

LEGISLATIVE SUMMARY SHEET

Tracking No. 0092-22

DATE: April 21, 2022

TITLE OF RESOLUTION: AN ACT RELATING TO HEALTH EDUCATION AND HUMAN SERVICES, LAW AND ORDER, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; AMENDING 15 N.N.C. §§ 302-308, THE PLAN OF OPERATIONS OF THE NAVAJO NATION LABOR COMMISSION

PURPOSE: This resolution, if approved, will amend the Plan of Operation for the Navajo Nation Labor Commission.

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: 4:55pm; 05-06-22
Website Posting Time/Date: 05-11-22
Posting End Date: 05-12-22
Eligible for Action: 05-12-22

Health Education & Human Services Committee

Thence

Law & Order Committee

Thence

Naabik'iyáti' Committee

Thence

Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL – Fourth Year, 2022

INTRODUCED BY


(Sponsor)

TRACKING NO. 0092-22

AN ACT

RELATING TO HEALTH EDUCATION AND HUMAN SERVICES, LAW AND
ORDER, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION
COUNCIL; AMENDING 15 N.N.C. §§ 302-308, THE PLAN OF OPERATIONS OF
THE NAVAJO NATION LABOR COMMISSION

BE IT ENACTED:

SECTION ONE. AUTHORITIES

- A. The Law and Order Committee is a standing committee of the Navajo Nation Council and has the power to review and make recommendations to the Navajo Nation Council on proposed amendments to and enactments in the Navajo Nation Code; and the Committee is the legislative oversight committee for the Navajo Nation Labor Commission. 2 N.N.C. §§ 164(A), 600(A), 601(B)(14) and (C)(1).
- B. The Health, Education and Human Services Committee is a standing committee of the Navajo Nation Council and has the power to review and recommend resolutions relating to employment and labor. 2 N.N.C. §§ 400(A), 401(B)(6)(a).
- C. The Naabik'iyáti' Committee is a standing committee of the Navajo Nation Council and has the power to review proposed legislation which requires final action by the Navajo Nation Council. 2 N.N.C. §§ 164(A)(9) and 700(A),
- D. The Navajo Nation Council is the governing body of the Navajo Nation and must review and approve enactments or amendments of positive law. 2 N.N.C. § 102(A) and 164(A).

SECTION TWO. FINDINGS

- A. The purpose of the Navajo Nation Labor Commission (“the Commission”) is to operate as a quasi-judicial body to hear, adjudicate and decide complaints filed under the Navajo Preference in Employment through its rules of procedure in an unbiased manner pursuant to 15 N.N.C. §§ 301-308.
- B. The Commission is established and has powers prescribed in its Plan of Operation as well as such additional powers as may be conferred to the Commission by law pursuant to 15 N.N.C. §§ 301.
- C. The Commission is the administrative oversight authority of the staff, program budget and Office of Navajo Nation Labor Commission to ensure the duties and responsibilities are in compliance pursuant to 15 N. N. C. § 304.
- D. The Commission is authorized to formulate overall administrative and operating policies pertaining to the function of the Commission and Office; and all formal substantive action shall be taken by written resolution of the Commission duly certified by the presiding officer or memorialized by written memorandum setting forth the action taken by the Commission pursuant to 15 N. N. C. § 304.
- E. There is a need to amend the Plan of Operations of the Navajo Nation Labor Commission to be in compliance with Resolution Nos. CMA-13-16 and CJY-42-16, and Navajo Nation Supreme Court Opinion, *Austin C. Bahe v. Navajo Nation Labor Commission and Concerning Navajo Engineering Construction Authority*, No. SC-CV-15-18 (Nav. Sup. Ct, June 29, 2018).
- F. On August 25, 2021, the Navajo Nation Labor Commission by Resolution No. NNLC AUGUST-25-2021 approved a Resolution to adopt and amend their Plan of Operation, attached hereto as **Exhibit A**.
- G. It is in the best interest of the Navajo Nation to amend 15 N.N.C. §§ 302 - 308, the Plan of Operations of the Navajo Nation Labor Commission.

SECTION THREE. AMENDMENTS TO 15 N.N.C. §§ 302 - 308

The Navajo Nation hereby amends the Navajo Nation Code, Title 15 as follows:

Title 15. Labor

Chapter 4. Navajo Nation Labor Commission

* * *

§ 302. Purposes

~~The purposes of the Commission shall be to:~~

- ~~A. Hear and adjudicate cases as the quasi-judicial hearing body under the Navajo Preference in Employment Act.~~
- ~~B. Conduct and hold quasi-judicial hearings in accordance with applicable Navajo Nation laws concerning Navajo employment.~~
- ~~C. Process and decide all formal complaints/petitions.~~
- ~~D. Adopt rules and regulations for Commission hearings.~~

The purpose of the Labor Commission is to operate as a quasi-judicial body to hear, adjudicate, and decide all complaints filed under the Navajo Preference in Employment Act (the "Act") in accordance with its rules of procedure in an unbiased manner.

§ 303. Organization

The Commission shall consist of five members.

- A. Membership. The Commission shall consist of: (1) two members ~~of the Law and Order Committee of the Navajo Nation Council to be designated by that Committee appointed by the Health, Education, and Human Services Committee;~~ and (2) three members appointed by the President of the Navajo Nation with the concurrence of the Naabik'íyáti` Committee of the Navajo Nation Council.
- B. Commission Members Qualifications. ~~The two members of the Law and Order Committee and the three members of the Commission appointed by the President of the Navajo Nation shall be familiar with labor practices, human resources and employment of the Navajo Nation. One appointed member shall be a Navajo worker familiar with human resources and employment practices. Neither the Executive~~

1 ~~Director of the Division of Human Resources (“DHR”), the Directors of any~~
2 ~~department within DHR, nor any person employed by DHR or its departments shall~~
3 ~~be eligible to serve as a member of the Commission.~~

4 The five Commission members shall be 1) familiar with the Navajo Nation’s labor
5 practices, human resources and employment; 2) a member of the Navajo Nation Bar
6 in good standing, and; 3) two Commission members shall be licensed to practice law
7 in either Arizona, New Mexico or Utah.

8 C. Officers. The officers of the Commission shall be elected every ~~four (4)~~ two (2) years
9 from among the Commission by a majority vote of the Commission and shall consist
10 of a Chairperson, Vice-Chairperson, and Secretary.

11 1. Chairperson. The Chairperson ~~of the Commission~~ shall preside over
12 hearings, at meetings/deliberative sessions, and meetings /hearing of the
13 Commission, assure in an orderly manner, and shall meetings/deliberative
14 sessions/hearings in accordance with accepted Navajo Nation Labor
15 Commission rules, and sign all documents / and pleadings as required for
16 action of the Commission. related to complaints filed under the Act.

17 2. Vice-Chairperson. The Vice-Chairperson shall serve in the absence of the
18 Chairperson, and in the ~~performance of this service~~ this capacity, shall
19 exercise all ~~powers and bear all the~~ authority and responsibilities of vested
20 in the Chairperson.

21 3. Secretary. The Secretary shall ~~carry out such duties as may be prescribed.~~
22 In serve in the absence of the Chairperson and Vice-Chairperson, and in this
23 capacity, the Secretary shall ~~preside at all meetings/deliberative~~
24 ~~sessions/hearings of the Commission.~~ exercise all authority and
25 responsibilities vested in the Chairperson and or Vice-Chairperson.

26 4. The Commission may recall former members to complete pending cases: or
27 to establish a quorum when necessary.

28 D. Term of Office. Each member of the Commission shall serve for a term of four (4)
29 years and until his or her successor is appointed.

30 E. Commission Vacancies.

- 1 1. Resignation. Any A Commission member may resign by submitting written
2 notice thirty (30) days prior to the effective date ~~written notice~~ of their
3 resignation. The Commission shall accept the ~~and such~~ resignation shall be
4 accepted by the Commission at the next Commission scheduled meeting.
- 5 2. Removal. ~~Any member of the~~ A Commission member shall be removed
6 from the Commission if:
 - 7 a. Such member has been convicted of any crime reflecting upon such
8 member's honesty or ability to fulfill the fiduciary obligations
9 imposed by law upon such member; or
 - 10 b. Such member violates the disclosure of conflicts of interest
11 requirements set forth in the Navajo Nation Ethics in Government
12 Law; or
 - 13 c. Such member lacks diligence or commitment to fulfil the
14 responsibilities of the Commission by failing to attend three (3)
15 consecutive hearings, including meetings, absent a valid excusal or
16 good reason for non-participation.
- 17 3. ~~In the event~~ Removal of a Commission member ~~is found to be in violation~~
18 of pursuant to § 303(E)(2)(a)-(c) ~~such member shall be removed from his~~
19 ~~or her position,~~ shall be effective upon written notice of removal by the
20 Chairperson ~~of the Commission~~ or designee. The Commission shall
21 promptly submit the appropriate information and facts concerning the
22 violation and removal to the appointing authority set forth at § 303(A).
- 23 4. ~~In the event a~~ A vacancy is created on the Commission by reason of
24 resignation, removal or any other reason, ~~such vacaney~~ shall be filled by the
25 authority which is authorized to appoint members to such vacant seat, in
26 accordance with the procedure prescribed in § 303(A) and (B).
27 ~~Appointment of a replacement member shall be made within thirty (30) days~~
28 ~~after the date the appointing authority receives written notification of the~~
29 vacaney.
30

1 **§ 304. Authority, ~~d~~Duties and ~~r~~Responsibilities**

2 The Commission is authorized and directed to:

- 3 ~~A. Submit annual/quarterly reports of its activities to the Office of the Speaker of the~~
4 ~~Navajo Nation Council for distribution to the Law and Order Committee and the~~
5 ~~Navajo Nation Council;~~
- 6 ~~B. Formulate overall administrative and operating policies pertaining to the function of~~
7 ~~the Commission;~~
- 8 ~~C. Regulate the course of hearings and conduct of participants;~~
- 9 ~~D. Administer oaths and affirmations;~~
- 10 ~~E. Rule on motions and other procedural matters;~~
- 11 ~~F. Grant applications for subpoenas and rule on petitions to revoke subpoenas;~~
- 12 ~~G. Inquire fully into all issues and obtain a complete record upon which Commission~~
13 ~~decisions can be rendered;~~
- 14 ~~H. Receive, rule on, exclude, and limit evidence, lines of questioning, or testimony~~
15 ~~which are irrelevant, immaterial, or unduly repetitious;~~
- 16 ~~I. Examine witnesses for the purpose of clarification of the facts and issues;~~
- 17 ~~J. Direct the submission of briefs and set the time for the filing thereof;~~
- 18 ~~K. Issue finding of fact, conclusions of law and order, and impose appropriate damages,~~
19 ~~sanctions, fines and other relief for non-compliance;~~
- 20 ~~L. Set the amount of bond and such appropriate conditions thereto as the Commission~~
21 ~~may deem necessary;~~
- 22 ~~M. Prepare and submit an annual budget;~~
- 23 ~~N. Exercise such other authority as may be conferred by law; and~~
- 24 ~~O. Hold deliberative sessions/meetings/hearings at such locations on the Navajo Nation~~
25 ~~to accommodate the Commission/parties/witnesses. Upon approval by the~~
26 ~~Chairperson.~~
- 27 A. The Commission may adopt and implement rules of procedure governing the
28 processing of complaints and the conduct of hearings pursuant to 15 N.N.C. § 611 of
29 the Act.
- 30 B. The Commission shall conduct hearings on complaints filed under the Act in

1 accordance with the Commission Rules of Procedure in a fair and unbiased manner.

2 C. The Commission may refer a complaint to a Peace Maker, Special Master, or
3 Mediator upon a request by the parties or where deemed appropriate.

4
5 **§ 305. Meetings, / ~~h~~Hearings, / ~~d~~Deliberative sSessions; ~~p~~rocedure**

6 ~~A. Meetings/hearings/deliberative sessions shall be called by the Chairperson or~~
7 ~~designee of the Commission for business transactions or as required by pending cases~~
8 ~~filed before the Commission. Three members of the Commission shall constitute a~~
9 ~~quorum for the transaction of business.~~

10 ~~B. The Commission may hold meetings with the Law and Order Committee of the~~
11 ~~Navajo Nation Council for informational and coordinating purposes as it deem~~
12 ~~appropriate.~~

13 ~~C. The Commission shall adopt rules for the conduct of its meetings/hearings or~~
14 ~~deliberative sessions and keep a record of all its proceedings and transactions. All~~
15 ~~formal substantive action shall be taken by written resolution duly certified by the~~
16 ~~presiding officer, or memorialized by written memorandum setting forth the action~~
17 ~~taken~~

18 ~~D. Members of the Commission shall receive a two hundred fifty dollar (\$250.00)~~
19 ~~stipend and shall be reimbursed for lodging, meals, expenses and mileage (at the~~
20 ~~Navajo Nation rate) incurred in connection with the performance of their duties.~~
21 ~~Commission members shall be eligible for any insurance provided by the Navajo~~
22 ~~Nation to its employees, other boards, commissions, elected officials and other tribal~~
23 ~~entities. All Commission expenses shall be paid from the budget of the Commission.~~

24 A. Hearings. Three (3) Commission members shall constitute a quorum. Hearings shall
25 be conducted in accordance with 15 N.N.C. §611 and the Labor Commission Rules
26 of Procedure.

27 B. Meetings; Deliberative Sessions. The Chairperson or designee may call a meeting or
28 deliberative session to conduct business related to complaints filed with the
29 Commission or related operational matters. Three (3) Commission members shall
30 constitute a quorum for the transaction of business. Meetings may be held with the

1 Law and Order Committee or other entities.

2 C. Hearings, Meetings, or Deliberative Sessions may be held via teleconference or by
3 other electronic means in the event environmental conditions or other emergencies
4 present a health risk if an in-person hearing or meeting were to be held.

5 D. Commission members shall receive five hundred dollar (\$500.00) stipend for
6 attending hearings, meetings or deliberative sessions, and: shall be reimbursed for
7 expenses incurred while performing their duties, including lodging, meals, and
8 mileage at the Navajo Nation government rate. Commission members shall be
9 eligible for any insurance provided by the Navajo Nation for its employees.

10
11 **§ 306. Personnel**

12 A. The Commission may employ independent legal counsel and personnel as it deems
13 necessary and ~~as provided in its budget~~ to carry out the duties and responsibilities
14 ~~herein set forth~~ of the Commission.

15 B.—~~The Commission office personnel shall provide administrative support to the~~
16 ~~Commission including, but not limited to:~~ consist of an Executive Director who
17 serves under the general direction of the Chairperson or designee. The Executive
18 Director is authorized to employ and supervise administrative support staff.

- 19 ~~1.— Accepting and processing complaints, petitions, and related pleadings;~~
20 ~~2.— Recording hearings and meetings;~~
21 ~~3.— Administering oaths to witnesses;~~
22 ~~4.— Accepting and maintain evidence;~~
23 ~~5.— Providing information to the public, parties, legal counsel and other Navajo~~
24 ~~Nation offices regarding the operations, requirements or public records of~~
25 ~~the Commission, subject to principles of due process and the Navajo Nation~~
26 ~~Privacy and Access to Information Act;~~
27 ~~6.— Providing official records of the Commission to the Supreme Court as~~
28 ~~necessary for appeals and petitions concerning Commission decisions; and~~
29 ~~7.— Other duties as necessary to carry out the purposes and responsibilities of~~
30 ~~the Commission as provided herein.~~

C. ~~The Commission office personnel shall consist of an Executive Director and such other support staff as needed and provided for in the Commission budget to provide administrative support to the Commission. The Executive Director shall be under the general direction and guidance of the Commission through its Chairperson. The Executive Director shall be authorized to employ and supervise additional personnel as needed and provided for in the Commission budget to carry out the purposes of the Commission. All personnel of the Commission office shall be employed and compensated pursuant to the Navajo Nation Personnel Policies Manual.~~
The Commission administrative support staff shall consist of an Office Specialist, and a Recorder, or other personnel as deemed necessary.

§ 307. Place of Office

The Commission shall have its ~~principal office and staff be located~~ in Window Rock, Navajo Nation, (Arizona). ~~The Commission may expand its offices as needed and provided for in the Commission budget.~~

§308. Amendment

This Plan of Operation may be amended from time to time by ~~the Intergovernmental Relations Committee of the Navajo Nation Council~~. Prior to any such amendment, the Health, Education and Human Services Committee shall review and recommend any change or proposed amendment to this Plan of Operation.

* * *

SECTION FOUR. CODIFICATION

The provisions of these amendments of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

1 **SECTION FIVE. SAVINGS CLAUSE**

2 Should any provisions of these amendments be determined invalid by the Navajo Nation
3 Supreme Court, or the District Courts of the Navajo Nation, without appeal to the Navajo
4 Nation Supreme Court, those amendments that are not determined invalid shall remain the law
5 of the Navajo Nation.
6

7 **SECTION SIX. EFFECTIVE DATE**

8 The Navajo Nation Code amendment enacted herein shall be effective pursuant to pursuant to
9 2 N.N.C. § 221(B).
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THE NAVAJO NATION

Nona L. Elsitty, Chairperson
Vacant, Vice-Chairperson
Vacant, Secretary
Loretta J. Danzuka, Member
Casey Watchman, Member



Navajo Nation Labor Commission
The Legislative Branch
Anslem Bitsoi, Executive Director
Victoria A. Dixon, Legislative Reporter
Leflew R. Denny, Office Specialist

NNLC AUGUST- 25-2021

**AMENDING PLAN OF OPERATION FOR THE NAVAJO NATION LABOR
COMMISSION AND PROGRAM #101014**

WHEREAS:

1. The Navajo Nation Labor Commission, (the Commission") shall have the powers prescribed in the Plan of Operation as well as such additional powers as may be conferred to the Commission by law; and
2. The Commission is the administrative oversight authority of the staff, program budget and Office of Navajo Nation Labor Commission to ensure the duties and responsibilities are in compliance pursuant to 15 N. N. C. § 304; and
3. The Commission is authorized to formulate overall administrative and operating policies pertaining to the function of and all formal substantive action shall be taken by written resolution duly certified by the presiding officer or memorialized by written memorandum setting forth the action taken by the Commission pursuant to 15 N. N. C. § 304; and
4. The Commission conducts quasi-judicial administrative hearings in accordance to Navajo Preference in Employment Act, 15 N. N. C. § 301 and § 601 et. seq.; and
5. The Commission is authorized to amend current rules in compliance with Resolution of the Navajo Nation Council, CMA-13-16, amending The Navajo Preference In Employment Act at 15 N.N.C. § 604, 611 and 614. Resolution of

the Navajo Nation Council, CJY-42-16, now requires all members of the Navajo Nation Labor Commission to be members in good standing of the Navajo Nation Bar Association, familiar with the Navajo Nation's labor practice, human resources and employment.

6. The Commission is authorized to amend the Plan of Operation for the Commission and Program. There is need to amend in compliance with Resolution of the Navajo Nation Council, CMA-13-16, CJY-42-16 and Navajo Nation Supreme Court Opinion, Austin C, Bahe v. Navajo Nation Labor Commission and Concerning Navajo Engineering Construction Authority, SC-CV-15-18.

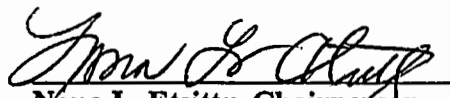
7.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Commission hereby adopts and amends the Plan Of Operation herein annexed as Exhibit "A".
2. The amended rules shall become effective upon approval by Law & Order Committee of the Navajo Nation Council, Naabik'iyatai Committee of the Navajo Nation Council and the Navajo Nation Council.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Commission at a duly called meeting at Navajo Nation Labor Commission Conference Room at Window Rock, Navajo Nation, Arizona at which a quorum was present and the same was passed by a vote of 04 in favor, 00 opposed and 01 abstention on this 25th day of August, 2021.

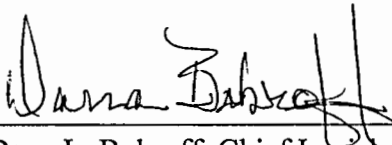

Nona L. Etsitty, Chairperson
Navajo Nation Labor Commission

Motion by Loretta J. Danzuka
Second by Casey Watchman



MEMORANDUM

TO: Honorable Otto Tso
24th Navajo Nation Council

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

DATE: April 20, 2022

SUBJECT: **AN ACT RELATING TO HEALTH EDUCATION AND HUMAN SERVICES,
LAW AND ORDER, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO
NATION COUNCIL; AMENDING 15 N.N.C. §§ 302-308, THE PLAN OF
OPERATIONS OF THE NAVAJO NATION LABOR COMMISSION**

I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge.

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

Please ensure that his particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0092-22_

SPONSOR: Otto Tso

TITLE: An Act Relating to Health Education and Human Services, Law and Order, and Naabik'iyáti' Committees and the Navajo Nation Council; Amending 15 N.N.C. §§ 302 – 308, the Plan of Operations of the Navajo Nation Labor Commission

Date posted: May 06, 2022 at 4:55M

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

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

LEGISLATION NO.: 0092-22

SPONSOR: Honorable Otto Tso

TITLE: An Act Relating to Health Education and Human Services, Law and Order, and Naabik'iyáti' Committees and the Navajo Nation Council; Amending 15 N.N.C. §§ 302 – 308, the Plan of Operations of the Navajo Nation Labor Commission

Posted: May 06, 2022 at 4:55 PM

5 DAY Comment Period Ended: May 11, 2022

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	<i>None</i>
Comments/Recommendations	1) Lynette Bonar, CEO, TRCHCC



**Legislative Tracking Secretary
Office of Legislative Services**

May 12, 2022; 8:20 AM
Date/Time



TUBA CITY REGIONAL HEALTH CARE CORPORATION

167 North Main Street, P.O. Box 600
Tuba City, Arizona 86045-0600
(928) 283.2501

May 11, 2022

Executive Director
Office of Legislative Services
Honorable Delegates
24th Navajo Nation Council
P. O. Box 3390
Window Rock, AZ 86515

VIA EMAIL to comments@navajo-nsn.gov

Re: Comments on Legislation No. 0092-22: An Act Relating to Health Education and Human Services, Law and Order, and Naabik'iyati' Committees and the Navajo Nation Council; Amending 15 N.N.C. §§ 302 - 308, the Plan of Operations of the Navajo Nation Labor Commission

Dear Sir or Madam:

The Tuba City Regional Health Care Corporation ("TCRHCC") hereby provides its comments on Legislation No. 0092-22: An Act Relating to Health Education and Human Services, Law and Order, and Naabik'iyati' Committees and the Navajo Nation Council; Amending 15 N.N.C. §§ 302 - 308, the Plan of Operations of the Navajo Nation Labor Commission (the "Legislation"). As discussed in comments below, the amendments to the Plan of Operation of the Navajo Nation Labor Commission ("Commission") must have a basis in proper legislative findings of a need for such amendments, which is not sufficiently stated in the Legislation. Moreover, any amendments should be carefully tailored to ensure that: (1) the Commission may only operate in a fair, impartial and unbiased manner in accordance with its limited statutory authority, and under rules approved by the Navajo Nation Supreme Court in accordance with Navajo due process and *k'é*, and (2) the Commission should be a professional body comprised only of licensed legal practitioners, including at least two licensed attorneys, with representational experience on the Commission for *both* employers and employees, and that no lay persons, including any prior Commissioners not meeting the current professional legal qualifications, be permitted to serve on the Commission at any time.

Background of TCRHCC

TCRHCC is authorized by the Navajo Nation Council as a tribal healthcare organization pursuant to the Indian Self Determination and Education Assistance Act, P.L. 93-638, as amended (the "ISDEAA"). Pursuant to its Compact with the Indian Health Service ("IHS"), TCRHCC operates the former Navajo Area IHS Tuba City Indian Medical Center, and multiple satellite facilities and clinics, providing services to IHS beneficiaries in TCRHCC's service area within the Western Navajo Agency and Coconino County, including the Cameron, Bodaway/Gap, Coalmine Canyon, Kaibeto, LeChee, Coppermine, Tonalea, and To'Naneez'Dizi Chapters of the Navajo Nation, the Hopi Village of Moenkopi, and the San Juan Southern Paiute Tribe. TCRHCC operates a Level III Trauma Center and American Association of Diabetes Educators (AADE) Accredited Program with a primary patient service population of nearly

36,000, and also serves as a Medical Referral Center for over 100,000 patients across the Navajo Nation, including for IHS beneficiaries from the Hopi and San Juan Southern Paiutes tribes.

TCRHCC employs almost 1,000 employees, of which 75% are Navajo tribal members. TCRHCC has a sophisticated Human Resources Department, well developed employee policies, trainings, and orientation, and has a robust affirmative action plan approved by the Office of Navajo Labor Relations for mentoring Navajo tribal members for employment growth and promotions. Most TCRHCC employees perform very well and are happy and productive in their positions. Nonetheless, TCRHCC is required to spend an excessive amount of its healthcare resources – which would otherwise be spent on critical healthcare services for Navajo Tribal members – answering and defending against frivolous complaints filed before the Commission pursuant to the Navajo Preference in Employment Act (“NPEA”).

Most complaints brought before the Commission against TCRHCC – many of which are brought by non-Navajos - are ultimately determined to be meritless. These complaints should be dismissed outright by the Commission as frivolous. However, and unfortunately, the Labor Commission rules actually prohibit decisions on summary judgment, and the Commission regularly denies motions to dismiss that should have been dismissed as a matter of law, thus holding unnecessary evidentiary hearings at great expense to TCRHCC and other employers on the Nation. Those outcomes – contrary to fundamental fairness, Navajo due process, and *k'é* – should be remedied by the Navajo Nation Council through appropriate amendments to the NPEA and the Commission’s Plan of Operation. As discussed below, in the best interest of both employees *and* employers on the Navajo Nation, any amendments to the Commission’s Plan of Operation under the Legislation should ensure that the Commission is truly reconstituted as a fair, balanced, professional legal body with competency to adjudicate employment claims under the NPEA and manage its proceedings respectfully and in accordance with *k'é*.

Comments

As a threshold matter, the only basis in the legislative findings for the proposed amendments to the Commission’s Plan of Operation is that they are purportedly necessary to comply with Resolution Nos. CMA-13-16 and CJY-42-16, and the Supreme Court’s decision in *Bahe v. Navajo Nation Labor Commission*, No. SC-CV-15-18 (Nav. Sup. Ct. June 29, 2018). That “finding” is inadequate as a matter of law and does not explain what the legislation is intended to accomplish or why it is being proposed. That finding is also contrary to fact. As the Navajo Nation Supreme Court has explained: “It is the settled expectation of the People that government actions must be explained. Without specific findings, the purpose of any government action will be questioned.” *Off. of Navajo Nation President & Vice-President v. Navajo Nation Council*, 9 Nav. R. 325, 332 (Nav. Sup. Ct. 2010). The referenced resolutions and the *Bahe* decision provide no explanation for amending the Commission’s Plan of Operation. To the contrary, Resolution No. CMA-13-16 made amendments to the NPEA to shift the burden of proof to the Petitioner in cases brought under the NPEA. Nothing in this legislation affects that amendment to the NPEA or is necessary to comply with that resolution. And Resolution No. CJY-42-16 already amended the qualifications for the Commission in order to establish a professional Commission made up of legal practitioners, including at least two licensed attorneys. Both resolutions are *already* the law, and nothing needs to be changed in the Commission’s Plan of Operation to “comply” with those resolutions.

Finally, in the *Bahe* decision, the Supreme Court explained the effect of 15 N.N.C. § 303(D) where at the time of its ruling from the bench on May 23, 2018, only two Commissioners had been confirmed to the Commission under the new qualifications that the Commission be comprised of licensed practitioners (at the time of its *written* decision on June 29, 2018 *four* Commissioners had actually already been confirmed). The Supreme Court stated in *Bahe*:

[15 N.N.C. § 303(D)] permits previously appointed members to continue serving on the NNLC *until such time a successor is appointed and confirmed*. With two appointments made thus far and, in conjunction, with previously appointed members who continue to serve, the NNLC has a fully seated panel to meet and adjudicate employments cases. We, therefore, reject Respondent's argument that previously appointed members on the NNLC are no longer serving and that the Commission lacks a panel as a result of the effective date as contained in CJY-42-16. This Court opines that the NPEA amendments concerning qualifications and the hold-over provision under § 303(D) must be read together.

Bahe, No. SC-CV-15-18, slip op. at 7 (emphasis added). 15 N.N.C. § 303(D) does not permit previously appointed members to continue serving *after* a successor has been appointed and confirmed because such former Commissioners are no longer "holding-over." *Id.* The proposed amendments in the Legislation would attempt to subvert that black letter principle of law codified at 15 N.N.C. § 303(D), as discussed below. The facts are that in 2018 and 2019, *all five* Commissioners were appointed under the amended statute, including Commissioner Loretta Danzuka, confirmed by the Naabik'iyáti Committee on February 22, 2018 (Res. No. NABIF-11-18), Commissioner Ed Dobson (a licensed attorney), confirmed by the Naabik'iyáti Committee on March 8, 2018 (Res. No. NABIMA-22-18), Commissioner Nona Etsitty, and Commissioner Marvin Beauvais (a licensed attorney), confirmed by the Health and Human Services Committee on June 6, 2018 (Res. Nos. HEHSCJN-08-18 and HEHSCJN-09-18, respectively), and Commissioner Watchman, confirmed by the Naabik'iyáti Committee on July 24, 2019 (Res. No. NABIO-58-19). That the Commission has continued to use prior Commissioners in *ad hoc* panels of the Commission, with lay persons not meeting the qualifications of the Commission by statute, is not a reason to amend the Commission's Plan of Operation to allow it to continue to do so, contrary to the intent of the Navajo Nation Council.

The following comments address specific proposed amendments in the Legislation to the various sections and subsections of Title 15, §§ 302 – 308.

1. § 308, subsections (A) and (B).

It is TCRHCC's understanding that the proposed amendments have already been made to these subsections by Council Resolution No. CJY-42-16, signed into law on August 4, 2016, by then President Russell Begaye.

However, although the previous amendments and the current Legislation require that Commission members be "familiar with the Navajo Nation's labor practices, human resources and employment," that language does not go far enough to ensure a fair and unbiased proceeding. TCRHCC therefore recommends that the following language be added to the previous amendments at § 303(B) to help ensure a fair, balanced and unbiased Commission:

Two (2) of the five (5) Commissioners shall have significant experience representing employers in their legal practice and two (2) of the five (5) Commissioners shall have significant experience representing employees in their legal practice. For the Commission to form a quorum there must be at least one (1) attorney present, one (1) Commissioner with employer representational experience present, and one (1) Commissioner with employee representational experience present, the latter two positions which may be filled by the required attorney Commissioner.

2. § 303, subsection (C)(4). The proposed amendment to permit former members of the Commission to be recalled “to establish a quorum when necessary” would eviscerate the amendments to § 303 subsection (B) to have a Commission made up of legal professionals who are members of the Navajo Nation Bar Association, including at least two licensed attorneys. It is also contrary to the decision in *Bahe v. Navajo Nation Labor Commission*, No. SC-CV-15-18 (Nav. Sup. Ct. June 29, 2018), which only permitted the Labor Commission to recall former members whose positions had not yet been filled under the 2016 revisions to § 303(B), because those former members therefore “held over” in their positions pursuant to 15 N.N.C. § 303(D). *See id.* As discussed above, all of the Commission’s five (5) positions were filled in 2018 and 2019, so no prior Commissioners can lawfully serve on the Commission now (but the Commission has been using them nonetheless). A Commission comprised of legal professionals with both employer and employee representation, and including licensed attorneys, is critical to a fair, balanced, and unbiased Commission, and the proposed amendment to subsection (C)(4) should be rejected by the Council. This amendment may be acceptable if it were modified as follows: “to establish a quorum when necessary provided such former member of the Commission is statutorily qualified to serve on the Commission.”

3. § 303, subsection (E)(3). This subsection gives inappropriate authority to the Commission to remove Commissioners. TCRHCC suggests replacing this subsection with:

A Commissioner may be removed by: (1) the appointing authority for the Commissioner upon a finding that such removal would be in the best interest of the Navajo Nation; (2) by the committee that confirmed the appointment of the Commissioner upon a finding that such removal would be in the best interest of the Navajo Nation; or (3) by the appointing authority for the Commissioner upon recommendation of the Commission pursuant to subsection (E)(2), next above.

4. § 303, subsection (E)(4). The proposed amendment would strike out the requirement that the Health and Human Services Committee or the President promptly appoint a new Commissioner when a Commissioner has resigned or been removed. The stricken language should be put back in, to ensure that the Commission can timely form a professional board. Indeed, this change, with the proposed amendment at § 303(C)(4) to permit former Commissioners to serve at any time, would permit the Commission to operate permanently without legal professionals as Commissioners. That is unacceptable and contrary to the intent of the Council to form a Commission comprised of legal professionals, not lay people.

§ 304. The entire proposed amendment should be rejected as contrary to law. Administrative tribunals like the Commission are strictly creatures of law limited by their *statutorily* given authorities. The strikeout removes those authorities such that the Commission can promulgate its

own rules and operate under those rules with seemingly unlimited authority and discretion, contrary to Navajo law. *See Meadows v. Navajo Nation Lab. Comm'n*, 9 Nav. R. 597, 599 (Nav. Sup. Ct. 2012) (“[T]he Commission may not act outside the scope of its statutory authority and duly promulgated rules. Unlike our courts which under 7 N.N.C. § 255 have broad discretion ‘to issue any writs or orders necessary and proper to the complete exercise of their jurisdiction,’ the Commission’s discretion [as an administrative tribunal] is limited to existing statutes and rules.”).

§ 305, subsection (A) (as proposed to be amended). For this proposed amendment, to ensure that the Commission’s proceedings are conducted in accordance with fundamental fairness, Navajo due process, and *k’é*, the Commission’s rules of procedure should first have to be approved by the Navajo Nation Supreme Court, the Commission’s appellate body, as is the case for the district courts for the Navajo Rules of Civil Procedure.

§ 305, subsection (D). A five hundred dollar (\$500) stipend may be insufficient to attract experienced licensed attorneys. TCRHCC suggests that a five hundred dollar (\$500) stipend be set for advocates and that the stipend for attorneys be set at seven hundred and fifty dollars (\$750), given the significant monetary resources attorneys have spent going to law school, and the student loans for that education that they may be repaying.


§ 306, subsection (B). The strike out of statutory responsibilities of Commission administrative staff should be rejected, as, again, necessary to be placed in statute for administrative tribunals, and to ensure that parties have a statutory basis for having basic due process requirements complied with by the agency. *See Meadows v. Navajo Nation Lab. Comm'n*, 9 Nav. R. 597, 599 (Nav. Sup. Ct. 2012).

TCRHCC has no comments on proposed amendments to 15 N.N.C. §§ 307 and 308.

Conclusion

Thank you for your consideration of TCRHCC’s comments on Legislation No. 0092-2022.

Sincerely,


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Chief Executive Officer
Tuba City Regional Health Care Corporation

c: TCRHCC Board of Directors
TCRHCC General Counsel