and such departments.

4 8. To coordinate with all committees, Chapters, branches and entities
5 concerned with all Navajo appearances and testimony before Congressional committees,
6 departments of the United States government, state legislatures and departments and
7 county and local governments.

8 9. To recommend to United States departments and agencies, the states and
9 various regional agencies the appointment of individuals who, in the judgment of the
10 Committee, will fulfill the requirements of their office and serve the interests of the
11 Navajo Nation.

12 10. To review and approve the negotiation and setting of the Navajo Nation's
13 indirect cost or administrative cost rate agreements with the cognizant federal agent.
14 When in the best interest of the Nation, the Committee may waive the indirect cost or
15 administrative cost rate when:

16 a. The division, department or program requesting the waiver
17 demonstrates a statutory and/or regulatory requirement that limits the indirect cost
18 or administrative cost rate available for a particular grant or contract, or

19 b. There is a showing of necessity and a commitment of available general
20 funds by the division, department or program requesting the waiver which is
21 available to offset the loss in indirect costs or administrative costs.

22 c. Chapters meeting these requirements will not be subject to any
23 administrative costs assessed by the central government.

24 11. To review and approve the distribution of funds appropriated or allocated
25 to assist enrolled Navajos residing outside the Navajo Nation.

26 12. To authorize, review, approve and accept any and all contracts, grants and
27 associated budgets with the United States, its departments and agencies for the
28 implementation of the Indian Self-Determination and Education Assistance Act, as
29 amended, upon the recommendation of the standing committee which has oversight of
30 the division, department or program applying for the contract and/or grant.

1 13. To prepare and recommend approval of a Committee budget each fiscal
2 year.

3 14. To grant final approval for:

4 a. Agreements negotiated by justice systems entities, other federal,
5 state, international, tribal, regional, and local governmental agencies.

6 b. Qualification standards for judges and justices of all courts of the
7 Navajo Nation and the application process to determine the most qualified
8 candidate.

9 15. To review and evaluate the performance of probationary and permanent
10 judges and justices.

11 16. To review and make recommendations to the Navajo Nation Council for
12 final approval for removal of a permanent judge or justice.

13 17. To determine, with the approval of the Navajo Nation Council,
14 qualifications to be required of judges and justices of the Navajo Nation.

15 18. To provide a process for accepting applications for judicial positions and
16 for determining the most qualified candidates.

17 a. Upon screening all eligible applicants; the Committee shall
18 recommend to the President of the Navajo Nation a panel of qualified candidates
19 for appointment as Probationary Chief Justice, Associate Justices of the Supreme
20 Court and Probationary Judges of the lower courts, and all other judicial positions
21 within the Navajo Nation may create.

22 b. The President shall appoint probationary Justices and Judges only
23 from among those named in the panel submitted by the Committee. Probationary
24 Justices or Judges shall be confirmed by the Navajo Nation Council.

25 19. To review and evaluate the performance of probationary and permanent
26 Justices and judges.

27 20. To recommend to the President of the Navajo Nation the removal of
28 Probationary Justices and Judges prior to their permanent appointment.

29 21. To recommend to the President the permanent appointment of
30 Probationary Justices and Judges.

1 a. The President shall not appoint to a permanent position any Justice
2 or Judge not recommended by the Naabik'iyáti' Committee.

3 b. The appointment of permanent Justices and Judges shall be
4 confirmed by the Navajo Nation Council.

5 22. To present directly to the Navajo Nation Council the issue of permanent
6 appointment of any Probationary Justice or Judge whom the committee and the Chief
7 Justice have recommended for permanent appointment and which recommendation the
8 President of the Navajo Nation has failed to convey to the Navajo Nation Council within
9 sixty (60) days of receiving the recommendation.

10 23. To recommend to the Navajo Nation Council the removal of permanent
11 Justices or Judges.

12 24. To represent the Navajo Nation, at local, state, and federal levels, in
13 coordination with the President of the Navajo Nation, appropriate committee of the
14 Navajo Nation Council and the Chief Justice in advocating for legislation, funding or
15 actions relating to the justice systems.

16 25. To review, amend, recommend and submit the annual budget for
17 programs under the oversight of the Committee to the Budget and Finance Committee
18 and to the Navajo Nation Council.

19 26. To prepare and recommend approval of a committee budget each fiscal
20 year.

21 B. The Committee shall have the authority to delegate its responsibilities and
22 authorities as appropriate for efficiency and streamlining of government processes to the
23 Standing Committees, Divisions, Chapters and appropriate entities provided that the
24 Committee first approves rules and regulations governing such delegations and to rescind
25 delegations.

26 * * *

27 **Chapter 5. Executive Branch**
28 **Subchapter 22. Water Rights Commission**

29 * * *

30 **§ 1551. Establishment**

1 There is hereby established the Navajo Nation Water Rights Commission (herein referred
2 to as the "Commission") in the Executive Branch of the Navajo Nation Government.

3 * * *

4 **§ 1553. Organization**

5 The organization of the Navajo Nation Water Rights Commission shall be set forth in the
6 Plan of Operation adopted by the Naabik'íyáti' Committee ~~upon recommendation of the~~
7 ~~Resources Committee of the Navajo Nation Council.~~

8
9 **§ 1554. Legislative Oversight**

10 The Commission shall operate under the legislative oversight of the ~~Resources and~~
11 ~~Development~~ Naabik'íyáti' Committee of the Navajo Nation Council. The Commission shall
12 operate pursuant to a Plan of Operation ~~recommended by the Resources and Development~~
13 ~~Committee of the Navajo Nation Council and~~ adopted by the Naabik'íyáti' Committee of the
14 Navajo Nation Council.

15
16 **§ 1555. Amendments**

17 The enabling legislation for the Commission may be amended from time to time by the
18 Navajo Nation Council by majority vote upon the recommendation of ~~the Resources and~~
19 ~~Development Committee and the~~ Naabik'íyáti' Committee of the Navajo Nation Council.

20 * * *

21 **Title 7. Courts and procedure**

22 **Chapter 3. Judicial Branch**

23 **Subchapter 1. Generally**

24
25 **§ 201. Establishment; composition**

26 * * *

27 C. The Judicial Branch of the Navajo Nation shall also consist of such additional
28 Judicial Branch divisions, departments, offices or programs that further the purposes of the
29 Courts as may be created, subject to amendments or abolishment, by the Naabik'íyáti' ~~Law and~~
30 ~~Order~~ Committee through adoption of their plans of operation.

1 * * *

2 **§ 251. Composition**

3 A. The District Courts of the Navajo Nation shall consist of judges recommended by
4 the Naabik'iyáti'~~Law and Order~~ Committee of the Navajo Nation Council, appointed by the
5 President of the Navajo Nation and confirmed by the Navajo Nation Council.

6 B. The District Courts of the Navajo Nation shall be located in such Judicial Districts
7 of the Navajo Nation as are developed by the Judicial Branch, approved by Naabik'iyáti'~~Law~~
8 ~~and Order~~ Committee of the Navajo Nation Council, operating budget.

9 * * *

10 **§ 351. Salaries**

11 Salaries for Justices and Judges of the Courts of the Navajo Nation shall be established
12 by the Naabik'iyáti'~~Law and Order~~ Committee of the Navajo Nation Council, and in setting
13 rates of compensation, the Committee shall take into consideration:

14 * * *

15 **§ 352. Removal from office**

16 A. The Naabik'iyáti'~~Law and Order~~ Committee of the Navajo Nation Council, may
17 recommend the removal of any Justice or Judge from office if the Naabik'iyáti'~~Law and Order~~
18 Committee determines reasonable causes exists to believe the Justice or Judge has engaged in
19 malfeasance or misfeasance in office, serious neglect of duty, or has become mentally or
20 physically unable to perform the duties of office. The Chief Justice may recommend to the
21 Naabik'iyáti'~~Law and Order~~ Committee the removal of any Justice or Judge as provided for
22 above. Only if the Naabik'iyáti'~~Law and Order~~ Committee does not follow the Chief Justice's
23 recommendation may the Chief Justice recommend such removal directly to the Navajo Nation
24 Council.

25 B. The Naabik'iyáti'~~Law and Order~~ Committee of the Navajo Nation Council may
26 recommend the removal of any Justice or Judge from office if the Naabik'iyáti'~~Law and Order~~
27 Committee determines there is substantial evidence that the Justice or Judge willfully or
28 negligently make significant misrepresentations or omissions about his or her qualifications on
29 his or her application for the judicial position. The Chief Justice may recommend to the
30 Naabik'iyáti'~~Law and Order~~ Committee the removal of any Justice or Judge as provided for

1 above. Only if the Naabik'iyáti'~~Law and Order~~ Committee does not follow the Chief Justice's
2 recommendation may the Chief Justice recommend such removal directly to the Navajo Nation
3 Council.

4 * * *

5 D. Documented and conclusive evidence that a Justice or Judge has been convicted
6 of a felony in state or federal court since taking office, or that a Justice or Judge has been
7 convicted of any tribal offense which is identified as a Major Crime in 18 U.S.C. § 1153 since
8 taking office, shall result in the removal of such Justice or Judge by resolution of the
9 Naabik'iyáti'~~Law and Order~~ Committee of the Navajo Nation Council.

10 * * *

11 § 353. Retirement

12 A. Definition. The following definition shall apply for purposes of this Section:

13 1. Naabik'iyáti'~~Law and Order~~ Committee means the Naabik'iyáti'~~Law and~~
14 ~~Order~~ Committee of the Navajo Nation Council.

15 * * *

16 C. Removal; effect on retirement benefits.

17 1. The Navajo Nation Council may, upon recommendation of the
18 Naabik'iyáti'~~Law and Order~~ Committee, remove from office a permanent Navajo Nation
19 Judge for inability to perform judicial duties due to permanent mental or physical
20 disability. The Chief Justice shall recommend removal to the Naabik'iyáti'~~Law and Order~~
21 Committee. A Navajo Nation Judge removed under Subsection (C) shall receive
22 retirement benefits in accordance with the disability provisions of the Judge's Retirement
23 Plan.

24 * * *

25 D. Permanent disability; eligibility

26 * * *

27 2. A Navajo Nation Judge who intends to retire under Subsection (D) shall
28 compile all the necessary paperwork and forward it to the Chief Justice for review. The
29 Chief Justice shall recommend to the Naabik'iyáti'~~Law and Order~~ Committee whether the
30 Judge is eligible to retire under Subsection (D). The Naabik'iyáti'~~Law and Order~~

1 Committee shall recommend to the Retirement Plan Administration Committee or its
2 successor whether the Judge is eligible to retire under Subsection (D). The Retirement
3 Plan Administration Committee or its successor shall have final authority to determine
4 whether a Navajo Nation Judge is eligible to retire under the disability provisions of the
5 Retirement Plan.

6 3. The Retirement Plan Administration Committee or its successor, with the
7 concurrence of the Naabik'iyáti'Law and Order Committee, may develop
8 nondiscriminatory procedures for evaluating the continuing disability of a Navajo Nation
9 Judge retired under Subsection (D). The retirement benefits of a Navajo Nation Judge
10 retired under Subsection (D) shall be suspended for failure to comply with such
11 procedures in a timely fashion or if the disability no longer meets the criteria of
12 Subsection (D).

13 H. Authority. The Budget and Finance Committee, upon positive recommendation
14 of the Naabik'iyáti'Law and Order Committee and the Retirement Plan Administration
15 Committee, shall have the authority to approve the initial Judges' Retirement Plan document
16 and any subsequent amendments. This authority shall not be deemed to alter or amend the
17 Retirement Plan Administration Committee's or the Navajo Nation Retirement Program's
18 authority to administer the Judges' Retirement Plan or the Budget and Finance Committee's
19 authority to administer the underlying trust funds.

20 I. Effective dates. Except for amended Subsections (B), (C), (D) and (E), these
21 amendments to 7 N.N.C. § 353 shall become effective upon enactment. Subsections (B), (C),
22 (D), and (E) shall become effective after a final Navajo Nation Judges' Retirement Plan has
23 been recommended by the Naabik'iyáti'Law and Order Committee and the Retirement Plan
24 Administration Committee and approved by the Budget and Finance Committee and the Judges
25 retirement trust fund fully funded by the Navajo Nation Council. For purposes of this
26 Subsections, fully funded shall mean funded to a level sufficient to satisfy the funding
27 requirements of the Employees Retirement Insurance Securities¹ if such Act was applicable to
28 the Judges Retirement Plan.

29 ¹ 29 U.S.C.A. § 1001 *et. seq.*

30 * * *

1 **§ 354. Qualifications for judicial appointments**

2 A. District Courts. The following standards and qualifications shall apply to all
3 judicial appointments to the District Courts of the Navajo Nation:

4 * * *

5 9. Writing Test. Upon initial screening of applicants by the
6 Naabik'íyáti'Law and Order Committee, those applicants selected shall submit to a
7 writing test that illustrates each applicant's organizational, analytical and communicative
8 legal writing abilities.

9 * * *

10 12. Management Ability. Each applicant shall possess managerial and
11 independent decision-making skills necessary for the efficient operation of a Court.
12 Information such as the applicant's record of supervising staff, coordinating budget and
13 personnel requirements, verbal communication and writing abilities shall be carefully
14 considered by the Naabik'íyáti'Law and Order Committee.

15 * * *

16 **§ 355. Appointment; term of office**

17 A. The President of the Navajo Nation shall appoint the Chief Justice, Associate
18 Justices, and District Court Judges with confirmation by the Navajo Nation Council from
19 among those applicants recommended by the Naabik'íyáti'Law and Order Committee of the
20 Navajo Nation Council.

21 B. The Chief Justice and the Associate Justices of the Supreme Court, and all District
22 Court Judges shall be appointed for a probationary period of two years and upon permanent
23 appointment shall serve thereafter during good behavior.

24 C. A probationary Chief Justice, Associate Justice or Judge shall not be
25 recommended for permanent appointment unless he or she has successfully completed a course
26 of training accredited for judges and he or she has received a satisfactory performance
27 evaluation from the Chief Justice and the Naabik'íyáti'Law and Order Committee of the Navajo
28 Nation Council at the conclusion of the probationary Justice's or Judge's two-year probationary
29 term.
30

1 D. At any time during the probationary term of any Chief Justice, Associate Justice
2 or Judge, the Judiciary Committee may recommend to the President of the Navajo Nation that
3 the probationary Justice or Judge be removed from office. The President of the Navajo Nation,
4 pursuant to such recommendation, shall remove such probationary Justice or Judge from
5 office. Any Justice or Judge so removed shall not be eligible for the status of retired Judge,
6 shall not be eligible for reappointment as a Justice or Judge, and shall not be called to sit in
7 any case pursuant to 7 N.N.C. § 353(F).

8 E. At the conclusion of the two-year probationary term, the Naabik'iyáti'~~Law and~~
9 ~~Order~~ Committee shall review the record and qualifications of each probationary Justice or
10 Judge and shall recommend to the President whether or not each probationary Justice or Judge
11 has satisfactorily completed the probationary term and should be appointed to a permanent
12 position. The President shall not appoint to a permanent position any probationary Justice or
13 Judge not recommended by the Naabik'iyáti'~~Law and Order~~ Committee. The appointments
14 shall be submitted to the Navajo Nation Council for confirmation.

15 * * *

16 § 357. Evaluation

17 Permanent Justices and Judges shall be subject to periodic objective evaluations in
18 accordance with Judicial Performance Evaluation Policies and Procedure approved by the
19 Naabik'iyáti'~~Law and Order~~ Committee of the Navajo Nation Council.

20 * * *

21 Subchapter 9. Judicial Branch Personnel Policies

22 23 § 401. Judicial Branch personnel policies and procedure

24 All employment positions, including judicial appointments, within the Judicial Branch
25 shall be governed by Judicial Branch personnel policies and procedures and Justices' and
26 Judges' personnel policies and procedures approved by the Naabik'iyáti'~~Law and Order~~
27 Committee of the Navajo Nation Council.

28 * * *

29 Subchapter 10. Navajo Nation Peacemaking Program (Hózhóǫ́jí Naat'aanii)

1 **§ 412. Personnel**

2 The Navajo Nation Peacemaking Program shall be administered by a Peacemaking
3 Program Coordinator. All personnel, including the coordinator, shall be subject to Navajo
4 Nation Judicial Branch personnel policies and procedures approved by the Naabik'íyáti'~~Law~~
5 ~~and Order~~ Committee of the Navajo Nation Council.

6
7 **§ 413. Legislative oversight**

8 The Navajo Nation Peacemaking Program shall operate under the legislative oversight
9 of the Naabik'íyáti'~~Law and Order~~ Committee of the Navajo Nation Council pursuant to the
10 powers granted that Committee in 2 N.N.C. 700600 et seq. The Navajo Nation Peacemaking
11 Program shall operate pursuant to a Plan of Operation approved by the Naabik'íyáti'~~Law and~~
12 ~~Order~~ Committee of the Navajo Nation Council.

13 * * *

14 **Subchapter 11. Judicial Conduct Commission**

15
16 **§ 422. Purpose and powers**

17 A. The purposes and powers of the Judicial Conduct Commission are:

18 * * *

19 4. To forward recommendations for suspension or removal of Justices and
20 Judges to the Naabik'íyáti'~~Law and Order~~ Committee and to the Chief Justice.

21 * * *

22 C. The Judicial Conduct Commission shall develop and recommend its Plan of
23 Operation, rules, policies and procedures, operating budget, for approval by the ~~Law and Order~~
24 Naabik'íyáti' Committee, the Budget and Finance Committee, and the Navajo Nation Council,
25 as necessary.

26 * * *

27 **§ 424. Legislative oversight**

28 The Judicial Conduct Commission shall operate pursuant to a Plan of Operation and
29 policies and procedures recommended by the Judicial Conduct Commission and approved by
30 the Judicial Naabik'íyáti' Committee of the Navajo Nation Council.

1 * * *

2 **Subchapter 1. Rules of General Construction**

3
4 * * *

5 **§ 852. Amendment**

6 This Title may be amended by two-thirds (2/3) vote of the full membership of the Navajo
7 Nation Council at a regular session of the Navajo Nation Council, upon favorable
8 recommendation by the Naabik'iyáti' ~~Law and Order~~ Committee of the Navajo Nation Council.

9 * * *

10 **Chapter 11. Navajo Nation Children Code**

11 **Subchapter 3. Establishment of Family Court and Probation Office**

12
13 * * *

14 **§ 1052. Court personnel – Appointment, certification, qualifications, duties**

15 * * *

16 B. Presenting Officer.

17 * * *

18 2. The Chief Prosecutor of the Navajo Nation, after consulting with and upon
19 recommendation of the Family Court judges, shall certify to the Naabik'iyáti' ~~Law and~~
20 ~~Order~~ Committee annually the number of qualified presenting officers needed to carry
21 out the purposes of this Code. The Chief Prosecutor of eh Navajo Nation shall be the
22 appointing authority for all presenting officers.

23 * * *

24 **§ 1053. Probation office; establishment; reporting**

25 A. The Chief Justice of the Navajo Nation may establish juvenile probation offices at
26 each of the agencies comprising the Navajo Nation. The Chief Justice of the Navajo Nation
27 shall be the appointing authority for all probation office personnel. If probation officers are
28 established by the Chief Justice of the Navajo Nation, he or she shall also establish a
29 classification and compensation plan for all positions in the service in accordance with the
30 personnel rules of the Courts of the Navajo Nation.

1 B. The Probation Offices shall provide the Chief Justice of the Navajo Nation and the
2 Naabik'iyáti'~~Law and Order~~ Committee of the Navajo Nation Council such information as is
3 requested about children coming into contact with the probation offices or the court under the
4 provisions of the Children's Code.

5 * * *

6 Chapter 17. Child Support Act

7 * * *

8 § 1722. Amendments

9 This Act may be amended from time to time by the Navajo Nation upon the
10 recommendation of the Department of Child Support Services, and the Health, Education and
11 Human Services Committee, and Naabik'iyáti'~~Law and Order~~ Committee of the Navajo
12 Nation Council.

13 * * *

14 Title 12. Fiscal Matters

15 Chapter 28. Navajo Nation Hashkééjí Nahat'á Béeso Bá Hooghan

16
17 * * *

18 § 2805. Expenditure of the Fund.

19 A. The Fund Principal and Income shall be expended upon recommendation by the
20 Chief Justice of the Navajo Nation Supreme Court through an annual or multi-year expenditure
21 plan approved by Naabik'iyáti'~~Law and Order~~ Committee and Budget and Finance Committee.
22 Any changes or modifications to an approved expenditure plan shall be approved by the
23 Naabik'iyáti'~~Law and Order~~ Committee and the Budget and Finance Committee upon the
24 recommendation of the Chief Justice of the Navajo Nation.

25 * * *

26 SECTION FOUR. REFERENCES TO PREVIOUS STANDING COMMITTEE

27 References to the Law and Order Committee's legislative oversight authority for the Judicial
28 Branch, Navajo Nation Department of Justice and Navajo Nation Water Rights Commission
29 shall mean the Naabik'iyáti' Committee, unless the amendments enacted herein or the context
30 of the previous law indicates otherwise.

1
2 **SECTION FIVE. CODIFICATION**

3 The provision of this Act which amend or adopt new sections of the Navajo Nation Code shall
4 be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall
5 incorporate such amended provisions into the next codification or supplement of the Navajo
6 Nation Code.

7
8 **SECTION SIX. SAVINGS CLAUSE**

9 Should any provision of this Act be determined invalid by the Navajo Nation Supreme Court
10 or the District Courts of the Navajo Nation, without appeal to the Navajo Supreme Court, the
11 remainder of the Act shall remain in the law of the Navajo Nation.

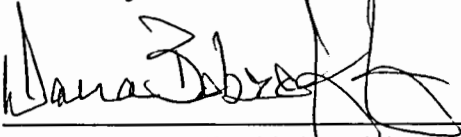
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13 **SECTION SEVEN. EFFECTIVE DATE**

14 The provisions of this Act shall become effective in accordance with 2 N.N.C. § 221 (B).
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MEMORANDUM

TO: Honorable Daniel Tso
24th Navajo Nation Council

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

DATE: December 7, 2022

SUBJECT: **AN ACT RELATING TO LAW AND ORDER AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; APPROVING AMENDMENTS TO 2 N.N.C. §§ 501, 600, 601, 602, 603, 700, 701, 1551, 1553, 1554, 1555; 7 N.N.C. §§ 201, 251, 351, 352, 353, 354, 355, 357, 401, 412, 413, 422, 424, 852, 1052, 1053, 1722; 12 N.N.C. § 2805, AND 1554; TRANSFERING LEGISLATIVE OVERSIGHT OF THE JUDICIAL BRANCH, NAVAJO NATION DEPARTMENT OF JUSTICE, AND NAVAJO NATION WATER RIGHTS COMMISSION FROM THE LAW AND ORDER COMMITTEE AND THE RESOURCES AND DEVELOPMENT COMMITTEE TO THE NAABIK'ÍYÁTI' COMMITTEE**

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.