

**LEGISLATIVE SUMMARY SHEET**

**Tracking No.** 0154-15

**DATE:** May 5, 2015

**TITLE OF RESOLUTION:** AN ACT RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' AND THE NAVAJO NATION COUNCIL; APPROVING THE JUDICIAL ELECTIONS REFERENDUM ACT OF 2015 REFERRING TO VOTERS OF THE NAVAJO NATION A REFERENDUM MEASURE ON WHETHER TITLES 2, 7 AND 11 OF THE NAVAJO NATION CODE TO PROVIDE FOR THE ELECTION OF NAVAJO NATION DISTRICT COURT JUDGES AND SUPREME COURT JUSTICES

**PURPOSE:** This resolution, if approved, will approve the Judicial Elections Referendum Act of 2015.

**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: Latanya Burbank  
Website Posting Time/Date: 1:51 pm 5/5/15  
Posting End Date: 5/10/15  
Eligible for Action: 5/11/15

Law & Order Committee  
THENCE  
Naa'biik'iyáti' Committee  
THENCE  
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION  
23rd NAVAJO NATION COUNCIL -- First Year, 2015

INTRODUCED BY

Al P. J.  
Raymond Smith Jr  
(Prime Sponsor)  
Keethan Begay Jr  
OTTO  
(OTTO TSO)  
Tracking No. 0154-15

AN ACT

RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' AND THE NAVAJO NATION  
COUNCIL; APPROVING THE JUDICIAL ELECTIONS REFERENDUM ACT OF 2015  
REFERRING TO VOTERS OF THE NAVAJO NATION A REFERENDUM MEASURE  
ON WHETHER TITLES 2, 7 AND 11 OF THE NAVAJO NATION CODE TO PROVIDE  
FOR THE ELECTION OF NAVAJO NATION DISTRICT COURT JUDGES AND  
SUPREME COURT JUSTICES

BE IT ENACTED:

Section One. Findings

- A. The Navajo Nation finds that Navajo Nation District Court Judges and Supreme Court Justices, as leaders of the Judicial Branch, are appointed officials. Unlike other Navajo leaders who are elected, Navajo Nation Judges and Justices of the Supreme Court are not elected. Under current Navajo Nation law, leaders such as the President of the Navajo, Council Delegates, Chapter officials, school board members, farm and land board officials are all elected, chosen by Diné voters in a democratic election process as set forth at 1 N.N.C. § 203(A).
- B. "The People have a fundamental right to choose their leaders and leaders have the obligation to ensure those rights." Nelson v. Shirley, No. SC-CV-03-10, Slip Op. at 16 (Nav. Sup. Ct. May 28, 2010, as corrected June 2, 2010).

1 C. The Navajo Nation finds that to ensure the fundamental right and freedom of the  
2 Diné to participate in their democracy with an option to choose their leaders in the Navajo  
3 Nation Courts, and to ensure the People's trust and confidence in the Navajo Nation  
4 Judiciary, the Diné should have an opportunity to decide through a referendum vote in a  
5 referendum election whether Navajo Nation District Court judges and Supreme Court  
6 justices should be elected positions.

7  
8 **Section Two. Referring for Referendum Election the Judicial Elections Referendum**  
9 **Act of 2010; Approving Ballot Language**

10 The Navajo Nation Council hereby refers the following referendum measure entitled  
11 the Judicial Elections Referendum Act of 2015. The Council further approves the ballot  
12 language of the measure referred as follows:

13  
14  
15  
16 **Official Title:** "The Judicial Elections Referendum Act of 2015"

17  
18 **Descriptive Summary:** The Judicial Elections Referendum Act of 2015 is a  
19 referendum ballot question from the Navajo Nation Council to give the Navajo People an  
20 opportunity to decide through referendum election whether the positions of all Navajo Nation  
21 District Court Judges and all Navajo Nation Supreme Court Justices should be elected  
22 positions as opposed to appointed positions. If the measure is approved, Judges and Justices  
23 will be subject to retention elections beginning upon certification of election results.

24  
25 **Brief Statement of Legal Effect:**

26 A "YES" vote is in favor of changing Navajo Nation District Court Judge positions and  
27 Navajo Nation Supreme Court Justice positions to elected positions subject to retention  
28 elections. A "YES" vote will amend the Navajo Nation Code and shall have the effect of  
29 approving the amendments to Titles 2, 7 and 11 of the Navajo Nation Code, as set forth in the  
30 complete text of the legislation referred by this referendum measure.

1 A "NO" vote is against changing Navajo Nation District Court Judge positions and Navajo  
2 Nation Supreme Court Justice positions to elected positions, and shall have the effect of  
3 maintaining the current status of Navajo Nation law whereby Navajo Nation Judges and  
4 Justices are appointed by the President and confirmed by the Navajo Nation Council. A  
5 "NO" vote will not amend the Navajo Nation Code.

6  
7 **Referendum Ballot Question:**

8 "Should the positions of Navajo Nation District Court Judges and Navajo Nation Supreme  
9 Court Justices be changed from appointed positions to elected positions, subject to retention  
10 elections, upon approval of referendum and certification of election results?"

11 "YES"

12 "NO"

13  
14 **Section Three. Complete Text of Proposed Legislation Referred by Referendum**  
15 **Measure to Amend Titles 2, 7 and 11 of the Navajo Nation Code**

16 The Navajo Nation Council hereby refers the complete text of proposed legislation by  
17 referendum measure to amend Titles 2, 7 and 11 of the Navajo Nation Council, as follows:

18  
19 **TITLE 2. NAVAJO NATION GOVERNMENT**  
20 **CHAPTER 1. ESTABLISHMENT**  
21 **SUBCHAPTER 2. GENERALLY**  
22  
23  
24  
25

26 \*\*\*\*

27 **§ 3. Oath of office**

28 The President, Vice-President, ~~and~~ all delegates to the Navajo Nation Council, all  
29 Navajo Nation District Court judges, all Navajo Nation Supreme Court justices, before  
30 assuming their official duties, shall take an oath of office as prescribed by 11 N.N.C. § 6(E).

1  
2 \*\*\*\*\*

3                   **TITLE 2. NAVAJO NATION GOVERNMENT**  
4                   **CHAPTER 3. LEGISLATIVE BRANCH**  
5                   **SUBCHAPTER 9. STANDING COMMITTEES**  
6                   **ARTICLE 4. LAW AND ORDER COMMITTEE**

7 \*\*\*\*\*

8 **§ 601. Powers**

9 \*\*\*\*\*

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

11 \*\*\*\*\*

12 ~~3. — To review and evaluate the performance of probationary and permanent judges and~~  
13 ~~justices.~~

14 5.       To review and make recommendations to the Navajo Nation Council for final  
15 approval:

16       a. — ~~Removal of a permanent judge or justice.~~

17       ba.   Resolutions requiring Council approval to accomplish or impact the  
18 Committee purposes.

19 \*\*\*\*\*

20 ~~7. — To provide a process for accepting applications for judicial positions and for~~  
21 ~~determining the most qualified candidates.~~

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

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

1 8.——To review and evaluate the performance of probationary and permanent Justices and  
2 judges.

3 9.——To recommend to the President of the Navajo Nation the removal of Probationary  
4 Justices and Judges prior to their permanent appointment.

5 10.——To recommend to the President the permanent appointment of Probationary Justices  
6 and Judges.

7 ——a.——The President shall not appoint to a permanent position any Justice or Judge  
8 not recommended by the Judiciary Committee.

9 ——b.——The appointment of permanent Justices and Judges shall be confirmed by the  
10 Navajo Nation Council.

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

16 12.——To recommend to the Navajo Nation Council the removal of permanent Justices or  
17 Judges.

18 [Subsequent sections shall be appropriately renumbered.]

19 \*\*\*\*

## 20 TITLE 7. COURTS AND PROCEDURE

### 21 CHAPTER 3. JUDICIAL BRANCH

#### 22 SUBCHAPTER 1. GENERALLY

23 § 201. Establishment; composition

24 \*\*\*\*

25 C. The Judicial Branch of the Navajo Nation shall also consist of such additional Judicial  
26 Branch divisions, departments, offices or programs that further the purposes of the Courts as  
27 may be created, subject to amendment or abolishment, by the Judiciary Committee Law and  
28 Order Committee through adoption of their plans of operation.

## 29 TITLE 7. COURTS AND PROCEDURE

**CHAPTER 3. JUDICIAL BRANCH**  
**SUBCHAPTER 3. DISTRICT COURTS**

**§ 251. Composition**

A. The District Courts of the Navajo Nation shall consist of judges recommended by the ~~Judiciary Committee~~ Judicial Conduct Commission ~~of the Navajo Nation Council~~, appointed by the President of the Navajo Nation, and confirmed by the Navajo Nation Council.

\*\*\*\*

**TITLE 7. COURTS AND PROCEDURE**  
**CHAPTER 3. JUDICIAL BRANCH**  
**SUBCHAPTER 7. JUSTICES AND JUDGES**  
**ARTICLE 1. GENERALLY**

\*\*\*\*

**§ 352. Removal from office; recall**

A. ~~The Judiciary Committee of the Navajo Nation Council may recommend the removal of any Justice or Judge from office if the Judiciary Committee determines reasonable cause exists to believe the Justice or Judge has engaged in malfeasance or misfeasance in office, serious neglect of duty, or has become mentally or physically unable to perform the duties of office. The Chief Justice may recommend to the Judiciary Committee the removal of any Justice or Judge as provided for above. Only if the Judiciary Committee does not follow the Chief Justice's recommendation may the Chief Justice recommend such removal directly to the Navajo Nation Council.~~

B. ~~The Judiciary Committee of the Navajo Nation Council may recommend the removal of any Justice or Judge from office if the Judiciary Committee determines there is substantial evidence that the Justice or Judge willfully or negligently made significant misrepresentations or omissions about his or her qualifications on his or her application for the judicial position. The Chief Justice may recommend to the Judiciary Committee the removal of any Justice or Judge as provided for above. Only if the Judiciary Committee does not follow the Chief Justice's recommendation may the Chief Justice recommend such removal directly to the Navajo Nation Council.~~

1 C. ~~— A recommendation for removal under Subsections (A) or (B) above shall be~~  
2 ~~presented promptly to the Navajo Nation Council by proposed resolution, and the Justice or~~  
3 ~~Judge sought to be removed from office shall be given an opportunity to appear before the~~  
4 ~~Navajo Nation Council and present evidence in his or her own defense. The Navajo Nation~~  
5 ~~Council is not bound by the formal Rules of Evidence in its considerations or deliberations.~~  
6 ~~Thereafter such Justice or Judge may be removed from office by a two-thirds (2/3) vote of~~  
7 ~~the full membership of the Navajo Nation Council.~~

8 D. ~~— Documented and conclusive evidence that a Justice or Judge has been convicted of a~~  
9 ~~felony in state or federal court since taking office, or that a Justice or Judge has been~~  
10 ~~convicted of any tribal criminal offense which is also identified as a Major Crime in 18~~  
11 ~~U.S.C. § 1153 since taking office, shall result in the removal of such Justice or Judge by~~  
12 ~~resolution of the Judiciary Committee of the Navajo Nation Council.~~

13 Navajo Nation judges and justices are subject to removal from office by election recall,  
14 pursuant to 11 N.N.C. § 241 et seq.

## 16 §353. Retirement

17 \*\*\*\*

### 18 B. Eligibility.

#### 19 1. Judges beginning service after the effective date of this Section:

20 a. A Navajo Nation Judge beginning service after the effective date of this  
21 Section ~~with a permanent appointment pursuant to 7 N.N.C. § 355~~ may retire and  
22 receive retirement benefits only in accordance with the Judges' Retirement Plan and  
23 only after meeting the vesting, retirement age and other eligibility requirements of the  
24 Judges' Retirement Plan.

26 \*\*\*\*

#### 27 2. Judges beginning service before the effective date of this Section:

28 b. A Navajo Nation Judge beginning service before the effective date of this  
29 Section ~~with a permanent appointment pursuant to 7 N.N.C. § 355~~ may retire after  
30 having served a total of eight or more years in office. A Navajo Nation Judge

beginning service before the effective date of this Section who retires before reaching the age of 55 years pursuant to Subsection (B), but not due to a disability, shall not receive retirement benefits until the Judge has reached the age of 55 years.

\*\*\*\*

4. A Navajo Nation Judge's total years of service for purposes of calculating eligibility for retirement benefits shall begin with the date of confirmation by the Navajo Nation Council and include all years served as a Navajo Nation probationary Judge and as a permanent Judge.

C. Removal; effect on retirement benefits

~~1. The Navajo Nation Council may, upon recommendation by the Judiciary Committee, remove from office a permanent Navajo Nation Judge for inability to perform judicial duties due to permanent mental or physical disability. The Chief Justice shall recommend the removal to the Judiciary Committee. A Navajo Nation Judge removed under Subsection (C) shall receive retirement benefits in accordance with the disability provisions of the Judges' Retirement Plan. Navajo Nation judges and justices are subject to removal from office by election recall, pursuant to 11 N.N.C. § 241 et seq. In the event that a Navajo Nation Judge is removed by recall, he or she will be eligible for retirement benefits under this Section but shall not have the status of retired Judge.~~

~~2. A Navajo Nation Judge who has been removed from office for malfeasance, misfeasance, serious neglect of duty, or criminal conviction as set forth in 7 N.N.C. § 352, shall be eligible for retirement benefits under this Section but shall not have the status of retired Judge.~~

\*\*\*\*

**§ 354. Qualifications for judicial appointment Judges and Justices**

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

~~1. Member of Navajo Nation and Age. An applicant shall be an enrolled member of the Navajo Nation and shall be over 30 years of age.~~

~~2. Criminal Convictions. An applicant shall not have any felony or other conviction of an offense identified as a Major Crime in 18 U.S.C. § 1153 in any jurisdiction. An applicant shall not have any misdemeanor convictions in any jurisdiction within a five consecutive year period prior to the date the application is submitted.~~

~~3. Education. Each applicant shall have earned, at a minimum, an Associate of Arts or Science degree from an accredited institution of higher education. An applicant who has earned a higher educational degree shall be preferred, with particular preference being given to a law degree (J.D. or LL.M.).~~

~~4. Experience. Each applicant shall have at least four years direct work experience in a law related area and shall have a working knowledge of Navajo and applicable federal and state laws. Those applicants with experience working with the Navajo Nation Courts or with state and federal courts shall be preferred.~~

~~5. Knowledge of Navajo Language, Culture and Tradition. Each applicant must be able to speak both Navajo and English, and have some practical knowledge of the fundamental laws of the Diné. The applicant must be able to demonstrate:~~

~~a. An understanding of K'é, including the Diné clan system; and~~

~~b. A basic understanding of traditional Navajo religious ceremonies; and~~

~~c. An understanding of the traditional Navajo lifestyle.~~

~~6. Health. Each applicant shall produce a current statement from a licensed physician indicating that the applicant is in good mental health.~~

~~7. Driver's License. Each applicant shall possess a valid driver's license.~~

~~8. No Substance Abuse or Addiction. In addition to the requirement of obtaining a medical statement pursuant to Subsection (A)(6) above, each applicant must attest that he or she does not abuse or have a harmful physical addiction to any mood altering substance.~~

~~9. Writing Test. Upon initial screening of applicants by the Judiciary Committee, those applicants selected shall submit to a writing test that illustrates each applicant's organizational, analytical and communicative legal writing abilities.~~

1 ~~10. Ethics. Each applicant shall show that he or she has neither present nor past~~  
2 ~~conflicts of interests that give the appearance of partiality or bias in cases brought in the~~  
3 ~~Courts of the Navajo Nation. Each applicant must demonstrate a commitment to judicial~~  
4 ~~independence and an impartial background that will indicate neutrality and fairness for~~  
5 ~~proper decision making. An applicant shall not have been found in violation of:~~

6 ~~a. The Navajo Nation Ethics in Government Law;~~

7 ~~b. Standards of ethics or professional conduct for lawyers in any~~  
8 ~~jurisdiction; or~~

9 ~~c. Standards of ethics for judges or judicial codes of conduct in any~~  
10 ~~jurisdiction; within a five consecutive year period prior to the date the application is~~  
11 ~~submitted.~~

12 ~~11. References. Each applicant must be of good moral character and shall submit~~  
13 ~~a minimum of four current letters of reference specifically regarding his or her application for~~  
14 ~~judicial appointment. At least one letter of reference shall be from a regular member in good~~  
15 ~~standing with the Navajo Nation Bar Association. Such letters shall outline the applicant's~~  
16 ~~legal skills, motivation and employment performance, and the applicant's character and~~  
17 ~~capacity for independence, honesty and impartiality.~~

18 ~~12. Management Ability. Each applicant shall possess managerial and~~  
19 ~~independent decision-making skills necessary for the efficient operation of a Court.~~  
20 ~~Information such as the applicant's record of supervising staff, coordinating budget and~~  
21 ~~personnel requirements, verbal communication and writing abilities shall be carefully~~  
22 ~~considered by the Judiciary Committee.~~

23 ~~13. Navajo Nation Bar Association. Each applicant shall provide proof in his or~~  
24 ~~her application that he or she is presently a regular or inactive member in good standing with~~  
25 ~~the Navajo Nation Bar Association and shall maintain membership in good standing~~  
26 ~~throughout his or her judicial career.~~

27 ~~14. Removal from office. Navajo Nation probationary and permanent judges~~  
28 ~~removed from office for any reason shall not be eligible for subsequent judicial appointment.~~

1 ~~B.—— Supreme Court. The standards and qualifications applicable to judicial appointments~~  
2 ~~to the District Courts of the Navajo Nation shall apply to all judicial appointments to the~~  
3 ~~Supreme Court of the Navajo Nation with the following variations:~~

4 ~~—— 1.—— Education. Each applicant for judicial appointment to the Supreme Court~~  
5 ~~shall have earned, at a minimum, a four year Bachelor's degree from an accredited institution~~  
6 ~~of higher education. An applicant who has earned a J.D. or LL.M. shall be preferred.~~

7 ~~—— 2.—— Judge Applicants. A sitting Navajo Nation District Court Judge applicant who~~  
8 ~~meets all requirements for appointment to the Supreme Court shall be preferred, in~~  
9 ~~accordance with the following:~~

10 ~~—— a.—— A Navajo Nation District Court Judge (permanent or probationary)~~  
11 ~~beginning service before the effective date of this Section shall be eligible for appointment to~~  
12 ~~the Supreme Court irrespective of the increased minimum educational qualifications for~~  
13 ~~either District Court Judges or Supreme Court Justices enumerated in this Section. Provided,~~  
14 ~~however, that such District Court Judge applicant shall meet all other minimum~~  
15 ~~qualifications as set forth in this Section.~~

16 ~~—— b.—— A Navajo Nation District Court Judge (permanent or probationary)~~  
17 ~~beginning service after the effective date of this Section shall not be eligible for appointment~~  
18 ~~to the Supreme Court unless he or she meets all minimum qualifications for Supreme Court~~  
19 ~~Justices as set forth in this Section.~~

20 ~~C.—— These minimum qualifications and educational requirements shall not affect the status~~  
21 ~~of probationary or permanent Justices or Judges beginning service before the effective date~~  
22 ~~of this Section.~~

23 ~~D.—— Each applicant shall be objectively evaluated, selected, appointed and confirmed~~  
24 ~~based solely on their qualifications for the particular judicial position at issue and without~~  
25 ~~regard to political affiliation or association.~~

26 A. Qualifications for Navajo Nation District Court Judge candidates and Judges are set  
27 forth in Navajo Nation Election Code, 11 N.N.C. § 8 (C).

28 B. Qualifications for Navajo Nation District Court Justice candidates and Justices are set  
29 forth in Navajo Nation Election Code, 11 N.N.C. § 8 (D).

1 **§ 355. Appointment; tTerm of office**

2 A. ~~— The President of the Navajo Nation shall appoint the Chief Justice, Associate Justices,~~  
3 ~~and District Court Judges with confirmation by the Navajo Nation Council from among those~~  
4 ~~applicants recommended by the Judiciary Committee of the Navajo Nation Council.~~

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

8 C. ~~— A probationary Chief Justice, Associate Justice or Judge shall not be recommended~~  
9 ~~for permanent appointment unless he or she has successfully completed a course of training~~  
10 ~~accredited for judges and he or she has received a satisfactory performance evaluation from~~  
11 ~~the Chief Justice and the Judiciary Committee of the Navajo Nation Council at the~~  
12 ~~conclusion of the probationary Justice's or Judge's two-year probationary term.~~

13 D. ~~— At any time during the probationary term of any Chief Justice, Associate Justice or~~  
14 ~~Judge, the Judiciary Committee may recommend to the President of the Navajo Nation that~~  
15 ~~the probationary Justice or Judge be removed from office. The President of the Navajo~~  
16 ~~Nation, pursuant to such recommendation, shall remove such probationary Justice or Judge~~  
17 ~~from office. Any Justice or Judge so removed shall not be eligible for the status of retired~~  
18 ~~Judge, shall not be eligible for reappointment as a Justice or Judge, and shall not be called to~~  
19 ~~sit in any case pursuant to 7 N.N.C. § 353(F).~~

20 E. ~~— At the conclusion of the two-year probationary term, the Judiciary Committee shall~~  
21 ~~review the record and qualifications of each probationary Justice or Judge and shall~~  
22 ~~recommend to the President whether or not each probationary Justice or Judge has~~  
23 ~~satisfactorily completed the probationary term and should be appointed to a permanent~~  
24 ~~position. The President shall not appoint to a permanent position any probationary Justice or~~  
25 ~~Judge not recommended by the Judiciary Committee. The appointments shall be submitted~~  
26 ~~to the Navajo Nation Council for confirmation.~~

27 A. Judges and justices previously appointed shall conclude their terms as judges and  
28 justices within 30 days of the effective date of the passage of the referendum and 7 N.N.C. §  
29 422 (D) shall govern.  
30

1 B. Judges and justices vacant positions pursuant to 7 N.N.C. § 355 (A) shall be declared  
2 vacant by the Navajo Election Administration and subject to the provisions set forth in 7  
3 N.N.C. § 422 (D). Judges and justices shall take an oath of office administered by the  
4 Chairperson of the Law and Order Committee of the Navajo Nation Council and begin their  
5 terms of office within 30 days of the effective date of the passage of referendum; and  
6 thereafter on the second Tuesday after the first Monday of January following each election  
7 for judges and justices.

8 C. Elected judges and justices shall be subject to retention elections every four years  
9 without term limitations, subject to maintaining all qualifications and compliance with  
10 Navajo Nation law, including but not limited to the Navajo Election Code, 11 N.N.C. § 1 *et*  
11 *seq.*

12 D. Any judge or justice not reelected in a retention election shall immediately make  
13 appropriate arrangements to cease his or her service as a judge or justice. The affected judge  
14 or justice position shall declared vacant and subject to the provisions set forth in 7 N.N.C. §  
15 422 (D).

16  
17 **§ 356. Probationary term Retention or rejection at general election**

18 ~~A. The probationary term for District Court Judges, the Chief Justice and Associate~~  
19 ~~Justices shall be two years from the date of confirmation by the Navajo Nation Council.~~

20 ~~B. A permanent District Court Judge subsequently appointed as Chief Justice or~~  
21 ~~Associate Justice shall also be subject to a two-year probationary term as described in~~  
22 ~~Subsection (A) of this Section.~~

23 A. Each justice of the supreme court and district court judge shall have been elected to  
24 that position in a retention election. Retention of the judicial office shall require at least fifty-  
25 five percent (55%) of the vote cast on the question of retention or rejection.

26 B. Each justice of the supreme court or district court judge shall be subject to retention  
27 or rejection in like manner at the general election every fourth year.

28 C. Every justice of the supreme court and district court judge holding office on January 1  
29 next following the date of the election at which this amendment is adopted shall be deemed  
30 to have fulfilled the requirements of Subsection A of this section and the justice or judge

1 shall be eligible for retention or rejection by the electorate at the general election next  
2 preceding the end of the term of which the justice or judge was last elected prior to the  
3 adoption of this amendment.

#### 4 5 **§ 357. Evaluation**

6 ~~Permanent~~ Justices and Judges shall be subject to ~~periodic objective~~ two evaluations  
7 by the Judicial Conduct Commission: 1) midway through the judge's term in office for the  
8 purpose of providing his or her performance. Midterm evaluations are not released to the  
9 public; and 2) before the retention election for the purpose of providing information to  
10 voters. The results of these evaluations are made available to the public at least forty-five  
11 (45) days before the retention election. Evaluations shall be based on legal ability, fairness,  
12 communication skills and preparation, attentiveness, temperament, and control over  
13 proceedings. in accordance with Judicial Performance Evaluation Policies and Procedures  
14 approved by the Judiciary Committee of the Navajo Nation Council.

### 15 16 **TITLE 7. COURTS AND PROCEDURE**

#### 17 **CHAPTER 3. JUDICIAL BRANCH**

#### 18 **SUBCHAPTER 7. JUSTICES AND JUDGES**

#### 19 **ARTICLE 2. CHIEF JUSTICE**

#### 20 **§ 371. Selection; Administrative Duties**

21 A. Within ten (10) days of beginning their first term of elective office, the supreme court  
22 justices shall, by majority vote, designate one of their number, not appointed, to serve as  
23 chief justice. In the event of a vacancy in the office of chief justice, the justices shall, by  
24 majority vote, designate one of their eligible number to serve for the remainder of the term.

25 B. In addition to his or her judicial duties, the Chief Justice of the Navajo Nation shall  
26 supervise all Justices and Judges of the Navajo Nation and administer the Judicial Branch in  
27 accordance with applicable duly-approved standards, rules, policies or and procedures. The  
28 Chief Justice shall also exercise such duties that are consistent with the Office of Chief  
29 Justice.

1 **§ 372. Acting Chief Justice**

2 ~~A. The Chief Justice of the Navajo Nation shall designate in writing one Associate~~  
3 ~~Justice of the Supreme Court to act as Chief Justice whenever the Chief Justice is absent~~  
4 ~~from the territorial jurisdiction of the Navajo Nation, is on vacation, ill or otherwise unable to~~  
5 ~~perform the duties of the Chief Justice. The Chief Justice shall delegate to the acting Chief~~  
6 ~~Justice some or all of the powers of the office of Chief Justice. The Chief Justice may at any~~  
7 ~~time change his or her written designation of the Associate Justice empowered to act as Chief~~  
8 ~~Justice.~~

9 ~~B. The Chief Justice may designate in writing one permanent District Court Judge to~~  
10 ~~carry out the administrative duties of the Office of Chief Justice whenever the Chief Justice~~  
11 ~~and both Associate Justices are absent from the territorial jurisdiction of the Navajo Nation,~~  
12 ~~ill or otherwise unable to perform the duties of the Chief Justice. The designation shall~~  
13 ~~expire at a time designated by the Chief Justice or whenever withdrawn in a separate writing~~  
14 ~~by the Chief Justice and, in any event, shall automatically expire in five working days after~~  
15 ~~the date of designation unless renewed in writing by the Chief Justice.~~

16 In the absence of the chief justice, the senior justice present shall exercise the powers of chief  
17 justice. Seniority shall be determined by the length of present continuous service on the  
18 supreme court. The Acting Chief Justice shall serve without additional salary compensation,  
19 unless duly selected as Chief Justice.

20 \*\*\*\*

21  
22 **§ 374. Oath of Office**

23 A. The Chief Justice of the Navajo Nation shall administer the oath of office to the  
24 President, Vice President, Navajo Nation Council Delegates, and all other elected officials as  
25 provided by law prescribed in 11 N.N.C. § 6. The Chief Justice may designate another  
26 Justice or Judge of the Navajo Nation to administer the oath. In the absence of a selected  
27 Chief Justice, any elected Justice of the Supreme Court shall administer the oath as described  
28 above.

B. The Chairperson of the Law and Order Committee of the Navajo Nation Council shall administer the oath of office to the elected Supreme Court Justices as prescribed in 11 N.N.C.

§ 6.

\*\*\*\*

## TITLE 7. COURTS AND PROCEDURE

### CHAPTER 3. JUDICIAL BRANCH

#### SUBCHAPTER 11. JUDICIAL CONDUCT COMMISSION

\*\*\*\*

#### **§ 422. Purposes and powers**

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

1. To enhance public confidence in the Navajo Nation Judiciary by providing a fair, impartial and expeditious forum to hear complaints and grievances against Navajo Nation Justices and Judges involving alleged violations of the Code of Judicial Conduct, personnel policies for Justices and Judges, and any other Navajo Nation laws or policies that set standards of ethics and conduct for Justices and Judges.

2. To investigate or direct the investigation of complaints or grievances against Justices and Judges;

3. To make findings and recommend sanctions, as appropriate; and

4. To forward recommendations for suspension ~~or removal~~ of Justices and Judges to the ~~Judiciary~~ Law and Order Committee and to the Chief Justice.

5. To forward recommendations for removal of Justices and Judges to the Navajo Election Administration to be subject to recall pursuant to 11 N.N.C. § 241 et seq.

\*\*\*\*

D. The Judicial Conduct Commission shall actively solicit, accept and evaluate applications from qualified lawyers for the position of justice of the supreme court or judge of the district court and may require an applicant to submit any information it deems relevant to the consideration of his/her application.

1. Upon the occurrence of an actual vacancy in the office of justice of the supreme court or judge of the district court, the Judicial Conduct Commission shall meet

1 within thirty (30) days and within that period submit to the Navajo Nation President the  
2 names of persons qualified for the judicial office and recommended for appointment to that  
3 office by a majority of the Judicial Conduct Commission.

4 2. The Navajo Nation President shall fill a vacancy or appoint a successor to fill  
5 an impending vacancy in the office of justice of the supreme court or judge of the district  
6 court within thirty (30) days after receiving final nominations from the Judicial Conduct  
7 Commission. The appointment shall be confirmed by the Navajo Nation Council.

8 3. If the Navajo Nation President fails to make the appointment within that  
9 period or from those nominations, the appointment shall be made from those nominations by  
10 the Law and Order Committee and shall be confirmed by the Navajo Nation Council.

11 4. Any person appointed shall serve until the next general election. That person's  
12 successor shall be chosen at such election and shall hold the office until the expiration of the  
13 original term.

14 E. Judicial Conduct Commission shall perform two evaluations on the justices and  
15 judges: 1) midway through the judge's term in office for the purpose of providing his or her  
16 performance. Midterm evaluations are not released to the public; and 2) before the retention  
17 election for the purpose of providing information to voters. The results of these evaluations  
18 are made available to the public at least forty-five (45) days before the retention election.  
19 Evaluations shall be based on legal ability, fairness, communication skills and preparation,  
20 attentiveness, temperament, and control over proceedings.

21 \*\*\*\*

## 22 23 TITLE 11. ELECTIONS

### 24 CHAPTER 1. NAVAJO ELECTION CODE ~~OF 1990~~

#### 25 SUBCHAPTER 1. GENERAL PROVISIONS

26 \*\*\*\*

#### 27 § 2. Definitions

28 \*\*\*\*

1 E. "Chapter/Judicial elections"—Elections held for the purpose of electing Chapter  
2 officers, other elected officials, school board members, Navajo Nation District Court judges,  
3 Navajo Nation Supreme Court justices, and/or for voting on a referendum.

4 \*\*\*\*

5 N. "Elected Officials"—Those officials holding offices of the President of the Navajo  
6 Nation, Vice-President of the Navajo Nation, Delegate of the Navajo Nation Council,  
7 Navajo Nation District Court Judge, Navajo Nation Supreme Court Justices, Chapter officers,  
8 other elected officials, the elected members of the Navajo Nation Board of Education and  
9 school board members that have been elected or appointed pursuant to this Election Code.

10 \*\*\*\*

11 W. "Judge" - Navajo Nation District Court Judge as defined in 7 N.N.C. § 103.

12 X. "Justice" – Navajo Nation Supreme Court Justice.

13 \*\*\*\*

14 ~~Z~~ BB. "Navajo Nation Officials"—The President of the Navajo Nation, Vice-President of  
15 the Navajo Nation ~~and~~ Delegates of the Navajo Nation Council, Navajo Nation District Court  
16 Judges, Navajo Nation Supreme Court Justices.

17 \*\*\*\*

18 ~~BB~~ DD. "Officials"—As used in subchapter 13 hereof this term is used to designate those  
19 holding the Offices of President of the Navajo Nation, Vice-President of the Navajo Nation,  
20 Delegate of the Navajo Nation Council, Navajo Nation District Court Judges, Navajo Nation  
21 Supreme Court Justices, Chapter officers, other elected officials, and school board members.

22  
23 *[All subsections shall be appropriately redesignated in alphabetical order.]*

24  
25 \*\*\*\*

26 **§ 3. Elections; election dates**

27 \*\*\*\*

28 B. Chapter/Judicial elections shall be held on the first Tuesday of November 2004 and  
29 every fourth year thereafter on the Tuesday after the first Monday in November.

C. Primary elections shall be held on the first Tuesday which precedes the date of the general election or chapter/judicial election by a minimum of 90 days.

\*\*\*\*

#### **§ 6. Term of office, oath**

A. The term of office for all offices filled by the general and/or chapter/judicial elections shall be four years. The first half of the term of office shall be the first 24 months following the oath of office for that position. The second half of the term of office shall be the remaining term prior to the next oath of office for that position.

\*\*\*\*

C. Candidates elected to office in chapter/judicial elections shall be installed in office upon taking the oath of office, which shall be administered at the direction of the Board during the first week following the first Saturday in January, and their predecessors term of office shall expire upon their installation.

\*\*\*\*

F. At each Chapter/Judicial election for judges and justices, all persons elected as District Court Judges and Supreme Court Justices shall be installed in office at noon on the second Tuesday after the first Monday of January following their election.

\*\*\*\*

#### **§ 8. Qualifications for office**

\*\*\*\*

C. Qualifications for Navajo Nation District Court Judge Candidates and Judges:

1. Shall be an enrolled member of the Navajo Nation; shall be a registered voter; and shall be over thirty (30) years of age by the date of the election.

2. Shall not have any felony or other conviction in any jurisdiction. Shall not have any misdemeanor convictions in any jurisdiction within a five consecutive year period prior to the date of filing the candidate application.

3. Shall have earned, at a minimum, an Associate of Arts or Science degree from an accredited institution of higher education.

1       4.       Shall be able to speak both Navajo and English; and shall be able to read and  
2 write in English.

3       5.       Shall possess a valid driver's license.

4       6.       Shall not have present nor past conflicts of interests that give the appearance  
5 of partiality or bias in cases brought in the Courts of the Navajo Nation. Shall have  
6 unswerving loyalty to the Navajo Nation, must be competent and capable of upholding the  
7 oath of office, have a commitment to judicial independence and an impartial background that  
8 will indicate neutrality and fairness for proper decision making.

9       7.       Shall not have been found in violation of: the Navajo Nation Ethics in  
10 Government Law; Standards of ethics or professional conduct for lawyers in any jurisdiction;  
11 or Standards of ethics for judges or judicial codes of conduct in any jurisdiction; within a five  
12 consecutive year period prior to the date of filing the candidate application.

13       8.       Shall be a member in good standing with the Navajo Nation Bar Association  
14 for a period of five years prior to the date of filing of the candidate application, and shall  
15 maintain membership in good standing throughout his or her judicial term.

16       9.       Shall not have been previously removed from judicial office for any reason.

17       10.      Shall not have been indicted by a federal grand jury at the time of filing of the  
18 candidate application. Any candidate for Navajo Nation District Court Judge who is indicted  
19 by a federal grand jury subsequent to the filing of the candidate application shall be  
20 disqualified or removed from office.

21       11.      Shall not, if elected, be in the permanent employment of the Navajo Nation,  
22 United States or any state, county or subdivision thereof; nor be an elected official of United  
23 States or any state, county or subdivision thereof, nor be an elected official of any other  
24 elective office of the Navajo Nation, including chapter and school board positions. Shall  
25 resign from any of the employment or elected offices described before taking the oath of  
26 office.

27       12.      Shall not, if elected, engage in the private practice of law, or be in  
28 employment of any kind, for self or others, during the term of elective office.

29       13.      Failure to maintain any qualification enumerated herein throughout the term  
30 of elective office shall result in the disqualification and removal of the District Court Judge.

1 D. Qualifications for Navajo Nation Supreme Court Justice Candidates and Justices:

2 1. Shall be an enrolled member of the Navajo Nation; shall be a registered voter;  
3 and shall be over thirty (30) years of age by the date of the election.

4 2. Shall not have any felony or other conviction in any jurisdiction. Shall not  
5 have any misdemeanor convictions in any jurisdiction within a five consecutive year period  
6 prior to the date of filing the candidate application.

7 3. Shall have earned, at a minimum, a Juris Doctor degree from an accredited  
8 school of law.

9 4. Shall be able to speak both Navajo and English; and shall be able to read and  
10 write in English.

11 5. Shall possess a valid driver's license.

12 6. Shall not have present nor past conflicts of interests that give the appearance  
13 of partiality or bias in cases brought in the Courts of the Navajo Nation. Shall have  
14 unswerving loyalty to the Navajo Nation, must be competent and capable of upholding the  
15 oath of office, have a commitment to judicial independence and an impartial background that  
16 will indicate neutrality and fairness for proper decision making.

17 7. Shall not have been found in violation of: the Navajo Nation Ethics in  
18 Government Law; Standards of ethics or professional conduct for lawyers in any jurisdiction;  
19 or Standards of ethics for judges or judicial codes of conduct in any jurisdiction; within a five  
20 consecutive year period prior to the date of filing the candidate application.

21 8. Shall be a state-licensed attorney; shall be a member in good standing with the  
22 Navajo Nation Bar Association for a period of ten (10) years prior to the date of filing of the  
23 candidate application, and shall maintain membership in good standing throughout his or her  
24 judicial term.

25 9. Shall not have been previously removed from judicial office for any reason.

26 10. Shall not have been indicted by a federal grand jury at the time of filing of the  
27 candidate application. Any candidate for Navajo Nation District Court Judge who is indicted  
28 by a federal grand jury subsequent to the filing of the candidate application shall be  
29 disqualified or removed from office.

1        11.     Shall not, if elected, be in the permanent employment of the Navajo Nation,  
2 United States or any state, county or subdivision thereof; nor be an elected official of United  
3 States or any state, county or subdivision thereof, nor be an elected official of any other  
4 elective office of the Navajo Nation, including chapter and school board positions. Shall  
5 resign from any of the employment or elected offices described before taking the oath of  
6 office.

7        12.     Shall not, if elected, engage in the private practice of law, or be in  
8 employment of any kind, for self or others, during the term of elective office.

9        13.     Failure to maintain any qualification enumerated herein throughout the term  
10 of elective office shall result in the disqualification and removal of the Supreme Court  
11 Justice.

12  
13                [All subsections shall be appropriately redesignated in alphabetical order.]  
14

15 \*\*\*\*\*

16 **§ 13. Election precincts for judges and justices elections**

17 **A. District Court Judges**

18        1.       On or before the first Monday of November 2016 and every four years  
19 thereafter, the Navajo Nation Council shall establish the election precincts for each Judicial  
20 District of the Navajo Nation, which shall, upon establishment, constitute the Judicial  
21 Districts of the Navajo Nation.

22        2.       The District Court judges shall be elected from the respective Judicial  
23 Districts at the election precincts established by the Navajo Nation Council at  
24 Chapter/Judicial elections for a term of four years beginning with the 2016 Chapter/Judicial  
25 elections.

26        3.       The number and location of Judicial Districts, District Court Judges and  
27 election precincts shall be approved by the Navajo Nation Council, upon recommendation of  
28 the Law and Order Committee.

29 **B. Supreme Court Justices**  
30

The Navajo Nation Supreme Court shall consist of three justices elected at large for the entire Navajo Nation in the Chapter/Judicial election for a term of four years beginning with the 2016 Chapter/Judicial election.

\* \* \* \*

**TITLE 11. ELECTIONS**  
**CHAPTER 1. NAVAJO ELECTION CODE OF 1990**  
**SUBCHAPTER 2. FILING FOR ELECTIONS**

\* \* \* \*

## § 24. Challenges; appeals

\* \* \* \*

G. The decision of the Office of Hearings and Appeals shall be issued to the party initiating the challenge and the candidate within 10 days of the hearing. The decision of the Office of Hearings and Appeals shall be final for Judge and Justice election candidates and/or parties without appeal to the Supreme Court, but subject to reconsideration by the Office of Hearings and Appeals. For non-judge and non-justice election matters, App~~ea~~l may be made by either party to the Navajo Nation Supreme Court within 10 days of the date of decision. The Supreme Court shall review the appeal no later than 15 days from the date of filing. Review by the Supreme Court shall be limited to whether or not the decision of the Office of Hearings and Appeals is sustained by sufficient evidence on the record.

\*\*\*\*

## § 26. Filing Fee

A. Candidates shall remit a filing fee pursuant to the schedule set forth below at the time they file their candidate application:

|                                   |                   |
|-----------------------------------|-------------------|
| President.....                    | \$1,500.00        |
| Vice President.....               | \$1,500.00        |
| <u>Supreme Court Justice.....</u> | <u>\$1,500.00</u> |

|   |   |                   |
|---|---|-------------------|
| 1 | <u>District Court Judge.....</u>          | <u>\$1,000.00</u> |
| 2 | Navajo Nation Council Delegate.....       | \$500.00          |
| 3 | Chapter Officers.....                     | \$200.00          |
| 4 | Other Elected Officials.....              | \$200.00          |
| 5 | School Board Members.....                 | \$200.00          |
| 6 | Kayenta Township Commission.....          | \$200.00          |
| 7 | Navajo Board of Election Supervisors..... | \$200.00          |
| 8 | Board of Education(electedpositions.....  | \$200.00          |

9 \*\*\*\*

## 11 TITLE 11. ELECTIONS

### 12 CHAPTER 1. NAVAJO ELECTION CODE OF 1990

#### 13 SUBCHAPTER 3. PRIMARY ELECTIONS

#### 15 § 41. Primary elections; selection of candidates

16 A. The primary election ballots for each precinct shall list the candidates for the offices  
 17 of the President of the Navajo Nation, Navajo Nation Council Delegates, District Court  
 18 Judges, Supreme Court Justices, Chapter Offices, and Other Elected Offices and School  
 19 Board members.

20 \*\*\*\*

21 F. In each election precinct represented in the Judicial District by one judge, the two  
 22 candidates receiving the highest number of votes in the primary election shall be the  
 23 candidates for judge in the chapter/judicial election. In each election precinct represented in  
 24 the Judicial District by two judges, the four candidates receive the highest number of votes in  
 25 the primary election shall be the candidates for judge in the chapter/judicial election. In each  
 26 election precinct represented in the Judicial District by three judges, the six candidates  
 27 receive the highest number of votes in the primary election shall be the candidates for judge  
 28 in the chapter/judicial election. In each election precinct represented in the Judicial District  
 29 by four judges, the eight candidates receive the highest number of votes in the primary  
 30 election shall be the candidates for judge in the chapter/judicial election.

1 G. The six primary election candidates receiving the highest number of votes Navajo  
2 Nation-wide in the primary election for Supreme Court Justice shall be candidates for the  
3 three Supreme Court Justice positions in the chapter/judicial election.

4 F H. The Board shall determine by regulations the number of votes a voter may cast for  
5 each of the above offices and positions in the primary and general, or chapter/judicial  
6 elections.

7 \*\*\*\*

## 8 9 TITLE 11. ELECTIONS

### 10 CHAPTER 1. NAVAJO ELECTION CODE OF 1990

#### 11 SUBCHAPTER 9. SPECIAL ELECTIONS

12

#### 13 § 143. Special elections for vacancies during the first half of term

14 A. Whenever a vacancy is declared for an elected office during the first half of a term of  
15 office, with the exception of a vacancy involving the Office of the Navajo Nation President,  
16 the Navajo Nation Vice President, the remaining term of the vacant office shall be filled  
17 pursuant to special election provisions of this Code.

18 B. Whenever a vacancy is declared for a Navajo Nation Judge or Justice position, 7  
19 N.N.C. § 422 (D) shall govern.

20 \*\*\*\*

## 21 22 TITLE 11. ELECTIONS

### 23 CHAPTER 1. NAVAJO ELECTION CODE OF 1990

#### 24 SUBCHAPTER 10. APPOINTMENTS

25

#### 26 § 161. Appointments

27 A. With the exception of a vacancy resulting from recall or involving the President or  
28 Vice President, or involving a Judge or Justice, and subject to certification by the Navajo  
29 Election Administration, when a vacancy occurs during the second half of an elective term of  
30 office, the remaining term shall be filled by appointment as follows:

1 \*\*\*\*

2 9. Whenever a vacancy is declared for a Navajo Nation judge or justice position,  
3 7 N.N.C. § 422 (D) shall govern.

4 \*\*\*\*

## 6 TITLE 11. ELECTIONS

### 7 CHAPTER 1. NAVAJO ELECTION CODE OF 1990

#### 8 SUBCHAPTER 11. CAMPAIGN EXPENSES; CONTRIBUTIONS

9 \*\*\*\*

#### 10 § 205. Limitation on expenditure by or on behalf of candidates; radio or television time

11 A. The following sums shall be the maximum amounts for both the primary and general  
12 elections combined which may be expended by or on behalf of any candidate in a primary  
13 and general, or special recall or referendum election. When anything of value other than  
14 money is expended or used by or on behalf of any candidate, it shall be considered as  
15 equivalent to money as its fair cash value. Necessary personal travel or subsistence expenses  
16 of candidate and provided by candidate shall not be included in the limitation and need not be  
17 reported.

18  
19 1. For the Office of the President and Vice-President (combined sum), and each  
20 Supreme Court Justice, one dollar and fifty cents (\$1.50) for each registered voter.

21 2. For the offices of Delegate, Chapter Officer, District Court Judges, Other  
22 Elected Officials and School Board members, four dollars (\$4.00) for each registered voter  
23 within the election precinct.

24 \*\*\*\*

## 26 TITLE 11. ELECTIONS

### 27 CHAPTER 1. NAVAJO ELECTION CODE OF 1990

#### 28 SUBCHAPTER 13. REMOVAL OF OFFICIALS, PLACEMENT OF OFFICIALS ON 29 ADMINISTRATIVE LEAVE; RECALL; FILLING VACANCY

30 \*\*\*\*

1  
2 **§ 241. Officials subject to recall; recall affidavits; recall petition**

3 \*\*\*\*\*

4 B. Any five or more registered voters may begin recall by filing a notarized affidavit  
5 constituting themselves as a petitioner's committee which shall be responsible for circulating  
6 and filing a recall petition. For recall of an elected official, ~~President, Vice President,~~  
7 ~~Delegate, Chapter Officer, Other Elected Official, or school board member~~, members of the  
8 petitioners' committee shall be registered voters of the Chapter or Chapters; which are  
9 represented by the elected official. A single petition is required for each elected official to be  
10 removed.

11 \*\*\*\*

12  
13 **§ 243. Petition challenges; hearings**

14 \*\*\*\*

15 G. The hearing decision shall be certified to the party or parties initiating the challenge  
16 and the committee within 10 days of the hearing. The decision of the Office of Hearings and  
17 Appeals shall be final for judge and justice recalls without appeal to the Supreme Court, but  
18 subject to reconsideration by the Office of Hearings and Appeals. For non-judge and non-  
19 justice recall matters, A appeal may be made by either the committee or the party or parties  
20 initiating the challenge to the Navajo Nation Supreme Court within 10 days of the date of  
21 decision. A transcript of the hearing shall be filed within 30 days of the filing of Notice of  
22 Appeal. The Supreme Court shall review the appeal no later than 30 days from the date of  
23 filing of the transcript. Review by the Supreme Court shall be limited to: (1) the sufficiency  
24 of the recall petition, exclusive of the ground or grounds of the petition; and (2) whether or  
25 not the decision of the Office of Hearings and Appeals is supported by sufficient evidence.

26  
27 **§ 244. Special recall elections; resignation; ballot**

28 A. When a petition is certified sufficient by the Navajo Election Administration or in the  
29 event of a challenge, the Office of Hearings and Appeals' decision is sustained by the Navajo  
30 Nation Supreme Court, or other final decision, the Administration shall set a date for the

special recall election and shall notify the committee and the official whose recall is sought that the petition has been certified and that it has set the date for a special recall election to be held not less than 30 days from the date of final certification. If a general or chapter/judicial election is set within 90 days of date the petition is finally certified, the special recall election shall be held during the general or chapter/judicial election.

\*\*\*\*\*

## **TITLE 11. ELECTIONS**

### **CHAPTER 1. NAVAJO ELECTION CODE OF 1990**

#### **SUBCHAPTER 18. ADMINISTRATIVE ELECTION CODE COMPLAINTS AND HEARINGS**

##### **§ 341. Office of Hearings and Appeals**

A.<sup>1</sup> The Office of Hearings and Appeals shall have the authority to implement procedures in resolving disputes pertaining to elections as follows:

\*\*\*\*\*

4. A party who wishes to appeal from a decision of the Office of Hearings and Appeals must file a Notice of Appeal with the Supreme Court of the Navajo Nation within 10 days after the decision is made. Provided, that the decision of the Office of Hearings and Appeals shall be final for all judge and justice election matters without appeal to the Supreme Court, but subject to reconsideration by the Office of Hearings and Appeals. For appeals of non-judge or non-justice election decisions of the Office of Hearings and Appeals, Rreview by the Supreme Court shall be limited to whether or not the decision of the Office of Hearings and Appeals is sustained by sufficient evidence on the record.

---

##### **Section Four. Vote Requirement**

This referendum measure shall pass if a majority of all registered voters who cast a vote, vote in favor of a referendum measure.

1       **Section Five. Effective Date**

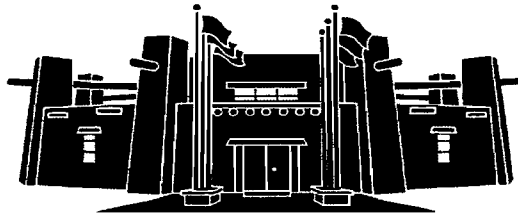
- 2           A. If approved by referendum vote and duly certified by the Navajo Nation Board  
3           of Election Supervisors, these amendments to Titles Two, Seven and Eleven of  
4           the Navajo Nation Code shall become effective and applicable to the preparation  
5           and election of Navajo Nation District Court Judges and Supreme Court Justices  
6           in the 2012 Chapter/Judicial Election process.
- 7           B. If approved by referendum vote, presently appointed District Court Judges and  
8           Supreme Court Justices shall continue to hold their respective appointed judicial  
9           offices until the January 15, 2013 administration of the oath of office to the  
10          Judges and Justices elected, in accord with the provisions of these amendments.
- 11          C. If approved by the referendum vote, presently appointed District Court Judges  
12          and Supreme Court Justices may run as candidates for the elective positions of  
13          the District Court Judge Supreme Court Justice, subject to the provisions of  
14          applicable law, including but not limited to the provisions of these amendments.

15  
16       **Section Six. Codification**

17           If approved by referendum vote and duly certified by the Navajo Board of Election  
18           Supervisors, the provisions of this Act which amend sections of the Navajo Nation  
19           Code shall be codified by the Office of Legislative counsel.


20  
21       **Section Seven. Saving Clause**

22           Should any provisions of this ordinance be determined invalid by the Navajo Nation  
23           Supreme Court, or the District Courts of the Navajo Nation, without appeal to the  
24           Navajo Nation Supreme Court, those portions of this ordinance which are not  
25           determined invalid shall remain the law of the Navajo Nation.



## MEMORANDUM

**TO:** Honorable Kee Allen Begay  
Navajo Nation Council

**FROM:**   
Levon B. Henry, Chief Legislative Counsel  
Office of Legislative Counsel

**DATE:** May 5, 2015

**SUBJECT:** AN ACT RELATING TO LAW AND ORDER, NAABIK'ÍYÁTTI' AND THE NAVAJO NATION COUNCIL; APPROVING THE JUDICIAL ELECTIONS REFERENDUM ACT OF 2015 REFERRING TO VOTERS OF THE NAVAJO NATION A REFERENDUM MEASURE ON WHETHER TITLES 2, 7 AND 11 OF THE NAVAJO NATION CODE TO PROVIDE FOR THE ELECTION OF NAVAJO NATION DISTRICT COURT JUDGES AND SUPREME COURT JUSTICES

Pursuant to your request, attached is the above-referenced proposed resolution and associated legislative summary sheet. Based on existing law and review of the documents submitted, the resolution as drafted is legally sufficient. However, as with all legislation, it is subject to review by the courts in the event of a challenge.

Please review the proposed resolution to ensure it is drafted to your satisfaction. If this proposed resolution is acceptable to you, please sign it where it indicates "Prime Sponsor", and submit it to the Office of Legislative Services for the assignment of a tracking number and referral to the Speaker.

If the proposed resolution is unacceptable to you, or if you have further questions, please contact me at the Office of Legislative Counsel and advise me of changes you would like made to the proposed resolution. You may contact me at (928) 871-7166. Thank you.


OLC No. 15-392-1



May 5, 2015

**MEMORANDUM**

**TO :** *Honorable Members*  
*Law and Order Committee*  
*Naabik'iyati' Committee*  
*Navajo Nation Council*

**FROM :**   
*Hon. LoRenzo C. Bates, Speaker*  
*23<sup>rd</sup> Navajo Nation Council*

**SUBJECT :** **ASSIGNMENT OF LEGISLATION**

---

Pursuant to 2 N.N.C § 164 (A)(4), this memorandum serves to inform and advise you that I assign the following legislation to the Law and Order Committee, Naabik'iyati' Committee and Navajo Nation Council;

**Legislation No. 0154-15**

**Relating to Law and Order; Naabik'iyati' and the Navajo Nation Council; Approving the Judicial Elections Referendum Act of 2015 Referring to Voters of the Navajo Nation a Referendum Measure on Whether Title 2, 7 and 11 of the Navajo Nation Code to Provide for the Election of Navajo Nation District Court Judges and Supreme Court Justices.**

As the Committee assigned to consider the legislation, Legislation No. 0154-15 must be placed on the Law and Order Committee, Naabik'iyati' Committee and Navajo Nation Council's agenda at the next regular meeting for final consideration.

ATTACHMENT: Legislation No. 0154-15

xc: Hon. Ben Shelly, *President*  
*The Navajo Nation*  
*Harrison Tsosie, Attorney General*  
*Robert Willie, Controller*  
*Dominic Beyal, Executive Director, OMB*  
*Honorable Kee Allen Begay, Jr, Council Delegate (Prime Sponsor)*

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0154-15\_

SPONSOR: Kee Allen Begay, Jr.

**TITLE: An Action Relating To Law And Order NAABIK'IYATI' And Navajo Nation Council; Approving The Judicial Elections Referendum Act Of 2015 Referring To Voters Of The Navajo Nation a Referendum Measure On Whether Title 2, 7 And 11 Of The Navajo Nation Code To Provide For The Election Of Navajo Nation District Court Judges And Supreme Court Justices**

**Date posted: May 5, 2015 at 7:51PM**

Digital comments may be e-mailed to [comments@navajo-nsn.gov](mailto: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.: 0154-15**

**SPONSOR: Honorable Kee Allen Begay Jr.**

**TITLE: Relating To Law And Order Naabik'iyati' And Navajo Nation Council; Approving The Judicial Elections Referendum Act Of 2015 Referring To Voters Of The Navajo Nation A Referendum Measure On Whether Title 2, 7 And 11 Of The Navajo Nation Code To Provide For The Election Of Navajo Nation District Court Judges And Supreme Court Justices.**

**Posted: May 5, 2015 at 7:51 PM**

**5 DAY Comment Period Ended: May 10, 2015**

**Digital Comments received:**

|                                   |   |
|-----------------------------------|---|
| <b>Comments Supporting</b>        | <i>None</i>   |
| <b>Comments Opposing<br/>(1)</b>  | <b>1. Karen Francis; Government Relations Officer, Judicial Branch.</b> |
| <b>Inclusive Comments<br/>(1)</b> | <b>1. James W. Zion</b>   |

*(Signature)*

**Executive Director  
Office of Legislative Services**

*5/11/2015 - 8:55 PM*

**Date/Time**

## Legislation No. 0154-15

Karen Francis <karenfrancis@navajo-nsn.gov>

Sat 5/9/2015 11:28 PM

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

1 attachment

Public comment 0154-15.pdf;

Please see attached memorandum as public comment on Legislation No. 0154-15. Thank you.

Karen Francis, Government Relations Officer  
JUDICIAL BRANCH OF THE NAVAJO NATION

Judicial Branch of the Navajo Nation  
Administrative Office of the Courts



---

## Memorandum

TO: Honorable Delegates  
**23<sup>rd</sup> NAVAJO NATION COUNCIL**

FROM: Karen Francis, *Government Relations Officer*  
**JUDICIAL BRANCH OF THE NAVAJO NATION**

SUBJECT: **Public comment stating reasons against the election of judges and justices pursuant to proposed Legislation No. 0154-15**

DATE: May 9, 2015

I am submitting the following public comment on proposed Legislation No. 0154-15.

Judges of the Navajo Nation Courts and justices of the Navajo Nation Supreme Court serve a unique and vital role for the Navajo Nation. They are charged with the duty of addressing legal conflicts and issues that have a tremendous impact on the lives of the Navajo people. The ability of Navajo Nation judges and justices to fulfill this duty to the Navajo Nation will be severely impaired if the positions of judge and justice become elected rather than appointed.

The reality is that election of judges has been tried in our history. Prior to 1959, the Navajo Nation had a system for electing judges. In 1958, the Navajo Tribal Council voted to appoint rather than elect judges to keep judges as far removed from politics as possible. The 1958 resolution stated, "In order to give adequate authority to the judges, obtain the best qualified personnel for the courts and to remove the judges, insofar as possible, from the pressure of politics in making decisions and enforcing the law, it is essential that Navajo Tribal judges hereafter be appointed rather than be elected."

The current system of appointing judges is a process that includes all three branches of government and the public. The Judicial Branch solicits and receives applications. The Law and Order Committee then has the duty to review the applications and recommend nominations to the President of the Navajo Nation for appointment. Once the President makes an appointment, the Navajo Nation Council votes to confirm the appointee for a two-year probationary period. After

the probationary period, there is an evaluation of the probationary judge and the Law and Order Committee holds a public hearing after which the committee may recommend permanent appointment. The President may then make the permanent appointment with the Navajo Nation Council having final approval for confirmation of the permanent appointment. During this process, the public has the opportunity to submit public comment on legislation for confirmation and to participate in the public hearing. The public is further involved through their selection of their *naat'áanii*, the Council delegates, who have the tools to conduct a comprehensive evaluation of candidates for judges.

The following are concerns that must be made known regarding the election of judges.

- 1. The burden of campaigning for election/retention will no doubt harm a judge's or justice's ability to maintain ethical requirements; ability to preside over matters due to recusal; and ability to render independent judgments.**

Changing the process to require judges to campaign for election creates a strong potential for bias and the appearance of bias when judges make decisions. There is the potential that the public may feel that elected judges decide in favor of certain litigants because of campaign contributions, political influence or popular opinion, rather than based on the law. This will undermine public confidence in the judiciary and very likely have a negative impact in the area of economic development. There is an engrained need for investors and businesses to be assured that the rules of law can be trusted and are enforced wherever they conduct business. Having a judiciary that even has the illusion of being biased or politically influenced will undermine efforts to grow the Navajo Nation's economy.

Concerns over an elected official's bias and impartiality are inherent in the fact that they are elected to their office after campaigning for election. The long history of allegations concerning the bias of elected officials in favor of the supporters and interested parties that helped them get elected is well established. The specter of bias and influence will no doubt be raised concerning our judges and justices should they be elected to office. Judges and justices will likely be stuck in a no-win situation of: 1) facing harsh public scrutiny and criticism (not to mention being overturned on appeal) if they preside over a case involving a campaign supporter, despite the judge having found no conflict of interest; or 2) recusing themselves from a matter and therefore being unavailable to serve the needs of the community due to a conflict of interest and placing an additional burden on the Judicial Branch as a whole to seek another judge/justice who does not have the same conflict of interest. This problem will likely multiply exponentially if judge and justice candidates receive funding, or even a simple endorsement, from a person, party, company, or corporation that supports multiple campaigns. Ultimately, even if a judge or justice presides over a matter with a clear conscience and without proof of bias or influence, the mere fact that they are elected to office will be enough for certain people to harbor the belief, however unfounded, that Navajo Nation judges and justices serve the interests of certain parties and individuals, not the people of the Navajo Nation.

We cannot ignore the potential for people and/or organizations to contribute to the campaigns of judicial candidates with the very purpose of influencing decision making. We are a Nation with many resources and cases are brought to the Navajo courts that involve those resources. There is

a strong incentive for those who would be affected by decisions of the judges to contribute to campaigns.

Furthermore, charging a filing fee of \$1,500.00 for justice candidates and \$1,000.00 for judges to run every four years is too high and will create an artificial barrier to entry for those candidates otherwise suitable to run as a candidate and will likely cause conflict of interest problems and claims of bias against those candidates who seek sponsorship or support in order to raise sufficient funds to pay for such an expensive fee. The high cost to even run for a judicial position will reserve those positions only for those who have money or connections to money. In effect, the people who dispense justice on the Navajo Nation will be those able to afford it. This will have the effect of shrinking an already small pool of potential candidates who are enrolled members of the Navajo Nation, members of the Navajo Nation Bar Association, and have the requisite education requirements, resulting in a very exclusionary election process.

**2. The burden of campaigning and concern for election/retention could cost the Navajo Nation a decrease in number of qualified judges and justices serving and the ability of judges and justices to effectively perform respective duties.**

The proposal in the legislation purports to remove every judge and justice currently serving. The expertise developed by our current judges over many years could be lost forever, with the potential that there will constantly be new and/or inexperienced judges. Frequent changes in the makeup of the court and forcing judges to take part in the election process may create huge backlogs in the caseloads of the courts. There will undoubtedly be a need for an increase in staff and funding for the Judicial Branch to ensure that the work of the branch is able to continue despite the possibility of a high turnover rate of judges and justices.

The courts of the Navajo Nation already face extremely high caseloads. These cases often concern complex legal matters that demand a large amount of time and resources for a court to properly address and resolve. This demand on time and resources for the resolution of cases is often compounded by emergency and time-sensitive cases, matters involving domestic violence for example, which place further strain on the court to address matters in an expedited fashion. On top of these daily tasks, judges are often called upon to fulfill needs outside of their court, whether it be providing education in their communities or acting upon the appointment by the Supreme Court to special assignments.

The Navajo Nation currently only has 12 district court judges and two Supreme Court justices whom are hearing cases. There is a need for more judges and justices but there are few qualified people who apply. This leads to questions regarding how many legitimate candidates will actually run for election. This legislation also appears to propose to have the judges for a judicial district elected from within that judicial district, which would further reduce the number of qualified candidates in some districts, eliminating some candidates completely in districts with multiple good candidates. Furthermore, reduced job security for judges and justices would make the position less attractive to qualified candidates.

**3. The job requirements and standards for the positions of judge and justice are not sufficient.**

The proposed referendum not only proposes to elect judges and justices, but also changes the requirements for qualifications. Knowledge of Navajo culture and traditions has been eliminated for all judges and justices. For Supreme Court justices, requirements for a state bar license and a juris doctorate degree have been added. These types of changes to qualifications have the potential to result in a court system that is heavily influenced by Western law rather than the unique laws of the Diné that promote and protect our sovereignty as a Navajo Nation. This also ignores that many of the cases of the Navajo Nation courts center on the family, where the laws and values of our Diné people are often used to settle matters.

Furthermore, preference for law-trained applicants for district court judges and for management and law-related experience for both judges and justices are proposed to be removed. Given the real-world demands placed on a Navajo Nation judge, the qualifications for office should include minimum requirements for experience and training in the areas of administrative services, management, and customer service. The skills related to these areas are necessary because judges are often required to involve themselves in the daily management of the court, including tasks such as: working with the court administrator to address court staff matters; attending meetings with court staff and members of other Branch divisions; meeting with community organizations; and working with court staff attorneys on community education assignments. Without addressing these skill requirements needed to perform all of these court duties, candidates for elected positions will not have the proper training and experience needed to fulfill the real-world needs of the court. Likewise, judges and justices require a working knowledge of the applicable law and it is necessary that candidates have law-related experience.

The research regarding the election of judges shows that it is not recommended. Rather than introducing reactionary proposals, our Navajo Nation needs to research, consult with experts and plan for a strong and independent judicial system. The Judicial Branch urges the leadership and the Navajo people to use the model of Sa'ah Naaghái Bik'eh Hózhóón and implement the stages of Nitsáhákees, Nahatá, Iiná, and Siihasin in considering the future of our Navajo justice system. The Judicial Branch itself has been undertaking the task of reviewing Title 7, Courts and Procedure, over the past year and has been conducting research specifically into selection methods in order to offer recommended amendments that would enhance our justice system and protect our sovereignty as the Navajo Nation. As stated in the article, *Judicial Selection Methods, Tribal Politics & Strong Government: Navajo Nation at the Crossroads*, "...before drastic action is taken by either the Navajo Nation Council or the Navajo electorate, it is essential that all parties pause and reflect – reflect on their current judicial system, the overt and covert reasons for change, and the potential effect such change may have on the Navajo Nation as a whole."

Thank you for the opportunity to submit public comments.

## 0154-14, Judicial Elections Referendum Act

James Zion <jzion@aol.com>

Sun 5/10/2015 12:23 PM

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

1 attachment

Comments on 0154-14 (signed).pdf;

Dear Executive Director:

My signed comments on this measure are attached.

I hope the Committee will hold public hearings before proceeding further.

James Zion  
jzion@aol.com

**JAMES W. ZION**  
**Attorney & Jurisconsult**  
**3808 Ladera Drive N.W.**  
**Albuquerque, NM 87120**

Admitted in the Navajo Nation, Connecticut and the Supreme Court of the United States

(505) 839-9549

JZion@aol.com

May 10, 2015

Executive Director  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, Navajo Nation  
(Arizona) 86515

Re: Legislation No. 0154-14, Relating to Judicial Elections Referendum Act of  
2015

*Via Email Only*

Dear Executive Director:

Time permits only a brief comment and I offer these comments in light of approximately 34 years of experience with the judiciary of the Navajo Nation and Navajo Nation law and experience evaluating seven tribal courts using national trial and appellate court standards.

Judicial elections are a failure, and many states have abandoned them, because the public does not know how to vote. Many states now have a mixed appointment-retention election system and it too is inadequate. I have criticized the State systems of judicial elections in Arizona, New Mexico and Utah as fostering discrimination against Navajos due to judicial fears of business elements who expect enforcement of the law against Navajos. *See*, No. E/CN.4/Sub.2/AC.4/2004/6, United Nations Commission on Human Rights, Report of the Expert Seminar on Indigenous Peoples and the Administration of Justice (Madrid, 12-14 November 2003), ¶ 11 p. 5 (summary of my comments).

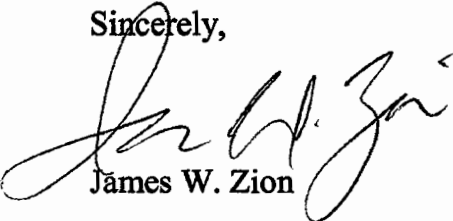
I particularly point out that the provisions to amend 7 N.N.C. § 354(A), at pages 12-13 of the proposed resolution, violate the ex post facto and takings provisions of the Navajo Nation Bill of Rights and such could invalidate the referendum measure.

If, as I believe, the Committee's decision to revisit judicial elections (an initiative abandoned several times in past decades) is prompted by gossip and complaints involving *some* judges (with many good judges and justices on the bench), the problem lies in the Navajo Nation Supreme Court decision in the case *In re Excusal of Ferguson*, 7 Navajo Rep. 320 (Nav. Sup. Ct. 1998). The prior statute on the authority of the chief justice permitted him or her, as the administrative head of the judiciary, to supervise the work of judges and to enforce ethics standards against them. The decision, prompted by a judge who was unhappy with a decision involving an ethical problem with being dealt with for it, stripped the chief justice of his administrative authority. As it now stands, the chief justice does not have the authority to deal with ethical lapses by trial judges and there are no adequate means of doing that. The prior judicial conduct commission could not and did not properly address judicial discipline or due process and the Navajo Nation bar cannot do that job.

The solution to the problem lies in the Committee reviewing the existing ethics code (that is quite good) and working with the justices and judges to devise a means of enforcing it in a manner that gives due process to judges accused of ethical lapses. I suggest that the Council should restore the administrative authority of the chief justice over the ethical conduct of the judges and exercise supervisory review of his job in doing that.

There is no magic bullet and judicial elections would be a disaster. It would be better to identify the problems, with input from lawyers and the public, and look to the authority of the chief justice as a branch chief.

Sincerely,



James W. Zion

**LAW AND ORDER COMMITTEE  
23<sup>RD</sup> NAVAJO NATION COUNCIL**

**FIRST YEAR 2015**

**COMMITTEE REPORT**

Mr. Speaker,

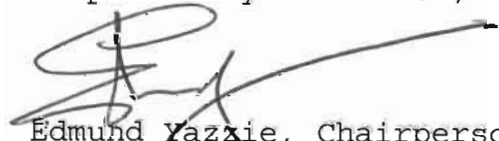
The **LAW AND ORDER COMMITTEE** to whom has been assigned:

**Legislation No. 0154-15:** An act relating to Law and Order, Naabik'iyati' and the Navajo Nation Council; Approving the Judicial Elections Referendum Act of 2015 Referring to Voters of the Navajo Nation a Referendum Measure on Whether Titles 2, 7 and 11 of the Navajo Nation Code to Provide for Election of Navajo Nation District Court Judges and Supreme Court Justices - Sponsors: Honorable Kee Allen Begay, Jr., Honorable Raymond Smith, Jr., Honorable Otto Tso

Has had it under consideration and reports the matter as **DO PASS** with no amendments.

And thereafter the matter will be referred to the **NAABIK' IYATI' COMMITTEE**.

Respectfully submitted,

  
Edmund Yazzie, Chairperson  
Law and Order Committee  
23<sup>rd</sup> Navajo Nation Council

Date: May 11, 2015  
Motion: Honorable Otto Tso  
Second: Honorable Kee Allen Begay, Jr.  
Vote: 2-1

**NAABIK'YATI COMMITTEE  
23rd NAVAJO NATION COUNCIL**

**FIRST YEAR 2015**

**COMMITTEE REPORT**

Mr. Speaker,

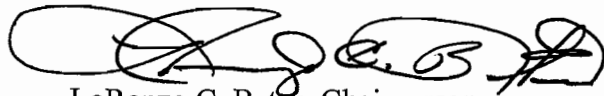
The **NAABIK'YATI COMMITTEE** to whom has been assigned:

**Legislation # 0154-15:** An Action Relating to Law and Order, Naabik'Iyati and the Navajo Nation Council; Approving the Judicial Elections Referendum Act of 2015 referring to voters of the Navajo Nationa referendum measure on whether Titles 2, 7 and 11 of the Navajo Nation Code to Provide for the election of Navajo Nation District Court Judges and Supreme Court Justices. *Sponsor: Honorable Kee Allen Begay, Jr*

Has had it under consideration and report the same with a **DO PASS** with the no amendment

and thereafter referred to Navajo Nation Council.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'LoRenzo C. Bates', with a stylized flourish at the end.

LoRenzo C. Bates, Chairperson  
Naabik'Iyati Committee  
Of the 23<sup>rd</sup> Navajo Nation Council

Date : May 14, 2015  
Motion: Leonard Tsosie  
Second: Seth Damon  
Vote : 11-0



## RECORD OF NAVAJO NATION COUNCIL ACTION

23<sup>RD</sup> Navajo Nation Council---First Year 2015

### LEGISLATION 0154-15

Introduced by the Honorable Kee Allen Begay, Jr.

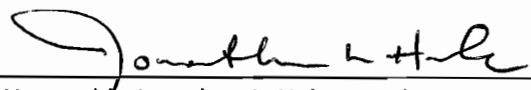
An Act relating to Law and Order, Naabik'íyáti' and the Navajo Nation Council; Approving the Judicial Elections Referendum Act of 2015 referring to voters of the Navajo Nation a referendum measure on whether Titles 2, 7 and 11 of the Navajo Nation Code to Provide for the election of Navajo Nation District Court Judges and Supreme Court Justices

TO THE 23<sup>RD</sup> NAVAJO NATION COUNCIL:

The Navajo Nation Council, to whom has been referred Legislation 0154-15, has had it under consideration and reports a **TABLING** action on the 19<sup>th</sup> Day of May, 2015. Legislation 0154-15 is tabled until the 2015 Summer Navajo Nation Council Session. A work session is to be held prior to the Summer Session and it will cover the following:

- 1) Duties and responsibilities of judges
- 2) Relevant election laws and processes; and
- 3) Comprehensive review of the legislation language

**THENCE, LEGISLATION 0154-15 IS ON TABLE STATUS UNTIL THE 2015 SUMMER NAVAJO NATION COUNCIL SESSION.**

  
Honorable Jonathan L. Hale, Speaker Pro Tem  
23<sup>rd</sup> Navajo Nation Council

Motion: Honorable Edmund Yazzie  
Second: Honorable Nathaniel Brown  
Vote:

#### TABLING MOTION

Motion: Honorable Davis Filfred  
Second: Honorable Benjamin Bennett  
Vote: 13 in favor; 3 opposed; 0 abstained

**SUMMARY OF DELIBERATION**  
**Legislation 0154-15**

| QUESTIONS/COMMENTS   | RESPONSES |
|--|-----------|
| 1. Consider the public comments  |           |
| 2. Elected leaders are highly influenced by public pressure and that has the potential to carry over into the rulings of elected judges; judges are expected to be fair and impartial in their rulings |           |
| 3. Judicial reform is necessary to reexamine Title 7   |           |
| 4. Referendum language speaks to the election of judges, but it expands to amending statutory law  |           |
| 5. Include language to remove elected judges, for cause. As it reads a judge can be removed only by recall election.   |           |
| 6. Revisit STRIKEN language, e.g. strike only PERMANENT and retain rest of language (no permanency in tribal government, but be held accountable)  |           |
| 7. Indicate years of term as elected judge (6 years per election?)   |           |
| 8. Elected judges may be reluctant to prosecution process; such is the case with grazing officials who don't perform tally counts  |           |
| 9. What are the impacts of monetary benefits to the judges, including retirement plans?  |           |
| 10. The purpose of the this legislation is no longer an issue  |           |
| 11. What is the position of the Board of Election Supervisors on this legislation?   |           |
| 12. Consider the work load of judges, and that Navajo Nation case laws extend well beyond its boundaries into state and federal courts   |           |



## RECORD OF NAVAJO NATION COUNCIL ACTION

23<sup>RD</sup> Navajo Nation Council---First Year 2015

|   |  |
|---|--|
| <p><b>Legislation 0154-15:</b> An Act Relating to Law and Order; Naabik'iyati' and the Navajo Nation Council; Approving the Judicial Elections Referendum Act of 2015 Referring to Voters of the Navajo Nation a Referendum Measure on Whether Title 2, 7 and 11 of the Navajo Nation Code to Provide for the Election of Navajo Nation District Court Judges and Supreme Court Justices</p> <p>Sponsor: Hon. Kee Allen Begay, Jr.<br/>Co-Sponsor: Raymond Smith, Jr.</p> <p>(m) Hon. Edmund Yazzie<br/>(s) Hon. Nathaniel Brown      Vote:</p> <p>May 19, 2015---Main Motion held by Hon. Edmund Yazzie/Hon. Nathaniel Brown. TABLED by the Honorable Davis Filfred/Honorable Benjamin Bennett by a vote of 13 in favor; 3 opposed; 0 abstained. Legislation 0154-15 is tabled until the 2015 Summer Navajo Nation Council Session. A work session is to be held prior to the Summer Session</p> <p>June 25, 2015---Naabik'iyati' Committee opted not to schedule the work session</p> | <p><b>Legislation 0156-15:</b> An Act Relating to Law and Order, Naabik'iyati' and the Navajo Nation Council; Approving the Change of Composition of the Supreme Court Referendum Act of 2015 Referring to Voters of the Navajo Nation a Referendum Measure on Whether Title 7 of the Navajo Nation Code Should be Amended to Provide for a Change of Composition of the Supreme Court From Two Associate Justices to Four Associate Justices from Each of the Five Navajo Agencies</p> <p>Sponsor: Hon. Kee Allen Begay, Jr.</p> <p>(m) Hon. Edmund Yazzie<br/>(s) Hon. Nathaniel Brown      Vote:</p> <p>May 19, 2015---Main Motion held by Hon. Edmund Yazzie/Hon. Otto Tso. TABLED by the Hon. Leonard Tsosie/Hon. Leonard H. Pete by a vote of 12 in favor; 5 opposed; 0 abstained. Legislation 0156-15 is tabled until the 2015 Summer Navajo Nation Council Session. The same instructions that were issued for Legislation 0154-15 will apply; and a combined work session is to be held prior to the Summer Session</p> <p>June 25, 2015---Naabik'iyati' Committee opted not to schedule the work session</p> |
|---|--|

### TO THE 23<sup>RD</sup> NAVAJO NATION COUNCIL:

The Navajo Nation Council, to whom has been referred Legislations **0154-15** and **0156-15**, has **DELETED** the Legislations off the 2015 Summer Session Agenda on this 20<sup>th</sup> Day of July, 2015.

Honorable LoRenzo C. Bates, Speaker  
23<sup>rd</sup> Navajo Nation Council

Motion: Honorable Kee Allen Begay, Jr.  
Second: Honorable Otto Tso  
Vote: 19 in favor, 0 opposed, 0 abstained

## 23<sup>rd</sup> NAVAJO NATION COUNCIL First Year 2015

The **NAVAJO NATION COUNCIL** to whom has been assigned:

### **NAVAJO LEGISLATIVE BILL #0154-15**

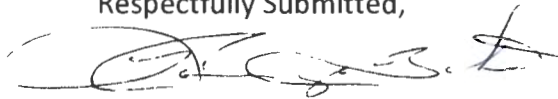
An Action Relating to Law and Order, Naabik'iyati' and the Navajo Nation Council; Approving the Judicial Elections Referendum Act of 2015 referring to Voters of the Navajo Nation a referendum measure on whether Titles 2, 7 and 11 of the Navajo Nation Code to provide for the Election of Navajo Nation District Court Judges and Supreme Court Justices.

*Sponsored by: Honorable Kee Allen Begay, Jr.*

*Co-Sponsored by: Honorable Raymond Smith, Jr. and Honorable Otto Tso*

Has had it under consideration and reports the same **EXPIRED**

Respectfully Submitted,



*Honorable LoRenzo Bates, Speaker*  
**NAVAJO NATION COUNCIL**

### **08 DECEMBER 2015**

Legislation 0154-15 was tabled by the Navajo Nation Council on May 19, 2015 by a vote of 12 in favor and 5 opposed. The tabling motion stated, "on table status until the 2015 Summer Navajo Nation Council Session." Per Navajo Nation Council Rule 19. E., "Any legislation not taken up from the table in the manner provided herein or at the time directed by the Council shall be deemed to be expired and shall be eliminated from the agenda of the Council." Legislation 0154-15 was not acted on during the 2015 Navajo Nation Council Session and is therefore "expired and shall be eliminated from the agenda of the Council." As such, Legislation 0154-15 will be closed out.