

## MEMORANDUM

**TO:** Tom Platero, Executive Director  
Office of Legislative Services  
24<sup>th</sup> Navajo Nation Council

**FROM:**

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

**DATE:** September 12, 2019

Re: Question Concerning Final Authority of Legislation No. 0251-19 REALTING TO THE NAABIK'İYATI' COMMITTEE AND THE NAVAJO NATION COUNCIL OPPOSING THE TERMINATION OF THE OFFICE OF NAVAJO-HOPI INDIAN RELOCATIO PURUSANT TO 25 U.S.C. §§ 640D-11(F), AS AMENDED, UNTIL ALL OF THE DUTIES AND RESPONSIBILITES IN THE ACT ARE COMPLETED INCLUDING UNFULFILLED OBLIGATIONS TO RELOCATEES

You have asked for clarification as to which authority is the final authority for the above legislation. The Naabik'iyati Committee is the final authority pursuant to 2 N.N.C. § 701(A).

The addition of Council as a recommendation from this office was an error of the drafter.

If you have any questions, let me know.

## LEGISLATIVE SUMMARY SHEET

Tracking No. 0251-19

**DATE:** August 6, 2019

**TITLE OF RESOLUTION:** AN ACTION RELATING TO THE NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; OPPOSING THE TERMINATION OF THE OFFICE OF NAVAJO-HOPI INDIAN RELOCATION PURSUANT TO 25 U.S.C. §§ 640D – 11(F), AS AMENDED, UNTIL ALL OF THE DUTIES AND RESPONSIBILITIES IN THE ACT ARE COMPLETED INCLUDING UNFULFILLED OBLIGATIONS TO RELOCATEES

**PURPOSE:** If approved, this resolution will oppose the termination of the Office of Navajo-Hopi Relocation pursuant to 25 U.S.C. §§ 640D-11(F), as amended, until all of the duties and responsibilities in the Act are completed including unfulfilled obligations to relocatees.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: None  
Website Posting Time/Date: 5:22pm 8-19-19  
Posting End Date: 8-24-19  
Eligible for Action: 8-25-19

Naabik'iyáti' Committee  
Thence  
Navajo Nation Council

PROPOSED STANDING COMMITTEE RESOLUTION  
24<sup>th</sup> NAVAJO NATION COUNCIL—FIRST YEAR, 2019

INTRODUCED BY

  
Primary Sponsor

TRACKING NO. 0251-19

  
Raymond Smith Jr.

AN ACTION

RELATING TO THE NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION  
COUNCIL; OPPOSING THE TERMINATION OF THE OFFICE OF NAVAJO-HOPI  
INDIAN RELOCATION PURSUANT TO 25 U.S.C. §§ 640D – 11(F), AS AMENDED,  
UNTIL ALL OF THE DUTIES AND RESPONSIBILITIES IN THE ACT ARE  
COMPLETED INCLUDING UNFULFILLED OBLIGATIONS TO RELOCATEES

WHEREAS:

**Section One. Authority**

- A. The Navajo Nation established the Naabik'iyáti' Committee as a Navajo Nation Council standing committee. 2 N.N.C. § 700 (A) (2012) *see also* CJA-03-13.
- B. The Naabik'iyáti Committee has the power to coordinate all federal, county and state programs with other standing committees and branches of the Navajo Nation government to provide the most efficient delivery of services to Navajo Nation. 2 N.N.C. § 701(A)(4).
- C. The Naabik'iyáti Committee further has the power to review and continually monitor the programs and activities of federal and state departments and to assist development of such programs designed to serve the Navajo People and the Navajo Nation through intergovernmental relationships between the Navajo Nation and such departments. 2 N.N.C. § 701(A)(7).
- D. The Navajo Nation has a government-to-government relationship with the United States of America, Treaty of 1868, Aug. 12, 1868, 15 Stat. 667.



## Section Two. Findings

- A. In February 2016, the Office of Navajo-Hopi Indian Relocation (“ONHIR”) Executive Director, Christopher Bavasi announced to the House Appropriation Committee that it would be able to close ONHIR at the end of Fiscal Year 2018.
- B. Pursuant to the Navajo-Hopi Land Settlement Act of 1974 (“1974 Act”), Sec. 13(2), Congress ordered the preparation and submission of a relocation plan that must, “take into account the adverse social, economic, cultural, and other impacts of relocation on persons involved in such relocation and be developed to avoid or minimize, to the extent possible, such impacts,” and “assure that housing and related community facilities and services, such as water, sewers, roads, schools, and health facilities, for such households shall be available at their relocation sites.” *See* Navajo-Hopi Land Settlement Act, Sec. 13(2).
- C. Amendments to the Act in 1988 removed the language requiring the preparation of a plan as plans were already developed. As such, the Amendments of 1988 also authorized ONHIR to call upon a department or agency of the United States to assist in carrying out the relocation plan. The Amendment further provides that, if any agency fails to provide reasonable assistance, ONHIR shall report such failure to the Congress. *See* 25 U.S.C. §§ 640D – 11(F), as amended.
- D. In the Commission’s 1983 Report and Plan Update, the agency stated that it was still unable to make finite plans because of the non-availability of land selections. But, it also stated its intention to “[i]nitiate coordination efforts to establish joint governmental agency involvement for future relocation to deal with such areas as employment, roads, utilities, and like areas of need.” *See* 25 U.S.C. §§ 640D – 11(F), as amended.
- E. ONHIR has never used its authority under the Act to call upon federal agencies to implement the promises of the Relocation Act, never coordinated joint governmental agency involvement to ensure the United States fulfills the promises made in the Relocation Act, and takes the position that it is not required to carry out the promises made to the Navajo Nation or follow through with the plans already created.

- 1 F. In February 2016, the President of Navajo Nation created the ONHIR Transition  
2 Team who conducted nine (9) public hearings and five (5) public meetings.
- 3 G. Public comments were collected which indicated the lack of community infrastructure  
4 such as roads, power, water, community centers, utilities to relocate homes, economic  
5 development, sewage, and solid waste, as outlined in **Exhibit A**.
- 6 H. The Navajo-Hopi Land Commission passed resolution NHL CJN-4-19 stating the  
7 Commission's opposition to the closing of the Office of Navajo-Hopi Indian  
8 Relocation. *See* NHL CJN-4-19 attached as **Exhibit B**.
- 9 I. It is in Navajo Nation's best interest to oppose the closure of the Office of Navajo-  
10 Hopi Indian Relocation until all the duties are responsibilities are completed  
11 including all of the unfilled obligations to relocatees and impacted communities, as  
12 outlined in **Exhibit A**.

13  
14 NOW THEREFORE, BE IT RESOLVED:

- 15 A. The Navajo Nation hereby opposes the closure of the Office of Navajo-Hopi Indian  
16 Relocation until all the duties are responsibilities are completed including all of the  
17 unfilled obligations to relocatees and impacted communities, as outlined in **Exhibit**  
18 **A**.
- 19 B. The Navajo Nation hereby takes the position that the original obligations in the  
20 Navajo-Hopi Land Settlement Act of 1974, Section 13, are still obligations that the  
21 Office of Navajo-Hopi Indian Relocation must complete as statutorily mandated as  
22 part of the promises made the Navajo people in their agreements to relocation.
- 23 C. The Navajo Nation hereby urges the Office of Navajo-Hopi Indian Relocation and the  
24 United States Congress to coordinate joint governmental agency action to ensure that  
25 the promises made in the Act are fulfilled.
- 26 D. The Navajo Nation demands the United States fulfill its trust responsibilities and  
27 engage in meaningful consultations with the Navajo Nation before any actions are  
28 taken regarding ONHIR.
- 29 E. The Navajo Nation hereby authorizes the Speaker of the Navajo Nation Council,  
30 President of the Navajo Nation, the Navajo Nation Washington Office, and their

1        respective designees, to advocate on the behalf of the Navajo Nation to oppose the  
2        closure of the Office of Navajo-Hopi Indian Relocation until all the duties are  
3        responsibilities are completed including all of the unfilled obligations to relocatees  
4        and impacted communities, as outlined in **Exhibit A**.





### Infrastructure Projects and Costs – Total \$226,729,357

Congress was greatly concerned that relocation of Indian families be to areas where community facilities and services exist or will exist. Congress ordered the Commission to develop a plan to “ensure that housing and related community facilities and services, such as water, sewer, roads, schools, and health facilities, for such households shall be available at their relocation sites...”

#### Community Infrastructure (developed by impacted communities) Total – \$109,729,357

Roads – \$42,384,300

Power – \$7,391,000

Water – \$13,240,000

Community Building (Chapter Houses, Head Start Buildings, Senior Centers) – \$83,729,357

Water/Sewer/Electricity to existing Relocation homes – \$1,768,000

Telephone lines – \$1,650,000

Economic Development – \$2,000,000

Sewage and Solid waste – \$518,169

Planning, Oversight, Predevelopment Costs, and Project Administration – \$26,000,000

#### Non-Community Identified Infrastructure – \$117,000,000

Roads – \$80,000,000

Telecommunication – \$15,000,000

Livestock/economic development – \$22,000,000

### Unknown and Other Costs

Peabody mining contamination – Environmental contamination affects Relocates. Mine reclamation and restoration is needed, especially considering Peabody’s recent bankruptcy.

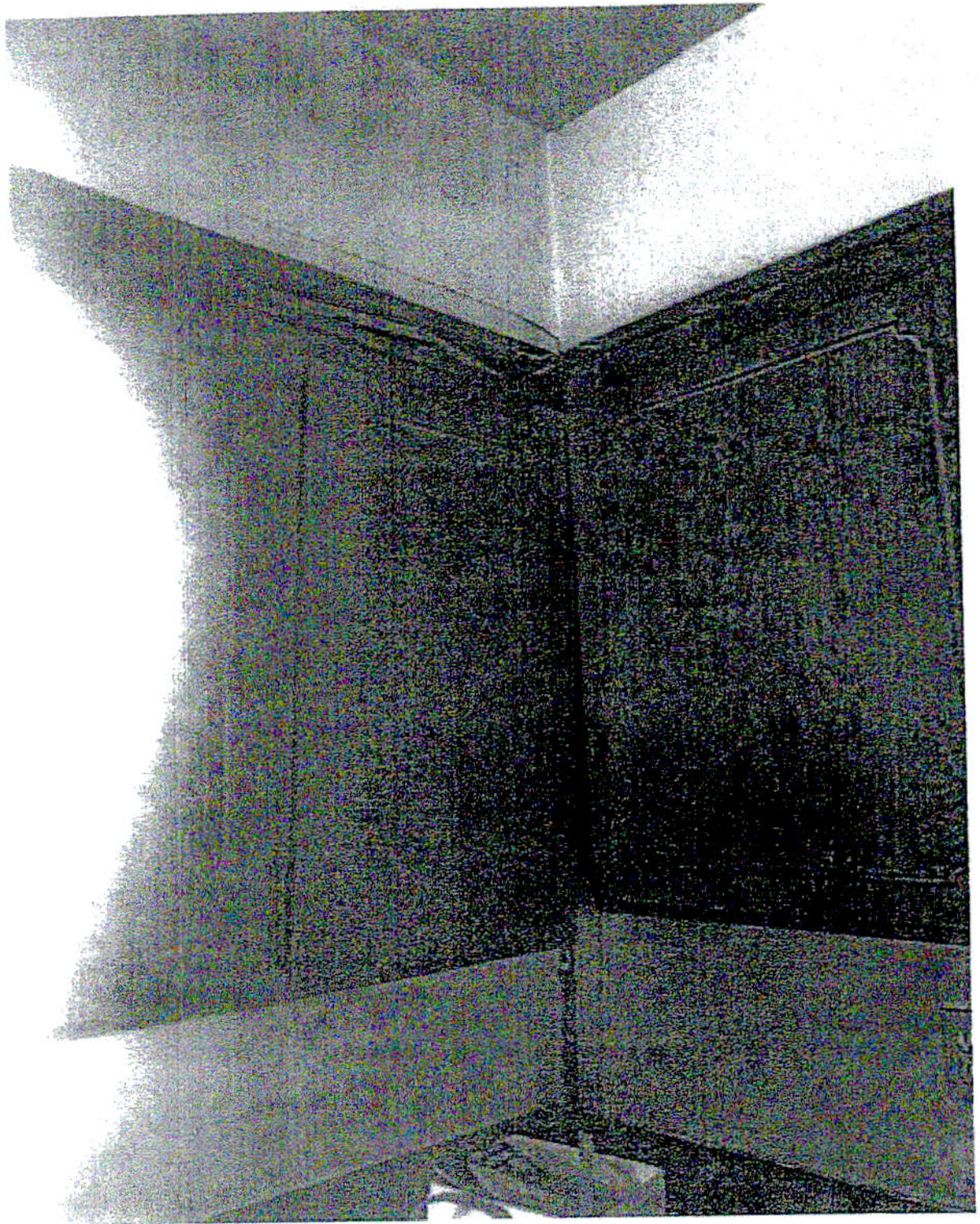
Uranium mining waste contamination – Thousands of Navajo people have been relocated to Nahat’s Dziil (the “Replacement Lands”). These land were acquired by the Navajo Nation through a three-way trade among the United State government, the State of Arizona, and the Navajo Nation. There has long been concern about contamination from radioactive mining waste and uranium contamination in water needs to be addressed.

New housing for Relocates that succeed on their appeals – With nearly 4,000 cases denied by ONHIR it is likely that Relocates will succeed on appeal and will need to be granted Relocation benefits.

Repair or replacement of faulty construction – An unknown number of homes were constructed with faulty workmanship or on unsuitable sites. Any final resolution of ONHIR’s responsibilities must include inventory, evaluation, inspection, and repair of these construction defects.

Impartial review of denied Relocatee cases – As ONHIR has rejected nearly half of all applications and used questionable practices the costs of impartial review needs to be accounted for before ONHIR closes.















# VOTE TALLY SHEET

NAVAJO-HOPI LAND COMMISSION

DATE: June 28, 2019

Special Meeting

RESOLUTION: RELATING TO THE NAVAJO-HOPI LAND COMMISSION; REAFFIRMING PURSUANT TO 25 U.S.C. §640D-11(F), THE OFFICE OF NAVAJO HOPI INDIAN RELOCATION SHALL NOT TERMINATE UNTIL ALL THE DUTIES AND RESPONSIBILITIES IN THE ACT ARE COMPLETED INCLUDING ALL THE UNFULFILLED OBLIGATIONS TO RELOCATEES

Main Motion:

NO AMENDMENTS

Motion: Honorable Kee Allen Begay

Second: Honorable Thomas Walker, Jr.

Vote 5-0-1 Chairman Otto Tso not voting

Commissioner	Yay	Nay
Hon. Elmer Begay	✓	
Hon. Kee Allen Begay	✓	
Hon. Paul Begay	✓	
Hon. Herman Daniels	E	
Hon. Vince R. James	E	
Hon. Raymond Smith, Jr.	E	
Hon. Otto Tso	CNV	
Hon. Thomas Walker, Jr.	✓	
Hon. Jimmy Yellowhair	✓	

Acknowledged:



Honorable Otto Tso, Chairman  
Navajo-Hopi Land Commission



Martha Ellison, Legislative Advisor  
Navajo-Hopi Land Commission  
Office of Legislative Services



NHLCJN-4-19

**RESOLUTION OF THE  
NAVAJO-HOPI LAND COMMISSION**

**24<sup>TH</sup> NAVAJO NATION COUNCIL---First Year 2019**

**AN ACTION**

**RELATING TO THE NAVAJO-HOPI LAND COMMISSION; REAFFIRMING  
PURSUANT TO 25 U.S.C. §640D-11(F), THE OFFICE OF NAVAJO HOPI INDIAN  
RELOCATION SHALL NOT TERMINATE UNTIL ALL THE DUTIES AND  
RESPONSIBILITIES IN THE ACT ARE COMPLETED INCLUDING ALL THE  
UNFULFILLED OBLIGATIONS TO RELOCATEES**

**BE IT ENACTED:**

**SECTION ONE. AUTHORITY**

1. The Navajo-Hopi Land Commission ("NHLC") is established within the Legislative Branch of the Navajo Nation government. 2 N.N.C. §851(A).
2. The Navajo-Hopi Land Commission of the Navajo Nation Council is authorized to advise the President of the Navajo Nation concerning all matters relating to land use conflicts between the Navajo Nation and the Hopi Tribe and for any claimants to lands within the areas described in the Act of June 14, 1934. 48 Stat. 960; 2 N.N.C. §853(B)(1).
3. The Navajo Nation Council delegated to the NHLC the authority to act and speak for the Navajo Nation on issues related to Navajo-Hopi Indian Relocation Amendment Act of 1980 ("Act") and Public Law 96-305, 25 U.S.C. §640d-10. Navajo Nation Council Resolution CN-69-80, codified at 2 N.N.C. §853(B)(2).

**SECTION TWO. FINDINGS**

1. In February, 2016, the ONHIR Executive Director Christopher Bavasi announced to the House Appropriation Committee that it would be able to close ONHIR at the end of Fiscal Year 2018.
2. Pursuant to the Navajo Hopi Land Settlement Act of 1974 ("1974 Act"), Sec. 13(2), Congress ordered the preparation and submission of a relocation plan that must, "take into account the adverse social, economic, cultural, and other impacts of relocation on persons involved in such relocation and be developed to avoid or minimize, to the extent possible, such impacts," and "assure that housing and related community facilities and services, such as water, sewers, roads, schools, and health facilities, for such households shall be available at their relocation sites."



3. Amendments to the Act in 1988 removed the language requiring the preparation of a plan as plans were already developed. As such, the Amendments of 1988 also authorized ONHIR to call upon any department or agency of the United States to assist in carrying out the relocation plan. The Amendment further provides that, if any agency fails to provide reasonable assistance, ONHIR shall report such failure to the Congress.

4. In the Commission's 1983 Report and Plan Update, the agency stated that it was still unable to make finite plans because of the non-availability of land selections. But, it also stated its intention to "[i]nitiate coordination efforts *to establish joint governmental agency involvement* for future relocation to deal with such areas as employment, roads, utilities, and like areas of need."

5. ONHIR has never used its authority under the Act to call upon federal agencies to implement the promises of the Relocation Act, never coordinated joint governmental agency involvement to ensure the United States fulfills the promises made in the Relocation Act, and takes the position that it is not required to carry out the promises made to the Navajo Nation or follow through with the plans already created.

6. In February, 2016, the President of the Navajo Nation created the ONHIR Transition Team who conducted nine (9) public hearings and five (5) public meetings, whereby the public comments were collected which indicated the lack of community infrastructure such as roads, power, water, community centers, utilities to relocatee homes, economic development, sewage and solid waste, as outlined in "Exhibit A".

**SECTION THREE: REAFFIRMING THE OFFICE OF NAVAJO HOPI INDIAN RELOCATION (ONHIR) SHALL NOT TERMINATE UNTIL ALL THE DUTIES AND RESPONSIBILITIES IN THE ACT ARE COMPLETED INCLUDING ALL THE UNFULFILLED OBLIGATIONS TO RELOCATEES**

1. The Navajo-Hopi Land Commission of the Navajo Nation Council opposes the closure of the Office of Navajo Hopi Indian Relocation (ONHIR) until all the duties and responsibilities are completed, including all the unfilled obligations to relocates and impacted communities, as outlined in Exhibit "A".

2. The Navajo-Hopi Land Commission of the Navajo Nation Council takes the position that the original obligations in the Navajo Hopi Land Settlement Act of 1974, Section 13, are still obligations that the Office of Navajo Hopi Indian Relocation must complete as statutorily mandated as part of the promises made to the Navajo people in their agreements to relocate.

3. The Navajo-Hopi Land Commission of the Navajo Nation Council urges Office of Navajo Hopi Indian Relocation (ONHIR) and the United States Congress to coordinate joint governmental agency action to ensure the promises made in the Act are fulfilled.

4. The Navajo-Hopi Land Commission of the Navajo Nation Council demands the United States fulfill its trust responsibilities and engage in meaningful consultations with the Navajo Nation before any actions are taken regarding ONHIR.

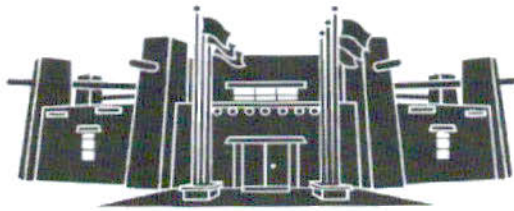
### CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Navajo-Hopi Land Commission at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of **4** in favor, **0** opposed, and **0** abstained on this 28<sup>th</sup> day of June, 2019.

  
\_\_\_\_\_  
Honorable Otto Tso, Chairman


Motion: Honorable Kee Allen Begay  
Second: Honorable Thomas Walker, Jr.

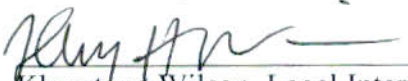




## MEMORANDUM

TO: Honorable Paul Begay  
24<sup>th</sup> Navajo Nation Council Delegate

THRU:   
Edward McCool, Acting Chief of Legislative Counsel  
Office of Legislative Counsel

FROM:   
Khrystine Wilson, Legal Intern  
Office of Legislative Counsel

DATE: August 6, 2019

RE: AN ACTION RELATING TO THE NAABIK'ÍYÁTI' COMMITTEE  
AND THE NAVAJO NATION COUNCIL; OPPOSING THE  
TERMINATION OF THE OFFICE OF NAVAJO-HOPI INDIAN  
RELOCATION PURSUANT TO 25 U.S.C. §§ 640D – 11(F), AS  
AMENDED, UNTIL ALL OF THE DUTIES AND RESPONSIBILITIES  
IN THE ACT ARE COMPLETED INCLUDING UNFULFILLED  
OBLIGATIONS TO RELOCATEES

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

The Office of Legislative Counsel recommends the appropriate standing committee(s) reviews based on the standing committees powers outlined in 2 N.N.C. §§ 301, 401, 501, 601, and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration. 2 N.N.C. § 164(A)(5).

Please review the proposed resolution to ensure it is drafted to your satisfaction. If you approve, please sign as "Primary Sponsor" and submit it to the Office of Legislative Services where the proposed resolution will be given a tracking number and referred to the Office of the Speaker. If the proposed legislation is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like to make to the proposed resolution.



THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0251-19\_\_\_\_\_

SPONSOR: Paul Begav

TITLE: An Action Relating To The Naabik'iyáti' Committee And The Navajo Nation Council:  
Opposing The Termination Of The Office Of Navajo-Hopi Indian Relocation Pursuant To 25  
U.S.C §§ 640D-11(F), As Amended, Until All Of The Duties And Responsibilities In The Act Are  
Completed Including Unfulfilled Obligations To Relocatees

*Date posted:* August 19, 2019 at 5:22pm

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) 871-7590

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.: 0251-19

SPONSOR: Honorable Paul Begay

TITLE: An Action Relating To The Naabik'iyáti' Committee And The Navajo Nation Council; Opposing The Termination Of The Office Of Navajo-Hopi Indian Relocation Pursuant To 25 U.S.C §§ 640D-11(F), As Amended, Until All Of The Duties And Responsibilities In The Act Are Completed Including Unfulfilled Obligations To Relocates

Posted: August 19, 2019 at 5:22PM

5 DAY Comment Period Ended: August 24, 2019

Digital Comments received:

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

  
\_\_\_\_\_  
Legislative Tracking Secretary  
Office of Legislative Services

8/25/19 3:11pm

Date/Time



# 24<sup>th</sup> NAVAJO NATION COUNCIL NAABIK'ÍYÁTI' COMMITTEE REPORT First Year 2019

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

## **NAVAJO LEGISLATIVE BILL #0251-19**

An Action Relating to the Naabik'íyáti' Committee and the Navajo Nation Council;  
Opposing the Termination of the Office of Navajo-Hopi Indian Relocation Pursuant to 25  
U.S.C §§ 640D-11(F), As Amended, Until All of the Duties and Responsibilities in the Act  
are Completed Including Unfulfilled Obligations to Relocates

*Sponsored by: Honorable Paul Begay*

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

Respectfully Submitted,

  
*Honorable Seth Damon, Chairman*  
**NAABIK'ÍYÁTI' COMMITTEE**

**05 September 2019**

### **MAIN MOTION**

*Motioned by: Honorable Raymond Smith, Jr.*

*Seconded by: Honorable Pernell Halona*

*Vote: 12 in Favor, 00 Opposed (Chairman Damon Not Voting)*

# NAVAJO NATION

299

Naa'bik'iyati Committee Meeting

9/5/2019

06:02:05 PM

Amd# to Amd#

Legislation 0251-19: Opposing

PASSED

MOT Smith

the Termination of the Ofc ONH..

SEC Halona, P

**Yea : 12**

**Nay : 0**

**Excused : 2**

**Not Voting : 8**

## **Yea : 12**

Begay, P

Freeland, M

Nez, R

Tso, O

Brown

Halona, P

Smith

Walker, T

Charles-Newton

Henio, J

Tso, C

Yellowhair

## **Nay : 0**

## **Excused : 2**

Begay, E

Tso, D

## **Not Voting : 8**

Begay, K

Daniels

Stewart, W

Wauneka, E

Crotty

James, V

Tso, E

Yazzie

**Presiding Chair: Damon**