

LEGISLATIVE SUMMARY SHEET

Tracking No. 0052-23

DATE: March 31, 2023

TITLE OF RESOLUTION: AN ACT RELATING TO THE LAW AND ORDER, RESOURCES AND DEVELOPMENT, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; AMENDING 2 N.N.C §104 AND 11 N.N.C. § 8(B) TO PROHIBIT COUNCIL DELEGATES FROM SERVING AS BOARD MEMBERS AND SHAREHOLDER REPRESENTATIVES FOR NAVAJO NATION-OWNED INSTRUMENTALITIES

PURPOSE: This resolution, if approved, will prohibit Council Delegates from serving on the governing boards, management committees or commissions of any Navajo Nation-owned instrumentality and from serving as Shareholder Representatives or Member Representatives to any Navajo Nation-owned instrumentality.

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: Johnson
Website Posting Time/Date: _____
Posting End Date: 04-09-23
Eligible for Action: 04-10-23

Law & Order Committee
Thence
Resources & Development Committee
Thence
Naabik'íyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

25th NAVAJO NATION COUNCIL – First Year, 2023

INTRODUCED BY

(Prime Sponsor)

TRACKING NO. 0052-23

AN ACT

RELATING TO THE LAW AND ORDER, RESOURCES AND
DEVELOPMENT, AND NAABIK'ÍYÁTI' COMMITTEES AND THE
NAVAJO NATION COUNCIL; AMENDING 2 N.N.C §104 AND 11 N.N.C. §
8(B) TO PROHIBIT COUNCIL DELEGATES FROM SERVING AS BOARD
MEMBERS AND SHAREHOLDER REPRESENTATIVES FOR NAVAJO
NATION-OWNED INSTRUMENTALITIES

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Law and Order Committee is a standing committee of the Navajo Nation Council with the delegated authority to review and make recommendations to the Navajo Nation Council on proposed amendments to and enactments to the Navajo Nation Code. 2 N.N.C. § 601 (B)(14).
- B. The Resources and Development Committee is a standing committee of the Navajo Nation Council with the delegated authority to periodically receive reports and review the operations of the Navajo Nation enterprises, authorities, and industries. 2 N.N.C. § 501 (B)(4)(e).

- 1 C. Pursuant to 2 N.N.C. § 164 (A)(9), "a proposed resolution that requires final
2 action by the Navajo Nation Council [must] be assigned to standing committee(s)
3 having authority over the subject matter at issue and the Naabik'íyátí Committee."
4 D. The Navajo Nation Council is the governing body of the Navajo Nation and is
5 responsible for the enactment and establishment of Navajo Nation law and policy.
6 2 N.N.C. § 102 (A) and 164 (A).

7
8 **SECTION TWO. FINDINGS**

- 9 A. The *Navajo Ethics in Government Law*, 2 N.N.C. 3741 *et seq.*, includes a general
10 prohibition that "public officials and employees of the Navajo Nation avoid any
11 action, whether or not specifically prohibited by the Standards of Conduct [ERC-
12 08-001], which could result in, or create the appearance of . . . adversely affecting
13 the confidence of the people in the integrity of the government of the Navajo
14 Nation." 2 N.N.C. § 3745 (B)(6).
15 B. The *Navajo Ethics in Government Law* also includes specific prohibitions that
16 elected officials "shall not ... [h]ave direct or indirect financial or other economic
17 interests nor engage in such other employment or economic activity which ...
18 necessarily involve inherent substantial conflict, or appears to have such
19 substantial conflict, with their responsibilities and duties as public officials ... of
20 the Navajo Nation." 2 N.N.C. § 3747(A), *Restrictions Against Incompatible*
21 *Interests or Employment*.
22 B. Due to the potential for conflicts of interest, the Navajo Nation Code specifically
23 prohibits Council Delegates from serving as an elected official of the federal or
24 state government, from being an employee of the federal or state government,
25 from engaging in the private practice of law or from serving simultaneously as a
26 school board member while serving as a delegate. *See* 2 N.N.C. § 104.
27 C. The *Regulations and Standards of Conduct for Elected Officials of the Navajo*
28 *Nation*, ERC-O8-001, further clarify that "[m]ultiple duties arise to create
29 conflicts when elected officials hold other governmental or non-governmental
30 positions that impose duties upon the elected official in their other roles.

1 Members of Boards of Directors have duties to the entity whose board they serve
2 on. A Board Member who is also an elected official should refrain from actions
3 involving that entity while performing functions as an elected official. . . . An
4 elected official shall not participate or vote on any before any entity of which the
5 elected official is a member by virtue of or her status as an elected official. . . .”
6 ERC-O8-001, Section Four (B)(3) and (C).

7 D. Under statutory plans of operations, articles of incorporation, operating
8 agreements, corporate charters, and/or by-laws, Council Delegates may, by virtue
9 of serving as members of the Navajo Nation Council, be appointed to the Boards,
10 Commissions, or Management Committees governing specific Navajo Nation-
11 owned instrumentalities, i.e., enterprises, companies, corporations, authorities,
12 entities, etc. (hereinafter “instrumentalities”).

13 E. Under statutory plans of operations, articles of incorporation, operating
14 agreements, corporate charters, and/or by-laws, Council Delegates, by virtue of
15 serving as members of the Navajo Nation Council, may also be appointed as
16 Shareholder Representatives or Member Representatives to specific Navajo
17 Nation-owned instrumentalities.

18 F. The *Ethics in Government Law* expressly states that “[i]t is the intention of the
19 Navajo Nation Council that the provisions of this Navajo Nation Ethics in
20 Government Law be construed and applied in each instance, so as to accomplish
21 its purposes of protecting the Navajo People from government decisions and
22 actions resulting from, or affected by, undue influences or conflicts of interest.” 2
23 N.N.C. § 3742 (B).

24 G. The duties and responsibilities of Navajo Nation Council Delegates should be
25 limited to appropriations and establishing the laws and policies for the Navajo
26 Nation. Council Delegates should *not* serve on the governing boards,
27 management committees or commissions of any Navajo Nation-owned
28 instrumentality. Council Delegates should also *not* serve as Shareholder
29 Representatives or Member Representatives to any Navajo Nation-owned
30 instrumentality.

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2 **SECTION THREE. AMENDING 2 N.N.C. § 104**

3 The Navajo Nation Council hereby amends 2 N.N.C. §104 as follows:
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6 TITLE 2. NAVAJO NATION GOVERNMENT
7 CHAPTER 3. LEGISLATIVE BRANCH
8 SUBCHAPTER 2. NAVAJO NATION COUNCIL MEETINGS
9

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11 **§ 104. Incompatible service**

- 12 A. No person shall serve as a delegate if he or she is in the permanent employment of
13 the United States or any state or any subdivisions thereof; nor shall an elected
14 official of the United States or the several states thereof serve as a delegate. This
15 Section shall not apply to service ~~on a school board or~~ in an elective county office.
- 16 B. No person shall be eligible for election to the Navajo Nation Council if that person
17 is permanently employed or an elected official as described in § 104(A).
- 18 C. If any delegate, after his/her election, enters such service, the delegate shall
19 immediately forfeit his/her office as a Council Delegate.
- 20 D. No Council Delegate shall engage in the private practice of law while serving as a
21 Navajo Nation Council Delegate.
- 22 E. No Council Delegate shall serve as a Shareholder Representative or Member
23 Representative or member of the governing Board, Management Committee, or
24 Commission of any Navajo Nation-owned instrumentality, which includes all
25 Navajo Nation-owned enterprises, companies, corporations, authorities, and
26 entities.

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30 **SECTION FOUR. AMENDING 11 N.N.C. §8(B)**

1 The Navajo Nation hereby amends the Election Code at 11 N.N.C. § 8(B) as follows:
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3

4 TITLE 11. ELECTIONS

5 CHAPTER 1. NAVAJO NATION ELECTION CODE OF 1990

6 SUBCHAPTER 1. GENERAL PROVISIONS
7

8 ****

9 §8. Qualifications for office

10 ****

11 B. Qualifications for Delegate to the Navajo Nation Council:

12 ****

13 9. Must not, if elected, serve in any other elected Navajo Nation Office with
14 ~~the exception of the office(s) of the school board(s).~~

15 ****

16 11. Must not be in the permanent employment of the United States or any
17 state or subdivision thereof, or be an elected official of the United States
18 or any state or subdivision thereof, with the exception of ~~service on a~~
19 ~~school board or~~ elective county office.

20 12. Elected candidates who serve as members of boards of directors,
21 management committees or commissions that govern a Navajo Nation-
22 owned instrumentality, enterprise, corporation, company, authority, or
23 entity shall resign from such positions before taking the Council Delegate
24 oath of office.

25 13. Once sworn into office, Council Delegates shall not simultaneously serve
26 as:

27 a. members of boards of directors, management committees or
28 commissions that govern a Navajo Nation-owned instrumentality,
29 enterprise, corporation, company, authority, or entity members of
30 Navajo Nation boards or commissions; or

1 b. Shareholder Representatives or Management Representatives for any
2 Navajo Nation-owned instrumentality, enterprise, corporation,
3 company, authority, or entity

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7 **SECTION FIVE. EFFECTIVE DATE; DIRECTIVE**

8 A. The amendments enacted herein shall become effective pursuant to 2 N.N.C. §
9 221(B).

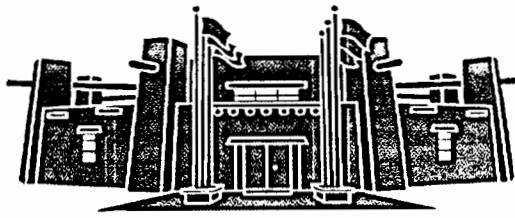
10 B. All Navajo Nation-owned instrumentalities, enterprises, companies, corporations,
11 authorities, and entities shall immediately amend their governing documents, e.g.,
12 articles of incorporation, operating agreements, by-laws, corporate charters, etc., to
13 reflect the amendments enacted herein and shall provide copies of such
14 amendments to the Resources and Development Committee within sixty (60) days
15 after the effective date of this legislation.

16
17 **SECTION SIX. CODIFICATION**

18 These amendments of the Navajo Nation Code shall be codified by the Office of
19 Legislative Counsel. The Office of Legislative Counsel shall incorporate these
20 amendments in the next codification of the Navajo Nation Code.

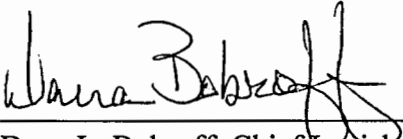
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22 **SECTION SEVEN. SAVINGS CLAUSE**

23 Should any provision of these amendments be determined invalid by the Navajo Nation
24 Supreme Court, or the District Courts of the Navajo Nation without appeal to the Navajo
25 Nation Supreme Court, those amendments that are not determined invalid shall remain
26 the law of the Nation.



MEMORANDUM

TO: Honorable Amber Kanazbah Crotty (Sponsor)
25th Navajo Nation Council

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

DATE: March 31, 2023

SUBJECT: **AN ACT RELATING TO THE LAW AND ORDER, RESOURCES AND DEVELOPMENT, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; AMENDING 2 N.N.C §104 AND 11 N.N.C. § 8(B) TO PROHIBIT COUNCIL DELEGATES FROM SERVING AS BOARD MEMBERS AND SHAREHOLDER REPRESENTATIVES FOR NAVAJO NATION-OWNED INSTRUMENTALITIES**

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.