

LEGISLATIVE SUMMARY SHEET

Tracking No. 0373-15

DATE: October 30, 2015

TITLE OF RESOLUTION: AN ACT RELATING TO LAW AND ORDER COMMITTEE, HEALTH, EDUCATION AND HUMAN SERVICES, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; AMENDING 10 N.N.C. § 106 AND 11 N.N.C. §§ 2, 8 and 161 TO MAKE THE POSITION OF SUPERINTENDENT OF SCHOOLS AN ELECTIVE POSITION

PURPOSE: This resolution, if approved, will make the appointed position of Superintendent of Schools an elected one.

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: None
Website Posting Time/Date: 4:47pm 11/5/15
Posting End Date: 11/10/2015
Eligible for Action: 11/11/2015

Law & Order Committee

THENCE

Health, Education & Human Services Committee

THENCE

Naa'bik'iyáti' Committee

THENCE

Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

23rd NAVAJO NATION COUNCIL – First Year, 2015

INTRODUCED BY


(Prime Sponsor)



TRACKING NO. 0373-15

AN ACT

RELATING TO LAW AND ORDER COMMITTEE, HEALTH, EDUCATION
AND HUMAN SERVICES, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO
NATION COUNCIL; AMENDING 10 N.N.C. § 106 AND 11 N.N.C. §§ 2, 8 and
161 TO MAKE THE POSITION OF SUPERINTENDENT OF SCHOOLS AN
ELECTIVE POSITION

BE IT ENACTED:

Section One. Findings

A. The Law and Order Committee of the Navajo Nation Council has the 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 Health, Education and Social Service Committee has oversight authority over matters relative to health, education and social services within the Navajo Nation. 2 N.N.C. § 401.

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

D. The Navajo Nation Council, pursuant to 2 N.N.C. §102(A), is the "governing body of the Navajo Nation..."

1 **Section Two. Amending Title 10, Education, Navajo Nation Code**

2 The Navajo Nation hereby amends Title 10, Education, as follows:

3
4 **TITLE 10. EDUCATION**

5 **Chapter 1. Policy and Planning**

6 **Subchapter 2. Navajo Education Policies**

7 ****

8 **§ 106. Navajo Nation Board of Education**

9 G. Powers and duties

10 ****

11 2. Subject to Navajo Nation law, the Board is authorized to solicit funds,
12 propose budgets and plans of operation, create positions, and establish
13 organization relationships, and employ and supervise personnel through a
14 chain of command.

15 a. The chief administrative officer of the Board shall be the “Navajo
16 Nation Superintendent of Schools,” who shall be ~~appointed by the~~
17 ~~Navajo Nation board of Education, subject to the confirmation by~~
18 ~~the Navajo Nation Council and, elected by Navajo voters for a~~
19 term of four years. The Superintendent of Schools shall be
20 empowered to do all things necessary and proper to carry in
21 carrying out the responsibilities of the Board as chief
22 administrative officer, and shall implement the mandates and
23 requirements of Title 10, including the Navajo Sovereignty in
24 Education Act.

25 ****

26
27
28 **Section Three. Amending Title 11, Navajo Election Code**

29 The Navajo Nation hereby amends Title 11, the Navajo Nation Election Code, as
30 follows:

TITLE 11. ELECTIONS
Chapter 1. Navajo Election Code of 1990
Subchapter 1. General Provisions

§2. Definitions

N. "Elected Officials"- Those officials holding offices of the President of the Navajo Nation, Vice-President of the Navajo Nation, Delegate of the Navajo Nation Council, Chapter officers, other elected officials, the elected members of the Navajo Nation Board of Education, Superintendent of Schools, and school board members that have been elected or appointed pursuant to this Election Code.

V. "General Elections"- Elections held for the purpose of electing the President of the Navajo Nation, Vice-President of the Navajo Nation, elected members of the Navajo Nation Board of Education, and Delegates of the Navajo Nation Council, Superintendent of Schools, and/or for voting on a referendum.

BB. "Officials"- As used in subchapter 13 hereof this term is used to designate those holding the Offices of President of the Navajo Nation, Vice-President of the Navajo Nation, Delegate of the Navajo Nation Council, Superintendent of Schools, Chapter officers, other elected officials, and school board members.

§ 8. Qualifications for Office

D. Qualifications for Superintendent of Schools:

1. Shall be an enrolled member of the Navajo Nation;

2. Shall be a registered voter of a Chapter;
3. Shall be fluent in the Navajo and English language;
4. Shall be at least 21 years of age at the time of filing;
5. Shall have a Master Degree or a Law Degree or an equivalent higher education degree from an accredited university or college;
6. Shall not have been convicted of a felony in any court; and
7. Shall not have been, within five years of filing, been convicted of any of the following misdemeanor offenses by any court:
 - a. Crimes of deceit, untruthfulness and dishonesty, including but not limited to extortion, embezzlement, bribery, perjury, forgery, fraud, misrepresentation, false pretense, theft, conversion, or misuse of government funds and property;
 - b. Crimes involving moral turpitude;
 - c. Crimes involving the welfare of children, child abuse, and child neglect; and
 - d. Aggravated assault and aggravated battery.
8. Shall not have been, within five years of filing, convicted by a District Court of the Navajo Nation of:
 - a. Any criminal offense under the Navajo Ethics in Government law, 2 N.N.C. § 3741 *et seq.*; and/or,
 - b. Any criminal offense under the Navajo Nation Election Code, 11 N.N.C. § 1 *et seq.*

[All subsequent subsections affected by this insertion shall be redesignated by the Office of Legislative Counsel]

Subchapter 10. Appointments

§ 161. Appointment

- A. With the exception of a vacancy resulting from recall or involving the President or the Vice President, and subject to certification by the Navajo Election Administration, when

1 a vacancy occurs during the second half of an elective term of office, the remaining term
2 shall be filled by appointment as follows:

3 ****

4 9. A vacancy for the elective position of Superintendent of Schools which
5 has been declared vacant by the Navajo Election Administration shall
6 be filled by appointment in one of the following ways:

7 a. By appointment by the Board of Education, subject to
8 confirmation by the Health, Education and Human Services
9 Committee. Prior to appointment by the Board of Education, all
10 applicants, within 45 days of vacancy declaration, shall submit
11 candidacy applications with the Navajo Election
12 Administration. The Election Administration, within 5 days of
13 application closing, review and determine the qualifications of
14 each applicant. The Administration shall then advise the Board
15 of Education on the qualifications of applicants. The Board of
16 Education shall, by written resolution, appoint a qualified
17 applicant from those determined qualified by the Election
18 Administration. The individual appointed and confirmed shall
19 complete the unexpired term.

20 b. By the Health, Education and Human Services Committee. In
21 the event that there is no quorum of the Board of Education due
22 to vacancies, then the Health, Education and Human Services
23 Committee shall appoint and confirm an appointment. Upon
24 declaration of vacancy by the Navajo Election Administration,
25 there shall be a 45-day filing period. No later than 5 days
26 following the expiration of this filing period, the Navajo
27 Election Administration shall review and determine the
28 qualifications of applicants. The names of those deemed
29 qualified shall be forwarded to the Health, Education and
30 Human Services Committee for appointment and confirmation.

1 The appointment and confirmation shall be by written
2 resolution, and the individual appointed and confirmed shall
3 complete the unexpired term.

4 ****

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6
7 **Section Four. Effective date; next Election**

8 The amendments enacted herein shall be effective pursuant to 2 N.N.C. §221(B).
9 However, the current appointed individual serving as Superintendent of Schools shall
10 continue to serve until the next Navajo Nation General Election and until the new elected
11 Superintendent of Schools assumes office upon an Oath of Office.

12
13 **Section Five. Codification**

14 The Office of Legislative Counsel shall incorporate amended provisions approved
15 herein in the next codification of the Navajo Nation Code.

16
17 **Section Six. Savings Clause**

18 Should any provision of the amendments approved be determined invalid by the
19 Navajo Nation Supreme Court, or the District Courts of the Navajo Nation, without appeal
20 to the Navajo Nation Supreme Court, those portions not determined invalid shall remain
21 the law of the Navajo Nation.



MEMORANDUM

To : Russell Begaye, President
NAVAJO NATION

From : Jonathon Hale, Council Delegate *JH*
OAK SPRINGS, ST. MICHAELS CHAPTERS

Date : August 6, 2015

Subject : Qualifications for Superintendent of Schools

Attached are proposed amendments to 10 NNC §106(G)(2)(a). I respectfully request your review and comment on the proposed amendments and new language.

Thank you in advance for your timely response.

COPIES: HEHS Committee
LoRenzo C. Bates, Speaker of the Council

Amend

Title 10 Section 106 (G)(2)(a):

- a. The chief administrative officer of the Board shall be the "Navajo Nation Superintendent of Schools," who shall be elected by the Navajo voters for a term of four years appointed by the Navajo Nation board of Education, subject to the confirmation by the Navajo Nation Council, and shall be empowered to do all things necessary and property to carry out the responsibilities of Navajo Sovereignty in Education Act, codified in Title 10 of the Navajo Nation Code of the Board.
-

Amend

Title 11 Section 8 (D) by inserting subsection 5, as follows:

5. Qualifications for Superintendent of Schools:

- a. Must be an enrolled member of the Navajo Nation;
- b. Must be a registered voter of a Chapter;
- c. Must be fluent in the Navajo and English language;
- d. Must be at least 21 years of age at the time of filing;
- e. Must have at least five years of experience as a school administrator;
- f. Must have a Master Degree or a Law Degree or an equivalent higher education degree from an accredited University or College;
- g. Must not have been convicted of a felony in any court; and
- h. Must not have been convicted of any misdemeanor in any court involving crimes of
deceit, untruthfulness and dishonesty, including but not limited to extortion,
embezzlement, bribery, perjury, forgery, fraud, misrepresentation, false pretense,
theft, conversion, or misuse of government funds and property; crimes involving
moral turpitude; and crimes involving the welfare of children, child abuse, child
neglect, aggravated assault and aggravated battery within the last five years.
Must not have been found in violation of the Navajo Ethics in Government or
Election Laws by a trial court or the Ethics and Rules Committee of the Navajo
Nation Council.

Amend

Title 10 Section 106 (G)(2)(a):

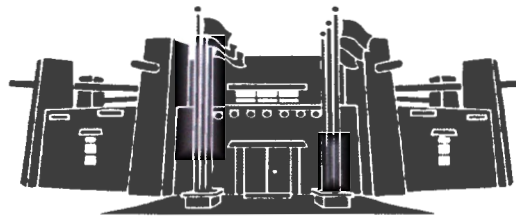
- a. The chief administrative officer of the Board shall be the "Navajo Nation Superintendent of Schools," who shall be elected by the Navajo voters for a term of four years ~~appointed by the Navajo Nation board of Education, subject to the confirmation by the Navajo Nation Council,~~ and shall be empowered to do all things necessary and property to carry out the responsibilities of Navajo Sovereignty in Education Act, codified in Title 10 of the Navajo Nation Code of the Board.
-

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Title 11 Section 8 (D) by inserting subsection 5, as follows:

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- e. Must have at least five years of experience as a school administrator;
- f. Must have a Master Degree or a Law Degree or an equivalent higher education degree from an accredited University or College;
- g. Must not have been convicted of a felony in any court; and
- h. Must not have been convicted of any misdemeanor in any court involving crimes deceit, untruthfulness and dishonesty, including but not limited to extortion, embezzlement, bribery, perjury, forgery, fraud, misrepresentation, false pretense, theft, conversion, or misuse of government funds and property; crimes involving moral turpitude; and crimes involving the welfare of children, child abuse, child neglect, aggravated assault and aggravated battery within the last five years. Must not have been found in violation of the Navajo Ethics in Government or Election Laws by a trial court or the Ethics and Rules Committee of the Navajo Nation Council.



MEMORANDUM

To : Hon. Jonathan Hale, Council Delegate
Navajo Nation Council

From :
Ron Haven, Attorney
Office of Legislative Counsel

Date : October 30, 2015

Re : **AN ACT RELATING TO LAW AND ORDER COMMITTEE,
HEALTH, EDUCATION AND HUMAN SERVICES, NAABIK'ÍYÁTI'
COMMITTEE AND THE NAVAJO NATION COUNCIL; AMENDING
10 N.N.C. §106 AND 11 N.N.C. §§ 2, 8 and 161 TO MAKE THE
POSITION OF SUPERINTENDENT OF SCHOOLS AN ELECTIVE
POSITION**

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. I have provided some comments for purposes of better understanding the drafting of this bill.

First, note that for purposes of clarity, I have slightly reworded your proposed language at section 106(G)(2)(a).¹ This appears on page 3 of bill. Please review the suggested language.

Second, because of the manner in which the Navajo Nation Election Code (Title 11) was initially drafted in 1990, please understand that making an *appointed* position an *elective* one requires some amendments to the Election Code beyond what you provided. These areas, first of all, include the *definition* section of the Code (section 2). See page 3 of bill. Here, we must include when the newly-created position will be up for election (either during the "General" elections or during the chapter elections). In your bill, please note that the new position will be included under "General Elections." This would mean that the *Superintendent* position will be up for election when our Presidential/Council Delegate elections are conducted.² Under the same section, I have included "Superintendent of Schools" within the definition of "Officials."

¹ Aside being the Chief Administrative Officer for the Directors of the Board of Education, the Superintendent serves as a Regen: for Dine College. 10 N.N.C. §2001.
Office of Legislative Counsel / Navajo Nation Council / P.O. Box 3390 / Window Rock, Arizona / 86515

Regarding qualifications, I have slightly reworded your proposed section regarding previous "violations" of Ethics and Election Code provisions. For purposes of consistency, the section would specify that criminal convictions in these areas can be grounds for disqualification. See page 4 of bill. Otherwise, administrative hearings will remain with the Office of Hearings and Appeals, within the same subject areas (to the extent of delegated authority).

Next, I have included a provision on vacancies for the elective position of Superintendent of Schools. See pages 4 and 5 of bill. Please carefully review my suggested appointment process (for vacancies occurring within second half of the term for Superintendent). Of course, the Council can specify a different process (such as a different appointing or confirmation body). Let me know if you have any questions here.

Finally, note that the bill states that current appointed Superintendent will serve until the General Election and until oath is administered the newly-elected official. See page 6, section four (the effective date provision). I have included this section primarily as a practical matter. Again, the Council (or assigned committees) may decide otherwise on this.

Based on existing law and review of documents submitted, the resolution drafted is legally sufficient. However, as with all legislation, it can be subject to review by the courts in the event of proper challenge. You are encouraged to review the proposed resolution to ensure that 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 resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution. Ahéhee'.

OLC # 16-019-1

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0373-15_

SPONSOR: Jonathan L. Hale

TITLE: An Action Relating to Law And Order Committee, Health, Education And Human Services, NAABIK'IYATI' Committee And The Navajo Nation Council; Amending 10 N.N.C. § 106 And 11 N.N.C. §§ 2, 8 And 161 To Make The Position Of Superintendent Of Schools An Elective Position.

Date posted: November 5, 2015 at 4:47PM

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.: 0373-15

SPONSOR: Honorable Jonathan L. Hale

TITLE An Action Relating To Law And Order Committee, Health, Education And Human Services, Naabik'iyati' Committee And The Navajo Nation Council; Amending 10 N.N.C. § 106 And 11 N.N.C. §§ 2, 8 And 161 To Make The Position Of Superintendent Of Schools An Elective Position.

Posted: November 5, 2015 at 4:47PM

5 DAY Comment Period Ended: November 10, 2015

Digital Comments received: *No comments received.*

Ratanya Burbank
Policy Analyst
Office of Legislative Services

11/12/15 8:35am
Date/Time

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

LEGISLATION NO.: 0373-15

SPONSOR: Honorable Jonathan L. Hale

TITLE An Action Relating To Law And Order Committee, Health, Education And Human Services, Naabik'iyati' Committee And The Navajo Nation Council; Amending 10 N.N.C. § 106 And 11 N.N.C. §§ 2, 8 And 161 To Make The Position Of Superintendent Of Schools An Elective Position.

Posted: November 5, 2015 at 4:47PM

5 DAY Comment Period Ended: November 10, 2015

Digital Comments received:

Supporting Comments	<i>None</i>
Opposing Comments	<i>None</i>
Inclusive Comments (1)	<ol style="list-style-type: none"> 1. Dr. Pauline M. Begay, President; Navajo Nation Board Of Education. Attached is a letter raising several questions and concerns regarding the impact of the legislation; request that this legislation be deferred or tabled until more detailed analysis, including a legal review.

(Signature)

**Executive Director
Office of Legislative Services**

11/18/2015 - 3:20pm

Date/Time



**DEPARTMENT OF DINÉ EDUCATION
THE NAVAJO NATION**

P.O. Box 670 · Window Rock, Arizona 86515
PHONE (928) 871 – 7475 · FAX (928) 871 – 7474



Russell Begaye
President

Jonathan Nez
Vice-President

November 17, 2015

Jonathan Hale,
Chairperson

Norman M. Begay,
Vice-Chairperson

Nelson Begaye,
Member

Nathaniel Brown,
Member

Amber K. Crotty,
Member

Herman Daniels, Jr.,
Member

Health, Education, and Human Services Chairperson
NAVAJO NATION COUNCIL
P.O. Box 3390
Window Rock, AZ 86515

RE: Questions/Concerns Regarding Legislation 0373-15 - Amending 10 N.N.C. §106 and 11 N.N.C. §2, 8, 161, Making the Superintendent of Schools Position an Elected Position

Dear Honorable Health, Education, and Human Services Committee Members:

Members of the Navajo Nation Board of Education and Department of Diné Education were barely made aware of the introduction of Legislation 0373-15, which would make the Superintendent of Schools position an elected position, rather than an appointed position. If we had known that such legislation was going to be introduced, we would have readily provided constructive feedback and analysis in a timely manner. In the meantime, we request that this legislation be deferred or tabled until a more detailed analysis can be provided. Legislation 0373-15 also needs a legal review and opinion by the Navajo Nation Department of Justice and Legislative Counsel of potential legal ramifications, including potential statutory conflicts and confusion. At the moment, the Legislation 0373-15 appears to be incomplete and may need to include amendments to 2 N.N.C. §§1804 and 1805 establishing the Department of Diné Education and Superintendent of Schools position. In the meantime, the Navajo Nation Board of Education is raising several questions and concerns about the potential impact of this legislation that should also be considered.

Questions/Concerns:

1. What is the purpose of making the Superintendent of Schools position an elected position, rather than using the existing process? Are there any legislative findings or policy rationale that justifies why this change is needed? Is there a problem or issue with the current appointed Superintendent of Schools position? Is there a specific or tangible policy rationale or improved outcome(s) that is expected if this legislation is enacted?

BOARD OF EDUCATION

Dr. Pauline M. Begay, President · Gloria Johns, Vice President · Marlene Burbank, Secretary
Members: *Dolly C. Begay · Delores Greyeyes · Patrick D. Lynch · Bennie Begay · Dr. Bernadette Todacheene*
Dr. Tommy Lewis, Superintendent of Schools

2. According to the proposed legislative language contained in 11 N.N.C. §8 regarding the qualifications for the Superintendent of Schools, it appears that there is a lowering of the standards regarding the qualifications of this position. In ¶5, the position only requires a **“Masters Degree or a Law Degree or an equivalent higher education degree from an accredited university or college.”** Second, is the Navajo Elections Administration best positioned to determine these qualifications?

As the legislation is written, anyone with a Masters Degree (regardless of type/concentration) or a Law Degree qualifies for this position. Because the Superintendent of Schools regularly interacts with schools, school leaders, administrators, state education officials, and oversees the assumption of control of schools, the Navajo Nation Board of Education has required other credentials such as possession of a valid state administrator/superintendent's license/certification in order to effectively serve in this position. These credentials and licensure requirements are essential for the person to have the necessary credibility to effectively serve in this position. These specific credentials and licensure requirements also have an impact on other policies enacted by the Health, Education, and Human Services Committee such as the school intervention policy, and may affect other accreditation/licensure requirements.

The Navajo Nation Board of Education specifically requires a *“Master’s degree in Education; and five (5) years of administrative or management experience in elementary or secondary school; three (3) years of which must have been in a supervisory capacity equivalent to a School Principal, an Executive Director of a BIA Grant or Contract School, a Public School Superintendent; and three (3) years of K -12 classroom experience”* and *“(p)ossess current superintendent licensure, teacher certification and a valid state driver’s license.”*

3. By establishing this position as an elected position, rather than as an appointed position, an elected Superintendent of Schools would nearly impossible to remove from office, even if the person demonstrates ineffectiveness or incompetence. As presently written, the proposed legislation lacks removal/accountability provisions. The elected Superintendent of Schools would also be protected by fundamental law (*Diné Bi Beenahaz'áanii*), which establishes a very high bar for removal. At the moment, the person who is appointed as Superintendent of Schools serves at the pleasure of the Navajo Nation Board of Education, which may also require amendments to 2 N.N.C. §1804. At the moment, the Navajo Nation Board of Education is a hybrid board comprised of elected and appointed members (appointed by the President and confirmed by the HEHSC).

Another consideration is that by establishing the Superintendent of Schools positions as an elected position, would it conflict with the statutory provision where the Superintendent of Schools serves at the pleasure of the Navajo Nation Board of Education? If the elected Superintendent of Schools is ineffective or incompetent, would the Navajo Nation Board of Education have the authority to remove that person? The potential statutory conflicts may present unforeseen and unintended consequences if the legislation is enacted in its present form.

4. The proposed amendments to 11 N.N.C. §161(A)(9)(a) regarding filling of an appointment or vacancy, appear to be very cumbersome, confusing, and may impose high costs upon the Navajo Nation to conduct a special election to fill a vacancy. Special elections alone, cost upwards of \$300,000 to conduct.
5. What is the filing fee for the elected Superintendent of Schools position? As with any other elected positions, filing fees are set for the President, council delegate, school board, chapter official positions.
6. What is the compensation for the elected Superintendent of Schools position? Who sets the pay for this position? Will the compensation be competitive enough to attract the best candidates? At the moment, compensation for other Navajo Nation elected positions are set by statute? At the moment, the Board has the flexibility to negotiate the Superintendent of Schools' compensation which is consistent with the Navajo Nation's pay scale.
7. Who is the elected Superintendent of Schools position accountable to? Will this person be independent of the President? Navajo Nation Council? Navajo Nation Board of Education? What will happen if the Superintendent of Schools decides to go in a different direction that what the Navajo Nation Council or President of the Navajo Nation or Board of Education wants? One present situation where this conflict and situation exists is with the Arizona Department of Education and Arizona Board of Education.
8. If the Superintendent of Schools position is converted into an elected position, the position may become very political which would be detrimental to the educational process.

We greatly appreciate the opportunity to be a part of the process to improve the quality of education our children, including offering input on legislation. In the meantime, we request that this legislation be deferred or tabled until a detailed analysis, including a legal review of potential legal ramifications, proposed amendments, can be provided.

Very Sincerely & Respectfully,



Dr. Pauline M. Begay, President
Navajo Nation Board of Education

CC: Members/Navajo Nation Board of Education
Michelle Begay, Attorney/Navajo Nation Department of Justice

Concerns Regarding the Superintendent of Schools as an Elected Position:

1. At the moment, the Superintendent of Schools is an appointed position located within the Executive Branch. Because Legislation 0373-15 impacts the Executive Branch, shouldn't the Executive Branch make the request to initiate this legislation? The purpose of this legislation or why it is necessary is unclear.
2. The selection of Superintendent of Schools is a grueling, lengthy process that is the responsibility of the Navajo Nation Board of Education, which also requires confirmation by the Navajo Nation Council. The Board membership is a representative sampling of all Navajo Nation voters and agencies. The Board is comprised of five elected members (by agency) and six appointed (by the President) Board members (subject to confirmation by the HEHSC) who have expertise and credentials in selected areas. In essence, what this Legislation 0373-15 is requesting is already in place. Adding the Board of Election Supervisors and Navajo Elections Administration will add another decision-making layer to an already lengthy process.
3. If this legislation goes in effect, the selection process of Superintendent of Schools, if elected, will mainly be a popularity contest. Voters will not likely have access to the person's credentials, resumes, and employment history. A Superintendent of Schools candidate can say anything to get voted in office and the Department of Diné Education would be "stuck" with that person for the whole four years. Whereas, the present process for the Superintendent of Schools has a screening, interview, and confirmation process. The position also is an At-Will position, which is an essential accountability and oversight mechanism.
4. If this legislation goes through, who does the Superintendent of Schools answer to? Would the Superintendent of Schools occupy a higher status/position than the Board? Would the Board and Superintendent of Schools have equal power? Would the Superintendent of Schools report to the President? Presently, the Superintendent of Schools works for the Navajo Nation Board of Education.
5. Title 10, even though its 10 years old, is still relative new legislation. The power and authority that is vested in the present law is just starting to take effect and needs additional time to be fully implemented. As we know, it's only been three years since May 2012 since the legislative body delegated its reauthorization authority (HEHSCMY-012-12) and processes to Board of Education and we are still working through the "kinks" with the expectation of improving the present process.
6. There is a claim of the lack of progress by DODE, Board of Education, and Superintendent's office. Please remember that DODE and the Board worked on:

Legislation 0373-15

- a. The Accountability Workbook is close to being approved for all Navajo Nation schools and students attending grant/contact schools and BIE schools. The Navajo Nation's Accountability Workbook waiting on a final senior level administrative review/approval at U.S. Department of Education.
- b. Made significant strides to improve the Navajo Head Start program, which was on the verge of being shut down federal government. More work, however, still remains.
- c. DODE performed a re-organization to best meet the needs of the schools.
- d. Title 2 delegation (HEHSCMY-012-12) regarding reauthorization of schools.
- e. Established Memorandums of Agreement and Understanding (MOA's/MOU's) three states bordering Navajo Nation regarding Navajo education.
- f. Developed and enacted the Diné Content Standards.
- g. Curriculum is being worked on by OSCAD
- h. The Board through, the Department, has assumed control of several schools and made significant improvements with them. In particular, the Department and Board have made significant progress with the Rock Point Community School, Inc. to the point the Department is about to return full control and authority back to the school board. At one point, Rock Point was missing 3 federal audits and was about to taken back by the federal government. The school is now in compliance.
- i. Performed a Diné Education Feasibility Study
- j. The federal Sovereignty in Indian Education Grant (SIEG) is putting policy and procedures in place for School Governance, Finance, and Human Resources.
- k. The federal Tribal Education Department Grant (TEDG) will refine all the SIEG recommendation to do a quality "Transfer of Authority" from BIE governance to Diné Consolidated Schools System.
- l. Collectively, the Department and Board, through the SIEG and TEDG grants, brought in significant sources of external funds (\$1.5+ million) that will be used to improve the quality of Navajo education.

Your consideration to address these points before going forward with the proposed legislation to have the Navajo Nation Superintendent of Schools as an elected position will be appreciated.

**LAW AND ORDER COMMITTEE
23rd NAVAJO NATION COUNCIL**

FIRST YEAR 2015

COMMITTEE REPORT

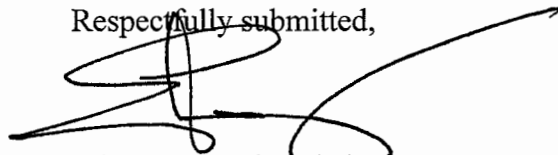
Mr. Speaker,

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

Legislation # 0373-15: An Act Relating to Law and Order Committee, Health, Education and Human Services, Naabik'iyáti' Committee and the Navajo Nation Council; Amending 10 N.N.C. §106 and 11 N.N.C. §§ 2, 8 and 161 to make the position of Superintendent of Schools an Elective Position.

Has had it under consideration and reports the matter **Passed** with no Amendment and thereafter the matter will be referred to the Health, Education and Human Services Committee.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Edmund Yazzie', written over the words 'Respectfully submitted,'.

Edmund Yazzie, Chairperson
Law and Order Committee of the
23rd Navajo Nation Council

Date: November 16, 2015

Motion: O. Tso

Second: K.A.Begay, Jr.

Vote: 3-0

Committee Report

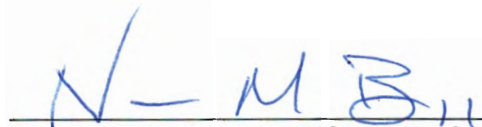
THE HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE OF THE NAVAJO NATION COUNCIL to who has been assigned;

LEGISLATION NO. 0373-15

AN ACTION RELATING TO LAW AND ORDER COMMITTEE, HEALTH, EDUCATION AND HUMAN SERVICES, NAABIK'IYATI' COMMITTEE AND NAVAJO NATION COUNCIL; AMENDING 10 N.N.C. § 106 AND §§ 2,8, AND 161 TO MAKE THE POSITION OF SUPERINTENDENT OF SCHOOLS AN ELECTIVE POSITION

Has had under consideration and report the same with the recommendation that it TABLED FOR 60 CALENDAR DAYS FOR DODE, ELECTIONS OFFICE, DOJ, NBOE TO BRING BACK UPDATE REPORT with no amendment and no directive;

And therefore referred the same to the NAABIK'IYATI' COMMITTEE OF THE NAVAJO NATION COUNCIL



Norman M. Begay, Vice-Chairperson
Health, Education and Human Services Committee

Dated: November 17, 2015

Tabled Motion

Motion by: Honorable Herman Daniels, Jr.

Seconded by: Honorable Jonathan L. Hale

Vote: 5 in favor; 0 Opposed and 0 Abstain

Vice-Chairperson not voting