

LEGISLATIVE SUMMARY SHEET

Tracking No. 0079-19

DATE: February 14, 2019

AN ACT RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; APPROVING AN ACT TO AMEND THE NAVAJO NATION CODE, TITLE 2, CHAPTER 3, SUBCHAPTER 2, SECTION 104 (A) INCOMPATIBLE SERVICE; REMOVING THE EXCEPTION PERMITTING THE HOLDING OF ELECTIVE COUNTY OFFICE WHILE A NAVAJO NATION COUNCIL DELEGATE AND TITLE 11, CHAPTER 11 NAVAJO ELECTION CODE SUBCHAPTER 1, GENERAL PROVISIONS SECTION 8(B) QUALIFICATIONS FOR DELEGATES TO THE NAVAJO NATION COUNCIL

PURPOSE: The purpose of this legislation is to eliminate the exception of serving in elective county office while a member of the Navajo Nation Council.

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 review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: 2019
Website Posting Time/Date: _____
Posting End Date: 4/3/19
Eligible for Action: 4/4/19

Law & Order Committee
Thence
Naa'bik'íyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL—First Year, 2019

INTRODUCED BY



Primary Sponsor

TRACKING NO. 0079-19

AN ACT

RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' COMMITTEE AND THE
NAVAJO NATION COUNCIL; APPROVING AN ACT TO AMEND THE NAVAJO
NATION CODE, TITLE 2, CHAPTER 3, SUBCHAPTER 2, SECTION 104 (A)
INCOMPATIBLE SERVICE; REMOVING THE EXCEPTION PERMITTING THE
HOLDING OF ELECTIVE COUNTY OFFICE WHILE A NAVAJO NATION
COUNCIL DELEGATE AND TITLE 11, CHAPTER 11 NAVAJO ELECTION CODE
SUBCHAPTER 1, GENERAL PROVISIONS SECTION 8(B) QUALIFICATIONS FOR
DELEGATES TO THE NAVAJO NATION COUNCIL

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Law and Order Committee of the Navajo Nation Council, pursuant to 2 N.N.C. 601(B)(14), reviews and makes recommendations to the Navajo Nation Council on proposed amendments to and enactments in the Navajo Nation Code.
- B. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council. Pursuant to 2 N.N.C. § 164(A) (9), the committee reviews proposed legislation which requires final action by the Navajo Nation Council.
- C. The Navajo Nation Council enacts laws and sets policy for the Navajo Nation. 2 N.N.C. § 102.

1 **SECTION TWO. FINDINGS**

- 2 A. The Diné have established the Navajo Nation Council as a branch of the Navajo Nation
3 Government. 2 N.N.C. § 101
- 4 B. In establishing the Navajo Nation Council the Diné have laid out specific qualifications
5 for eligibility for holding the trusted office of Delegate to the Navajo Nation Council,
6 among them being the requirement that the Delegate be an enrolled member of the
7 Navajo Nation and be above the age of 25 years. 2 N.N.C. § 103
- 8 C. Loyalty to the sovereignty of the Navajo Nation and to fulfilling the responsibilities to the
9 Diné as a Council Delegate are also required in that the Code expressly prohibits anyone
10 holding elected office or in permanent employment of the United States or any state or
11 any subdivisions thereof from also serving as elected Delegate of the Navajo Nation
12 Council. 2 N.N.C. § 104
- 13 D. These prohibitions stem in part from the potential conflicts created when an elected
14 official takes the oath of office to swear allegiance to the laws of the Navajo Nation and
15 also to another sovereign be it Federal or State or subdivision thereof.
- 16 E. The Supreme Court of the Navajo Nation has held with respect to taking the oath of
17 office that "...a person may not swear allegiance to obey and serve simultaneously the
18 laws of the Nation and the State..." *In the Matter of the Grievance of: Wagner, and*
19 *concerning, Tsosie.* SC-CV-01-07, slip op at 7-8 (Nav.Sup.Ct. May 14 2007)
- 20 F. The Navajo Nation chose to include an exception to the prohibition against
21 simultaneously holding another elected office by stating that the prohibition "...shall not
22 apply to service on a school board or elective county office."
- 23 G. Such an exception has proven to not be in the best interest of the Diné and at times
24 detrimental to the effective operation and work of the Navajo Nation Council and
25 therefore is no longer necessary.
- 26 H. It is in the best interest of the Diné and the Navajo Nation Council to amend the Navajo
27 Nation Code, Title 2, Chapter 3, Subchapter 2, § 104(A) and Navajo Nation Code,
28 Title 11, Chapter 1, Subchapter 1, § 8(B)(11), during a Regular Session of the Navajo
29 Nation Council, to remove the exception allowing the simultaneous holding an elective
30 county office and the position of elected Navajo Nation Council Delegate.

1 **SECTION THREE. Amending Title 2**

2 The Navajo Nation Council hereby amends the Navajo Nation Code, 2 N.N.C. § 104 (A)
3 and 11 N.N.C. § 8 (B)(11) as follows:

4
5 **The NAVAJO NATION CODE**
6 **TITLE 2 NAVAJO NATION GOVERNMENT**
7 **Chapter 3 Legislative Branch**
8 **Subchapter 1. Navajo Nation Council**

9 * * * *

10 **§ 104. Incompatible Service**

- 11 A. No person shall serve as a delegate if he or she is in the permanent
12 employment of the United States or any state or any subdivisions thereof; nor
13 shall and elected official of the Unites States or the several states thereof serve
14 as a delegate. This Section shall not apply to service on a school board or
15 elective county office.
- 16 B. No person shall be eligible for election to the Navajo Nation Council if that
17 person is permanently employed or an elected official as described in §104
18 (A).
- 19 C. If any delegate, after his/her election, enters such service the delegate shall
20 immediately forfeit his/her office as a Council Delegate.
- 21 D. No Council Delegate shall engage in the private practice of law while serving
22 as a Navajo Nation Council Delegate.

23 * * * *

24 **TITLE 11 ELECTIONS**
25 **Chapter 1. Navajo Election Code of 1990**
26 **Subchapter 1. General Provisions**

27 * * * *

28 **§ 8 Qualifications for Office**

29 * * * *

30 **B. Qualifications for Delegate to the Navajo Nation Council:**

- 1 1. Must be at least 25 years of age on or before the date of the general
2 election;
 - 3 2. Must be an enrolled member of the Navajo Nation on the Agency
4 Census roll of the Bureau of Indian Affairs;
 - 5 3. Must not have been convicted of a felony within the last five years;
 - 6 4. Must not have been convicted of any misdemeanor involving crimes of
7 deceit, untruthfulness and dishonesty, including but not limited to extortion,
8 embezzlement, bribery, perjury, forgery, fraud, misrepresentation, false pretense,
9 theft, conversion, or misuse of Navajo Nation funds and property, and crimes
10 involving the welfare of children, child abuse, child neglect, aggravated assault
11 and aggravated battery within the last five years. Must not have been found in
12 violation by a trial court or the Ethics and Rules Committee of the Navajo Nation
13 Council of the Navajo Ethics in Government or Election Laws;
 - 14 5. Must maintain unswerving loyalty to the Navajo Nation and must be
15 competent and capable of upholding the oath of office;
 - 16 6. Must be a registered voter in the chapter or precinct from which elected;
 - 17 7. Candidates elected, who are employed by the Navajo Nation, must
18 resign from such employment before taking the oath of office and shall not be
19 employed by the Navajo Nation during their term of office;
 - 20 8. Must be able to speak and understand Navajo and/or English;
 - 21 9. Must not, if elected, serve in any other elected Navajo Nation Office
22 with the exception of the office(s) of the school board(s);
 - 23 10. Must have permanent residence and been continually physically
24 present within the Navajo Nation as defined in 7 N.N.C. § 254 at least three years
25 prior to the time of election; and
 - 26 11. Must not be in the permanent employment of the United States or any
27 state or subdivision thereof, or be an elected official of the United States or any
28 state or subdivision thereof, with the exception of service on a school board ~~or~~
29 ~~elective county office.~~
 - 30
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1 **SECTION FOUR. CODIFICATION**

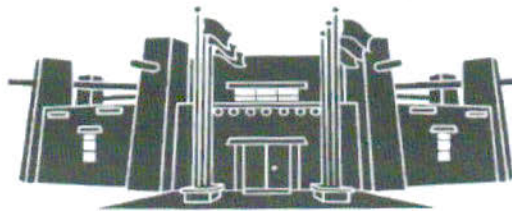
2 The provisions of the Act which amend or adopt new sections of the Navajo Nation
3 Code shall be codified by the Office of Legislative Counsel. The Office of Legislative
4 Counsel shall incorporate such amended provisions in the next codification of the Navajo
5 Nation Code.

6
7 **SECTION FIVE. SAVING CLAUSE**

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

11
12 **SECTION SIX. EFFECTIVE DATE**

13 The provisions of this Act shall become effective upon the occurrence of the next
14 scheduled elections for Navajo Nation Council.



MEMORANDUM

TO: Honorable Otto Tso
Navajo Nation Council

FROM: 
Edward A. McCool, Acting-Chief Legislative Counsel
Office of Legislative Counsel

DATE: February 14, 2019

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Requiring Action Be Taken Only In Regular Session of the Navajo Nation Council

As requested, 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. Please ensure that this 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 Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§500, 501. 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).

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.