24th NAVAJO NATION COUNCIL
NAABIK'ÍYÁTI' COMMITTEE REPORT
Third Year 2021

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

NAVAJO LEGISLATIVE BILL #0108-21

An Act Relating to Law and Order and Naabik'íyáti' Committees and Navajo Nation Council; Amending 2 N.N.C. §§ 1973 (A) and (C), Removing the Domicile and Tribal Membership Requirements for the Chief Prosecutor Position; Office of the Prosecutor

Sponsored by: Honorable Eugene Tso
Co-Sponsored by: Honorable Otto Tso

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

Respectfully Submitted,

Honorable Seth Damon, Chairman
NAABIK'ÍYÁTI' COMMITTEE

30 August 2021

On July 15, 2020, Legislation 0024-21 was Tabled. Tabling Language was "...to Table legislation 0108-21 for no more than 30 days to have a Naabik'íyáti' Committee Work Session with the Navajo Nation Department of Justice then bring legislation 0108-21 back to the Naabik'íyáti' Committee." To date, Legislation 0108-21 has not been acted on by the Naabik'íyáti' Committee. Per Navajo Nation Standing Committee Rules of Order Rule 18. H., "Any legislation not taken up from the table in the manner provided herein or at the time directed by the Committee shall be deemed to have expired and shall be eliminated from the agenda of the Committee." Legislation 0108-21 has expired and will be closed out.

LEGISLATIVE SUMMARY SHEET

Tracking No. 0108-21

DATE: July 6, 2021

TITLE OF RESOLUTION: AN ACT RELATING TO LAW AND ORDER AND NAABIK'ÍYATI' COMMITTEES AND NAVAJO NATION COUNCIL; AMENDING 2 N.N.C. §§ 1973 (A) AND (C), REMOVING THE DOMICILE AND TRIBAL MEMBERSHIP REQUIREMENTS FOR THE CHIEF PROSECUTOR POSITION; OFFICE OF THE PROSECUTOR

PURPOSE: An action related to the Law and Order and Naabik'iyati' Committees; and Navajo Nation Council, amending 2 N.N.C. §§ 1973(A) and (C), removing the domicile and tribal membership requirements for the Chief Prosecutor position within the Office of the Prosecutor.

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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 VSpeanase
Website Posting Time/Date 07-06-2021 11:15pm
Posting End Date: 07-11-2021
Eligible for Action: 07-12-2021

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

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

24th NAVAJO NATION COUNCIL – Third Year 2021

INTRODUCED BY

(Prime Sponsor)

TRACKING NO. 0108-21

AN ACT

RELATING TO LAW AND ORDER AND NAABIK'ÍYATI' COMMITTEES AND NAVAJO NATION COUNCIL; AMENDING 2 N.N.C. §§ 1973 (A) AND (C), REMOVING THE DOMICILE AND TRIBAL MEMBERSHIP REQUIREMENTS FOR THE CHIEF PROSECUTOR POSITION

BE IT ENACTED:

SECTION ONE. AUTHORITY

A. The Law and Order Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 600. The Committee has the authority to review and make recommendations to the Navajo Nation Council regarding proposed amendments and enactments to the Navajo Nation Code. 2 N.N.C. § 601(B)(14).

B. The Law and Order Committee has the enumerated powers to serve as the oversight Committee for the Department of Justice, unless otherwise designated by Navajo Nation law, and to approve and amend Plans of Operation thereto. 2 N.N.C. § 601(C)(2).

C. The Naabik'íyati' Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 700. A proposed resolution that requires final action by the Navajo Nation Council [must] be assigned to the standing committee(s) having authority over the subject matter at issue and to the Naabik'iyati' Committee. 2 N.N.C. § 164(A)(9).

D. The Navajo Nation Council is the governing body of the Navajo Nation, empowered to promulgate policy and enact laws of the Navajo Nation. 2 N.N.C. §§ 102 (A) and 164 (A).

SECTION TWO. FINDINGS

A. The Office of the Prosecutor was created in 1979 by the Navajo Nation Council by Resolution No. ACF-9-79, and codified as 2 N.N.C. §§ 1171 – 1183 and subsequently amended and re-codified as 2 N.N.C. §§ 1971 – 1983.

B. Pursuant to 2 N.N.C. § 1973(A), the Office of the Prosecutor shall be headed by a Chief Prosecutor, who shall be a member of the Navajo Nation and have domicile upon the Navajo Reservation, or land under the jurisdiction of the Navajo Nation Courts for a term of six months immediately preceding his or her appointment as Chief Prosecutor.

C. The Chief Prosecutor's position has been vacant since 2019. Since this time, the Navajo Nation Department of Justice ("DOJ") has advertised the Chief Prosecutor position without receiving any qualified applicants.

D. Prior to 2019, there were ongoing challenges in filling the Chief Prosecutor position. Over time, the Office has had long stretches of time when it has been led by an *Acting* Chief Prosecutor.

E. This reality has prompted the DOJ to reconsider the statutory requirements for the Chief Prosecutor position as set forth in 2 N.N.C. § 1973. Statutory provisions, unlike job vacancy requirements, are difficult to change or update to keep up with the changing needs of departments.

F. Statutory requirements created the lack of flexibility and have inhibited DOJ's ability to fill the Chief Prosecutor position.

G. The lack of a permanent, full time Chief Prosecutor contributes to internal instability in the Office of the Prosecutor, and has had a negative impact on the ability of the Office to function effectively and meet its vital public safety responsibilities.

H. The domicile and tribal membership requirements precede the enactment of the Navajo Preference in Employment Act ("NEPA") at 15 N.N.C. § 601 *et. seq,* which otherwise requires that a qualified Navajo tribal member is afforded preference in hiring.

I. Removing the statutory requirements regarding domicile and tribal membership may enlarge the pool of applicants and result in a qualified applicant hired as Chief Prosecutor.

J. The Chief Legislative Counsel, Navajo Nation Attorney General, and Deputy Attorney General positions have been held by non-Navajos in the past.

K. It is critical to fill the Chief Prosecutor position with a qualified candidate who has the necessary education, experience, and skills to fulfill the duties, responsibilities, and authority of the Chief Prosecutor, as outlined in 2 N.N.C. § 1974.

L. Removal of the statutory domicile and tribal membership requirement would expand the pool of potential qualified applicants and better enable the DOJ to fill this critical position.

M. Internal DOJ memorandum dated June 28, 2021, justifying support for amending the statutory requirements and qualifications for the Chief Prosecutor's position are attached as **Exhibits A.**

SECTION THREE. AMENDING TITLE 2, CHAPTER 5, SUBCHAPTER 39

A. The Navajo Nation hereby amends the Title 2 as follows:

NAVAJO NATION CODE

TITLE 2. NAVAJO NATION GOVERNMENT

CHAPTER 5. EXECUTIVE BRANCH

SUBCHAPTER 39. DEPARTMENT OF JUSTICE

* * * *

§ 1973. Chief Prosecutor

A. The Office of the Prosecutor shall be headed by a Chief Prosecutor~~., who shall be a member of the Navajo Nation and have domicile upon the Navajo Reservation, or land under the jurisdiction of the Navajo Nation Courts for a term of six months immediately preceding his or her appointment as Chief Prosecutor.~~

B. The Chief Prosecutor shall be appointed by the Attorney General and he or she shall serve at ~~his or her~~ the pleasure of the Attorney General.

~~C. The Chief Prosecutor shall serve until his or her successor is appointed.~~

E. Any attorney/prosecutor/advocate positions within the Office of the Prosecutor, other than the Chief Prosecutor's position, shall be appointed by the Chief Prosecutor and shall serve at the pleasure of the Chief Prosecutor. All other personnel shall be hired and compensated pursuant to the Navajo Nation Personnel Policies and Procedures.

* * * *

SECTION FOUR. EFFECTIVE DATE

The amendments enacted herein shall be effective pursuant to 2 N.N.C. § 221 (B).

SECTION FIVE. 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 amendments in the next codification of the Navajo Nation Code.

SECTION SIX. SAVINGS CLAUSE

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

EXHIBIT
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NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

DOREEN N. MCPAUL
Attorney General

KIMBERLY A. DUTCHER
Deputy Attorney General

To: Honorable Members of the Law and Order Committee

From: Doreen N. McPaul
Doreen N. McPaul, Attorney General

Date: June 28, 2021

Subject: Recommending Changes to the Chief Prosecutor Statute and Requesting LOC Support

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The Department of Justice (DOJ) has advertised the Chief Prosecutor position since 2019 without any qualified applicants. Prior to 2019, there were ongoing challenges to filling the Chief Prosecutor position and, over time, the office has had long stretches of time where the office has been led by an Acting Chief Prosecutor.

This reality has prompted DOJ to evaluate the statutory requirements for the Chief Prosecutor position outlined in 2 N.N.C. § 1973. Statutory provisions, unlike Job Vacancy Announcement (JVA) requirements, are more difficult to change or update to keep up with the needs of the Department. Statutory requirements and the lack of flexibility with the Chief Prosecutor position have inhibited DOJ's ability to fill the Chief Prosecutor position, which in turn contributes to instability in the Office of the Prosecutor (OTP) and has a direct impact on the ability of OTP to function effectively and meet its vital public safety responsibilities.

To better serve the needs of OTP and to more effectively fill the Chief Prosecutor position, DOJ proposes the following changes to the Chief Prosecutor statute:

§ 1973. Chief Prosecutor

A. The Office of the Prosecutor, as established by this article, shall be headed by a Chief Prosecutor~~, who shall be a member of the Navajo Nation and have original domicile upon the Navajo Reservation, or land under the jurisdiction of the Navajo Nation Courts for a term of six months immediately preceding his or her appointment as Chief Prosecutor~~.

B. The Chief Prosecutor shall be appointed by the Attorney General and he or she shall serve at his or her pleasure.

~~C. The Chief Prosecutor shall serve until his or her successor is appointed.~~

D. Any attorney/prosecutor/advocate positions within the Office of the Prosecutor, other than the Chief Prosecutor's position, shall be appointed by the Chief Prosecutor and shall serve at the pleasure of the Chief Prosecutor. All other personnel shall be hired and compensated pursuant to the Navajo Nation Personnel Policies and Procedures.

A narrative of DOJ's recommendations and the rationale follows:

1. **Remove the domicile and tribal membership requirements in subsection (A).**

Rationale: The domicile and tribal membership requirements severely limit the available pool of applicants. These requirements precede the enactment of the Navajo Preference in Employment Act, 15 N.N.C. § 601 *et. seq*, which otherwise requires that a qualified Navajo tribal member is afforded preference in hiring.

In the absence of a qualified Navajo tribal member, however, removing the statutory requirements would allow a qualified non-Navajo to be appointed as Chief Prosecutor, if needed. This would be similar to the Chief Legislative Counsel position, for example, which allows for hiring of a non-Navajo in the event that a qualified Navajo candidate cannot be found. *See* 2 N.N.C. § 963(C) ("A non-Navajo licensed attorney may be hired only if a licensed Navajo attorney cannot be found to fill the position of Chief Legislative Counsel."). Both the Attorney General and Deputy Attorney General positions have also been held by non-Navajos in the past – there is no similar statutory requirement for these positions to be filled by a Navajo tribal member.

It is critical to fill the Chief Prosecutor position with a qualified candidate who has the necessary education, experience, and skills to fulfill the duties, responsibilities, and authority of the Chief Prosecutor as outlined in 2 N.N.C. § 1974. These requirements are set forth in the JVA for the Chief Prosecutor position. Removal of the statutory domicile and tribal membership requirement would expand the pool of potential qualified applicants and better enable DOJ to fill this critical position. DOJ would still strive to fill the position with a qualified Navajo candidate consistent

with the NPEA. But in the absence of such applicants, DOJ would have the flexibility to appoint any qualified candidate to stabilize and lead OTP.

Without a permanent Chief Prosecutor, the Office of the Prosecutor lacks overall direction and consistency, staff morale suffers, personnel challenges ensue, and coverage issues arise and burn out is inevitable as the functions are assumed by another prosecuting attorney with a full time case load. All of these issues directly affect the ability of the OTP to perform its essential public safety functions.

2. **Remove the requirement in 2 subsection (C) that the Chief Prosecutor shall serve until a successor is appointed.**

Rationale: The requirement that a Chief Prosecutor must serve until a successor is appointed is both legally and practically impossible to enforce.

3. **Add "Prosecutor" to Subsection (D).**

Rationale: Subsection (D) currently only includes "attorney" and "advocate" positions, however OTP has "prosecutor" positions. Adding "prosecutor" to the statutory language clarifies that prosecutors are similarly appointed by and serve at the pleasure of the Chief Prosecutor.

For the reasons explained herein, DOJ respectfully requests support from LOC to address the ongoing challenges in implementing the Chief Prosecutor statute.

Office of Legislative Counsel
Telephone: (928) 871-7166
Fax # (928) 871-7576

Honorable Seth Damon
Speaker
24th Navajo Nation Council

MEMORANDUM

TO : Hon. Eugene Tso, Delegate
Navajo Nation Council

FROM : Troy D. Cook, Senior Court Advocate
Office of Legislative Counsel

DATE : July 6, 2021

RE : **AN ACTION RELATING TO LAW AND ORDER AND NAABIK'ÍYATI' COMMITTEES AND NAVAJO NATION COUNCIL; AMENDING 2 N.N.C. §§ 1973 (A) AND (C), REMOVING THE DOMICILE AND TRIBAL MEMBERSHIP REQUIREMENTS FOR THE CHIEF PROSECUTOR POSITION; OFFICE OF THE PROSECUTOR**

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. As to format, the resolution as drafted is legally sufficient. Regarding substance, as with any legislation, it can be subject to review by the courts in the event of proper challenge. Please ensure that this particular resolution request is precisely what you want.

If you are satisfied with the proposed resolution, please sign it as "sponsor" and submit it to the Office of Legislative Services where it will be given a tracking number and sent to the Office of the Speaker for assignment. If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution. Ahéhee'.

21-198-1

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION

LEGISLATION NO: _0108-21__ **SPONSOR: Eugene Tso**

TITLE: An Act Relating to Law and Order and Naabik'íyáti' Committees and Navajo Nation Council; Amending 2 N.N.C. §§ 1973 (A) and (C), Removing the Domicile and Tribal Membership Requirements for the Chief Prosecutor Position; Office of the Prosecutor

***Date posted*: July 06, 2021 at 11:15PM**

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.: 0108-21

SPONSOR: Honorable Eugene Tso

TITLE: An Act Relating to Law and Order and Naabik'íyáti' Committees and Navajo Nation Council; Amending 2 N.N.C. §§ 1973 (A) and (C), Removing the Domicile and Tribal Membership Requirements for the Chief Prosecutor Position; Office of the Prosecutor

Posted: July 06, 2021 at 11:15 PM

5 DAY Comment Period Ended: July 11, 2021

Digital Comments received:

Comments Supporting	***None***
Comments Opposing	**1) Kee Begay Junior** **2) Tyson Yazzie** **3) Calvin F. Lee** **4) Tamera Begay** **5) Jennifer Henry**
Comments/Recommendations	**1) Gertrude Lee**

Legislative Tracking Secretary
Office of Legislative Services

07/12/21; 6:51 AM

Date/Time

Legislation No. 0108-21

jayaredot_9086 <jayaredot_9086@yahoo.com>

Fri 7/9, 11:14 AMcomments

Regarding Legislation No. 0108-21: This should be vetoed.

The legislation violates the Navajo Preference in Employment Act. No one should benefit from legislation that violates existing Navajo law.

The legislation completely contradicts the Nation's goal of educated, professional Diné returning to work for Navajo government.

Any and all persons working in the legal field for Navajo government should be immersed in Diné Fundamental Law and in Diné Way of Life.

Veto Legislation No. 0108-21

Kee Begay Junior

Kinlichii Chapter

July 9, 2021

Via E-Mail
Honorable Council Delegates of the 24th Navajo Nation Council
Navajo Nation Council
P.O. Box 3390
Window Rock, Arizona 86515

Re: Opposition to Legislation No. 0108-21 (Act relating to amending the statutory baseline requirements for the Navajo Nation Chief Prosecutor)

To Whom It May Concern:

Please accept my public comment regarding Legislation No. 0108-21. My comment does not represent the views of my employer. I make this comment and express my views as a Navajo Nation enrolled member and as a licensed member of the Navajo Nation Bar Association. I oppose the legislation because there presently exists a quick administrative remedy and the Navajo Nation chief prosecutor position should be filled by an enrolled member who lives on the Navajo Indian reservation.

Navajo law requires that certain important positions be held by a Navajo Nation enrolled member. Sometimes there are domicile requirements attached to those positions too. For example, Navajo law requires that the president, vice president, council delegates, district judges, justices/chief justice, chapter officials, and other elected officials all be enrolled members of the Navajo Nation. Notice that all these positions are positions of the highest authority and are policymakers (in some instances). Yes, included among these important positions is the chief prosecutor position. I am certain that you all – as elected council delegates and enrolled members – can ascertain why Navajo law picks and chooses what positions should be held by enrolled members. The position may require that officeholder be able to speak and understand *Diné bízaad*. The position may require that the officeholder be accountable to the *Diné* citizens. The position may require that the officeholder have a shared life experience that is similar to the ordinary *Diné* citizen so that he or she is better able to relate to the ordinary *Diné* citizen.

While the chief prosecutor position is in fact an important position within our Navajo Nation government, Navajo law does not require much as far as the statutory qualifications. 2 N.N.C. § 1973 simply requires two things: (1) that the person be a Navajo Nation enrolled member, and (2) that the person have original domicile on the Navajo reservation. Moreover, this same Section also makes the chief prosecutor position an at-will position. This Section empowers the attorney general to appoint a chief prosecutor. Despite the relatively simply statutory qualifications, the chief prosecutor job vacancy announcement (JVA) that is presently advertised on the Department of Personnel Management's webpage requires so much more. In addition to the statutory qualifications, the JVA states that the chief prosecutor must have: (1) a juris doctorate degree; (2) eight years of professional experience in the practice of law with criminal or trial experience; (3) two years of law office supervisory experience; (4) licensed to practice law in either Arizona, New Mexico, or Utah; (5) must be a member in good standing

with the Navajo Nation Bar Association; and (6) must have a favorable background investigation.

I will concede that, of those extra JVA requirements, some requirements are necessary. For example, the chief prosecutor (who practices entirely Navajo law and entirely on the Navajo Nation) must be a member of the Navajo Nation Bar Association. Also, the chief prosecutor should have an acceptable background (due to the sensitivity of the work). But, beyond that, I believe the Department of Justice has great leeway to mend the JVA as it sees fit to fill the chief prosecutor position. The Personnel Policies Manual permits the Department of Justice to reclassify the chief prosecutor position (i.e. amend the JVA). This is the administrative remedy I speak of.

Just like the Navajo Nation government has done so since the formal statutory creation of the Office of the Prosecutor, I also highly revere the chief prosecutor position. As a prosecutor, I worked under many previous chief prosecutors and acting chief prosecutors. I acknowledge the importance of the position. I acknowledge the great discretion and power entrusted in the position. Indeed, a number of years ago, the Navajo Nation Council recognized the chief prosecutor to be the "chief law enforcement officer" for the Navajo Nation. The chief prosecutor appoints all Navajo Nation prosecutors (who also all serve in an at-will capacity). The chief prosecutor exercises ultimate authority over who to charge with a criminal charge and with what criminal charge. Title 2 also entrusts the chief prosecutor with authority to represent (and speak for) the Navajo Nation with regard to criminal justice matters. The chief prosecutor also exercises administrative control over charging decisions at a district level. For all these reasons, it is vital that a chief prosecutor relate to the ordinary *Diné* citizen. Being an enrolled member and a resident will ensure that the chief prosecutor relates to the ordinary *Diné* citizen.

To my understanding, the Hopi Tribe does not have enrollment and residency requirements for its chief prosecutor. Years ago, the Hopi Tribe hired a non-Indian as its chief prosecutor. The Hopi chief prosecutor was instrumental in imposing non-tribal criminal laws and procedures on the Hopi People. This was done through adoption of the Tribal Law and Order Act enhanced sentencing authority. As a result, the Hopi People are subjected to foreign criminal laws today. This is especially unfortunate in light of Hopi's traditional governance and culture which continues to persevere today. It is my sincere belief that, should the Navajo Nation remove the enrollment and residency requirements for the chief prosecutor position (thereby opening the door for the attorney general to appoint a non-Indian from, say, Washington, D.C.), the Navajo Nation and *Diné* citizens will fall victim to the same conundrum that happened to the Hopi People.

If the Navajo Nation removes the enrollment and residency requirements for the chief prosecutor position, I sincerely believe that the floodgate will be opened and the district judges will be next. I strongly urge the Navajo Nation Council to choose to continue to uphold our culture, our *Diné* values, and our method of requiring that some important positions continue to be held by *Diné* citizens. Please vote "no" to this legislation. *Ahéhéé'*.

Sincerely,
Tyson Yazzie (Klagetoh Chapter Member)

THE NAVAJO NATION
Department of Personnel Management
JOB VACANCY ANNOUNCEMENT

REQUISITION NO: DOJ01019785
POSITION NO: 297943
POSITION TITLE: CHIEF PROSECUTOR
DEPARTMENT NAME / WORKSITE: DOJ/OAG - Office of the Chief Prosecutor / Window Rock, Arizona
WORK DAYS: Monday-Friday
WORK HOURS: 8 a.m. to 5 p.m.
SENSITIVE ☑
NON-SENSITIVE ☐
REGULAR FULL TIME: ☑
PART TIME: ☐ NO. OF HRS./WK.:
SEASONAL: ☐
TEMPORARY: ☐ DURATION :
DATE POSTED: 06/12/20
CLOSING DATE: OUF
GRADE/STEP: BK74A
$ 118,389.60 PER ANNUM
$ 56.70 PER HOUR

DUTIES AND RESPONSIBILITIES:

The Chief Prosecutor performs administrative, managerial, and prosecution work in directing the Office of the Chief Prosecutor and component districts including the Juvenile Justice and White Collar Crime programs. Administers short and long range planning, organizing, directing, strategic planning for annual, external, and supplemental budgets, and related activities of the Office of the Chief Prosecutor. Coordinates and evaluates the overall effectiveness of the assigned program offices and districts. Responsible for adhering to the Plan of Operation and establishing annual goals and objectives, and making necessary amendments. Administrative responsibilities include and are not limited to: Preparing and presenting the annual budget during all stages of the annual budget process; conducting staff and program evaluations, ensuring the appropriate services are effectively and efficiently addressed; addressing personnel recruitment, interviews, hiring, and promotions; supervising all professional at-will employees and regular status employees; Reviewing and monitoring applicable procedures/policies necessary to ensure and promote ethical and professional standards; promoting and maintaining public relations, representing the interests of the Navajo Nation and the Office of the Prosecutor(s) on local, state, national, tribal and related levels, attending meetings, serving on committees, task forces, and other related groups; overseeing the management and expenditures of the General and, if applicable, External funds ensuring compliance with financial requirements. Reviews and approves expenditures/financial documents, and secures grant funds as needed; completes personnel timesheets; addresses personnel matters, evaluations, disciplinary actions, etc.

Represents the interest of the Navajo Nation in prosecuting individuals charged with violating Titles 17 and 14 of the Navajo Nation Code, establishing a strong advocacy role on the Nation's behalf to obtain the best possible disposition within the bounds of law and professional conduct. Responsible for reviewing and assisting with all cases that are appealed from State and District Courts. Reviews and assigns cases to Attorneys, Prosecutors, Presenting Officers, and Investigators. Plans, coordinates and evaluates the overall effectiveness of the assigned district and cases; Provides technical legal guidance to central and district office staff, law enforcement agencies; Reviews, monitors and assigns cases; Determines importance of cases; develops case plans, case strategies, evidence gathering, etc.; Prepares and interprets administrative orders, motions, rules, regulation to effect the provisions of governing statutes and other requirements of the law; Performs extensive legal research; prepares memorandums, briefs, motions, orders and other required legal documents, including appellate cases. Interviews witnesses, making judgment as to their credibility. Subpoenas all appropriate witnesses, including police officers for a case scheduled for trial; responds to motions, orders, petitions, and other legal documents. Reviews incoming criminal and civil complaints received directly and indirectly from the general public and law enforcement and other agencies identifying facts and information to justify filing

This position serves at the pleasure of the Attorney General.

QUALIFICATION REQUIREMENTS: (Education, Experience and Training)

Minimum Qualifications:

- A Juris Doctorate; and eight (8) years of professional experience in the practice of law, criminal or trial experience; two (2) years of which must have been in managing and supervising a law office.

Special Requirements:

- Must be a member of the Navajo Nation and have original domicile upon the Navajo Reservation, or land under the jurisdiction of the Navajo Nation Courts for a term of six (6) months immediately preceding his or her appointment as Chief Prosecutor. (2 N.N.C. §1973.A.).
- Licensed to practice in the State of Arizona, New Mexico or Utah.
- Must be a member in good standing with the Navajo Nation Bar Association.
- A favorable background investigation.

(To receive full credit for education, certification, or licensure, transcripts, copies of degrees, certificates, and other appropriate documents must be submitted along with employment application.)

Special Knowledge, Skills and Abilities:

Knowledgeable in Navajo Nation laws, and applicable state and federal statues, rules and regulations.
Knowledgeable in Federal Indian Law, prosecution, juvenile justice and white collar crime.
Knowledge of principles of management, administration, supervision, budgeting, etc.
Knowledge of principles, practices and methods of legal research.
Knowledge of principles of evidentiary gathering of information, documents and financial records.
Knowledge of principles of criminal law and appeal procedures related to violations of Navajo Nation laws and applicable state and federal statutes, rules
Knowledge of court processes, administrative law and legal terminology.
Skilled in performing legal research, interpreting and applying complex laws; Skilled in establishing and maintaining an effective and cooperative working relationship with numerous officials of the Navajo Nation, attorneys, litigants, witnesses, and other law enforcement partners.

THE NAVAJO NATION GIVES PREFERENCE TO ELIGIBLE AND QUALIFIED APPLICANTS IN ACCORDANCE WITH THE NAVAJO PREFERENCE IN EMPLOYMENT ACT AND VETERANS' PREFERENCE.

0108-21

Calvin F. Lee <cfleeco421@gmail.com>
Today, 6:37 AMcomments

My name is Calvin F. Lee, I am a chapter president and a former member of the Navajo Nation Bar Association.

My concern and objection to the Legislation 0108-21 is in Removing the membership requirement for the Position of the Chief Prosecutor.

Removing the domicile requirement should be enough to increase candidate poll.

The Chief Prosecutor should be a member of the Navajo Nation and a member of the Navajo Nation Bar Association.

The Chief Prosecutor should be a permanent position and well paid and not subject to political whems.

Yá'át'ééh, Tamera Begay, yinishyé. Áshįįhí nishli, Naałání baschichiin, Kinyaa'áanii da shi cheii, Bilagáana da shi nalí. I am a former Attorney Prosecutor for the Navajo Nation and Legislative and Policy Associate with the Navajo Nation Washington Office (NNWO). I was the supervising attorney at the Crownpoint District overseeing two legal advocates and two legal secretaries. Additionally, I was a Legislative and Policy Associate at NNWO, I primarily worked on public safety, housing, and the Indian Child Welfare Act.

I respectfully submit my comments for and in opposition to Legislation No. 0108-21, which removes the requirement that the Chief Prosecutor be an enrolled member of the Navajo Nation and be domiciled within the Navajo Nation within six months.

First, I think it is an excellent idea to remove the domicile provision as a requirement. Housing is a major problem for the Navajo Nation, especially those with professional degrees that don't qualify for low income housing. I myself, fell victim to this. I could not find suitable housing to remain a prosecutor for the Crownpoint District, so I moved elsewhere. Requiring the Chief Prosecutor to be domiciled on the Navajo Nation six months prior or after they are appointed to the position is an unnecessary challenge. The position primarily works out of Window Rock, AZ, which is an easy commute from Gallup, N.M. Many attorneys for the Navajo Nation live in Gallup, N.M. This is the unfortunate reality of working professionals on the Navajo Nation, and an entirely different issue that needs to addressed.

Secondly, I oppose removing the requirement that the Chief Prosecutor be an enrolled member of the Navajo Nation. The Chief Prosecutor sets the tone of all the offices he/she oversees, managing and supervising offices primarily filled with other Navajos. Allowing a non-Navajo to make decisions concerning Navajo employees is a recipe for an HR disaster. Additionally, a Navajo who understands the concept of Ké along with the many complex layers of criminal justice on the Navajo Nation will be better equipped to make policy decisions concerning criminal justice.

Third, the requirement that the Chief Prosecutor have 8 years of experience is ridiculous. As a Navajo lawyer, I have met many other qualified Navajo attorneys who would be qualified for that job after 3 years of experience. From a young age I was taught to go get an education and return home to help the community. I did that, and I returned home with a mountain of student debt and I had to live with my parents because there was no available housing. Removing the requirement is sending the message that even I as a Navajo, with considerable experience, are not qualified to be the Chief Prosecutor. What kind of message does that send to the rest of the other qualified Navajo attorneys?

Lastly, the Chief Prosecutor position was filled with an experienced and qualified attorney that the Nez-Lizer administration terminated. This administration has not made public safety a priority, which has clearly resonated based on the lack of applicants. Public safety should always be a priority for the Navajo Nation. My experience as a Prosecutor has shown me that our people are hurting each other at alarming rates. Yet, I don't see any dedication to public safety from an administration that is responsible to put that budgeted money to work from the Honorable Council.

Sincerely, Tamera Begay, tamera.begay@gmail.com

Yá'át'ééh. Jennifer Henry yinishyé. Biliag1ana nish[8. Biliag1ana b1shishch77n. Biliag1ana dashicheii, áád00 Biliag1ana dashin1l7. I have worked for and with our Navajo communities, people, and the Navajo Nation government for more than 20 years. In January 2021 I stepped away from my public servant role as Acting Chief Prosecutor. But my life is here, my home is here, my family is here. For better or worse, what the Navajo government does and how it functions matters to me and those I care about.

I respectfully submit this comment in opposition to Legislation No. 0108-21 as written. I urge you to consider its practical ramifications. There are better, more productive, and more protective alternatives to consider.

First, let me say that I wholeheartedly agree with removing the domicile provision. It really doesn't make sense, and most everyone conflates residency with domicile. Our courts (and common sense) tell us that "domicile" is where your umbilical cord is buried, or, more broadly, if you're Navajo and "from" the Navajo Nation, no matter where you live now. But when confused with residency, it requires an applicant to have lived in the Nation for six months. Many Navajos either live outside of the Navajo Nation due to the unavailability of housing, or have moved away and would like to come home to serve the Nation.

But I vehemently oppose the legislation inasmuch as it seeks to make non-Navajos eligible to be Chief Prosecutor. On its face, this legislation reads like it's only about race/ethnicity/identity. Or, perhaps, you believe that it's simply about enlarging the pool of applicants so that the position can be filled. I recommend that you, instead, consider that it's about the full qualifications of your Chief Prosecutor, and to what extent those qualifications should be statutorily mandated.

If you believe that the reason the Chief Prosecutor position remains unfilled is because no domiciled Navajos are qualified or interested in the position, that does not mean the only solution is to remove those two requirements. There are numerous other requirements that could be amended and, perhaps, added to the statute if the Council feels that it is important to do so.

I apologize in advance if any parts of this comment are offensive in tone or words. I've chosen my words carefully but bluntly. These are my comments as a non-Navajo attorney who was invited to the Nation for work and chose to stay and make my life here. These are my comments after 20 years of interaction with the Navajo Nation government and understanding the various ways that it consistently works or fails to work for its people. These are my comments after actually serving as Acting Chief Prosecutor -- the hardest, most important, and most fulfilling role I've ever served in for the Navajo Nation.

For most positions within the Navajo Nation, the qualifications are driven solely by the classification plan and specific minimum, preferred, and other requirements for the position. The classification plan is outdated and doesn't always meet the actual needs of the Navajo Nation government as an employer and provider of public services. The DPM is authorized to change

those qualifications upon proper request from a division or program, but doing so is akin to hitting one's head against a wall repeatedly for months or years.

For some positions within the classification plan, some of the position requirements are statutorily codified, meaning that those specific qualifications can only be changed by the Council. This is what you have with the Chief Prosecutor position and with Legislation No. 0108-21.

Title 2 only requires that the Chief Prosecutor be a 6-month domiciliary of the Navajo Nation and an enrolled member of the Navajo Nation. The DPM-driven minimum requirements include additional minimum requirements: that the Chief Prosecutor have a JD, 8 years of professional practice in certain areas, 2 years' experience in managing/supervising a law office, be licensed to practice law in AZ, NM, or UT, and to be a member in good standing with the NNBA.

Taken together, all these requirements are what the Navajo Nation, through the Council and the DPM, has pronounced it requires in a Chief Prosecutor. It is time to reevaluate. It's true that the Chief Prosecutor position is notoriously difficult to fill and retain. I am not at all convinced, however, that the response should be simply to remove the requirement that our Chief Prosecutor be Navajo.

What should the requirements for your Chief Prosecutor be?
The Chief Prosecutor position conveys more authority and policy-making influence than most people -- especially our Nation's "leadership" -- comprehends. Before you consider position requirements, it's important to understand what the Chief Prosecutor actually does.

1. Management/Supervision/Policy Direction of the OTP: The Chief Prosecutor drives prosecutorial policy throughout the districts. The Chief Prosecutor directly supervises the support and legal staff within the OTP. The Chief Prosecutor must have a very healthy dose of program management and supervisory experience or be willing to learn it fire hose style. The Chief Prosecutor is responsible for the productivity, discipline, safety, and well-being of predominantly Navajo support and legal teams throughout all OTP district offices. The Chief Prosecutor is responsible for "hiring & firing" and the internal structuring of the OTP from a human resources perspective.

2. Navajo Systemic Development: The Chief Prosecutor has a great deal of internal influence within the Nation. The Chief Prosecutor is called upon by "leadership" to, among many other things, provide training, and to develop and draft legislation. As a Chief Prosecutor gains trust, she will be called upon for advice and guidance by all three branches of the Navajo Nation government on a wide array of issues of vital importance to the Navajo people.

3. Navajo Nation Mouthpiece: The Chief Prosecutor is frequently the primary liaison between the Navajo Nation and its tribal, municipal, state, and federal law enforcement and prosecuting partners. She coordinates regularly, on behalf of the Navajo Nation, with

prosecutors and law enforcement officers in other tribal nations and Pueblos, FBI agents, U.S. Attorneys, and district attorneys.

In short, the Chief Prosecutor has a lot of clout internally and externally.

What are the dangers of a non-Navajo Chief Prosecutor?
Unconscious and unintentional bias is real and destructive. It manifests regardless of race; it's the product of the individual's own experiences and the lenses through which she sees and understands the world. Non-Navajos inherently bring their non-Navajo life experience to the Nation. For a non-Navajo supervisor, it's not always easy to understand the need to accommodate leave for ceremonies, or to refrain from certain behavior that would be acceptable elsewhere, or to adapt non-Navajo management styles to serve Navajo relationships with and between employees.

With perseverance, a non-Navajo can certainly learn the Nation's HR policies and, on some surface level, understand Navajo culture enough to be a good supervisor/manager. But can that truly be said for the substantive aspect of the Chief Prosecutor's position? Maybe. I'd argue that it takes *years* for a very astute and open-minded non-Navajo to even begin to understand how to truly serve Navajo people and their government.

Internalized racial oppression is also real and destructive. That means that, all too often, Navajos give more weight to a non-Navajo's legal advice or training than they would a Navajo's legal advice or training. Silly? Yes! And I would hope that the Navajo Nation chooses to interrupt that pattern rather than imbed it further. The Chief Prosecutor needs an OTP team who's willing to challenge her, to argue and debate with her, to walk next to her in leadership. In my experience, that is less likely to happen when "the boss" is non-Navajo. Community members need to feel open and comfortable seeking out the assistance of the Chief Prosecutor. In my experience, that is less likely to happen when she is non-Navajo. The entire Navajo Nation needs a Chief Prosecutor who can disagree with "leadership" without being dismissed with comments like: "you wouldn't understand because you're not Navajo." None of that is productive. None of that solves the internal instability that is purportedly one of the reasons for the legislation.

Last -- let's just be honest -- open and blatant racism is real and destructive. Why even expose the Nation to a non-Navajo Chief Prosecutor who perceives our Navajo families and community members as "less than"? And, since this is a two-way street intended to create stability within the OTP, why expose even the most well-meaning non-Navajo Chief Prosecutor to the abuse and mistrust that our Navajo families, community members, and the government "leaders" themselves frequently impose upon non-Navajo employees?

In my opinion, removing the requirement that the Chief Prosecutor be Navajo affirms the internal and external perception that there are no excellent Navajo legal professionals, and/or that the Navajo Nation "needs" non-Navajo influence in its criminal justice system. Likewise, it reaffirms the perception that the Navajo Nation government lacks confidence in itself.

After serving the Navajo Nation for so long, not much scares me. My shoulders are broad and my skin is thick. But the idea that you would even crack the door for a nonresident non-Navajo to serve as permanent Chief Prosecutor really is frightening. Especially that you would be doing so to fill a difficult-to-fill position without first giving serious thought to opening that door for more Navajos to fill the position.

NPEA "protection" and enlarging the pool of applicants:
Yes, opening the position to non-Navajos will most certainly "enlarge the pool of applicants." But the Navajo Preference in Employment Act (NPEA) will only protect the Navajo Nation against a non-Navajo Chief Prosecutor *if* both a qualified Navajo and a qualified non-Navajo apply at the same time. In that case, the qualified Navajo applicant will be hired over the non-Navajo. The NPEA does not provide anything if what you simply believe is that the Chief Prosecutor should be Navajo.

Instead of enlarging the pool of applicants to include non-Navajos, why not enlarge the pool of Navajo applicants by reviewing some of the other qualifications for the position?

To statute or not to statute?
None of the Chief Prosecutor qualifications need be codified in statute. They can be left to DPM's HR policies completely. As the legislation states, "Statutory provisions, unlike job vacancy requirements, are difficult to change or update to keep up with the changing needs of departments." The legislation is asking you to remove all requirements from the statute and trust that DPM and DOJ/OTP will work together to implement reasonable and appropriate qualifications.

Maybe. As long as you're willing to give up the right to insist that your Chief Prosecutor be Navajo. And as long as you believe that the NPEA will protect against inappropriate hiring of a non-Navajo. As long as you believe that this is the only way to fill the position, and that the interview team will be able to reveal the unconscious and unintentional bias within any candidate before hiring. As long as you believe that every Attorney General will have the fortitude to remove a bad non-Navajo Chief Prosecutor before real damage is done. And as long as you feel good about enlarging the applicant pool before making or directing DPM to make other adjustments to enlarge the applicant pool for Navajos.

Recommendations:
Protect the Nation's criminal justice system and our people by retaining the requirement that our Chief Prosecutor be Navajo. Change some of the other requirements.

— Is it really necessary that the Chief Prosecutor possess a JD and that she have 8 years of law/trial practice experience? Sure, it would be ideal (in case you haven't caught on, the Chief Prosecutor is a *difficult* position, and that experience helps!). But some of our seasoned Navajo NNBA members don't have a JD and have been practicing law for years within the Nation. Some of our Navajo NNBA members do have a JD, but have -- for

whatever reason -- not become licensed in a state bar association. Why not open the door for these Navajo legal professionals to be Chief Prosecutor before simply opening the position up to nonresident non-Navajo state-licensed attorneys?

— Is it necessary that the Chief Prosecutor have at least 2 years' experience "managing and supervising a law office"? Again, it would be ideal. But it's not realistic or even necessary. There are few law offices in the Nation, and therefore few opportunities for a Navajo legal professional to have ever managed a law office while practicing law in the Navajo Nation. There are ways to measure management and supervisory and human resource skills without requiring it to have been in a law office.

— There are lots of permutations and changes that could be made to the qualifications. Be creative and think critically about the best qualifications for our Chief Prosecutor. Remember, the goal is to broaden the applicant pool for those you believe are truly qualified to serve in this capacity within the Navajo Nation.

These recommended changes are absolutely <u>not</u> a "lowering of the bar!" They directly reflect that our legal system's backbone is comprised of Navajo legal advocates licensed within the Navajo Nation Bar Association. Those advocates -- every bit ATTORNEYS in my mind -- fully practice all types of law within the Navajo Nation, but they are denied the opportunity to be Chief Prosecutor. Likewise, there may be Navajo attorneys who want to come home to serve as Chief Prosecutor, but have been denied the opportunity due to what they see as a residency requirement.

In conclusion, the legislation as written is just too "easy." It's all about simply filling a position with an experienced warm body and calling it a day. In my opinion, the legislation misses the mark on protecting the integrity of the Navajo Nation's legal system, and it further embeds the notion that Navajos aren't good enough to serve in the top positions within their own government. I urge you to reevaluate the underlying qualifications for our Chief Prosecutor position and determine whether there are changes to be made that will entice Navajo legal professionals, with or without state licensure, to come home and serve.

If you make the best changes you can to the Chief Prosecutor requirements, and you still can't fill the position permanently -- take heart! If you've worked hard to change the law once, you can change it again -- try new things, add resident non-Navajos to the pool, open the pool up to everyone -- that's your job. Jumping from one end of the spectrum to the other is easy and convenient, but leadership means trying to do the *right* thing, even if it's difficult and very inconvenient.

Jennifer Henry
Former Acting Chief Prosecutor
Current Recovering Attorney
P.O. Box Vanderwagen, NM 87326
jhenry@nizhoni.com

COMMENT ON LEGISLATION 0108-21:

Yá'át'ééh shi nataani. Shí éí Gertrude Lee yinishyé. Tó'áhání nishłį, Tótsohnii bashishchiin, Táchii'nii dashicheii, Kinyaa'áanii dashinalií. I am from the Four Corner's area of New Mexico. I am an attorney who is licensed in New Mexico and have been licensed to practice law in the Navajo Nation since 2013. My legal career of eleven (11) years has been dedicated to public service as a prosecutor. I had the great honor of serving as Chief Prosecutor of the Navajo Nation from October 31, 2016 to April 22, 2019, when I was informed my appointment as Chief Prosecutor had come to an end. I am writing this public comment to raise concerns regarding legislation 0108-21's removal of the requirement that the Chief Prosecutor be a member of the Navajo Nation.

I do not oppose 0108-21 in its entirety. The provision that requires the Chief Prosecutor to have a domicile upon the Navajo Reservation for a term of six months should be removed, especially in light of the Navajo Nation Supreme Court's analysis in *In Re Vern Lee*, 9 Nav. R. 61 (Aug. 11, 2006). In that case, the Supreme Court struck down the residency provision in Title 2 and Title 11 of the Navajo Nation Code for candidates running for president. On a more practical side and speaking from experience, recruiting for legal positions is extremely difficult because of lack of housing. Young Navajos are encouraged to leave the reservation, attain professional degrees, and acquire the experience needed to successfully apply for a position. For many people, most of these things can only be done off-reservation. This makes the domicile requirement a hurdle to applicants.

I also do not oppose striking the provision that the Chief Prosecutor serve until his or her successor is appointed. The Chief Prosecutor position is an at-will position. It is a contradiction to state that the Chief Prosecutor serves at the pleasure of the Attorney General yet is required to serve until a successor is appointed. If the Chief Prosecutor is hired under one Attorney General, and after the election cycle the Council appoints a new Attorney General, and the newly appointed Attorney General makes the decision to end the Chief Prosecutor's appointment without a successor ready to step in, there is little to be done. One could say it is to be expected during a transition from one administration to the next. While the decision to end the Chief Prosecutor's appointment without a successor in line may have serious consequences not just for the Office of the Prosecutor but the entire Navajo public safety system, it is the right and privilege of the Attorney General to do so.

My question to the honorable delegates of the Navajo Nation Council is whether the position of the Chief Prosecutor should be an at-will position and whether other protections should be in place to protect the position from becoming vacant. An example of an important legal position within the criminal justice system that is not at-will is the position of the Director of the Office of the Navajo Public Defender. Under 2 N.N.C. § 1994:

> C. The Public Defender Commission shall appoint and discharge, for good cause only, the Director of the Office of the Navajo Public Defender. The Director shall be appointed to serve a term of three years and shall serve until his or her

successor is appointed and qualified. The Director may be reappointed for one or more subsequent three-year terms. Vacancies in the office shall be filled by the Public Defender Commission for the remainder of the unexpired term.

As the delegates are aware, the Director of the Office of the Public Defender is not included in the Attorney General's budget during budget season. During budget season the Director advocates for her office and budget. She also appears, as requested, before the oversight committee to address concerns and provide input as needed. I think it is time to review whether the Chief Prosecutor position and Office of the Prosecutor should be separated from the Office of the Attorney General, much like the Office of the Navajo Public Defender.

I do oppose removing the requirement that the Chief Prosecutor be a member of the Navajo Nation and ask the Council not to remove it. First, removing the residence and domicile requirement currently present in the Job Vacancy Announcement (JVA) will have an impact on the number of qualified applicants. Second, the unique responsibilities and powers required of a Chief Prosecutor supports keeping the membership requirement in place.

The Chief Prosecutor is not just an administrative figurehead, the Chief Prosecutor has to have the ability to manage ten legal offices with dozens of staff members across the entire Navajo Nation. The day in and day out process of decision making beyond administrative duties involves working with law enforcement (federal, state, and tribal) to ensure the safety of the community by prosecuting every manner of crime from petty theft to major assaults and murder. They also wear the hat of the juvenile presenting officer (JPO) which means they have to make decisions affecting the health and welfare of the Navajo Nation's children. Many people do not realize that the Office of the Prosecutor represents the Navajo Nation in dependency cases (i.e. child abuse and neglect cases) filed in the Navajo Courts. When you are talking about taking away the liberty of a Navajo person by putting them in jail or when you are talking about removing a Navajo child from their parents, who should lead the legal office tasked with those decisions? The Chief Prosecutor leads the Prosecutors and JPOs and sets the tone for the staff. On the Navajo Nation, when a Navajo person is brought before a Navajo judge to answer allegations they violated Navajo law, and may end up in a Navajo jail, the leader of the office prosecuting those charges should be a member of the Navajo Nation. Also, I have no doubt there Navajo people out there who have the experience, qualifications, and integrity to fulfill the role and responsibility of the Chief Prosecutor.

As to recruitment, there is much that can be done separate and apart from amending Title 2 to create a larger pool of applicants for the Chief Prosecutor. First, after taking a look at the current JVA, I am concerned with the delay in advertising. The JVA currently posted and available on the Navajo Nation Department of Personnel Management website was posted on June 12, 2020. See Exhibit 1.Which begs the question, what caused the delay of over a year in advertising the position? The COVID-19 pandemic could only reasonably account for 3 of those months. Such a delay appears to be a major contributing factor to the most recent stretch of time the position has remained vacant. I won't speculate on what caused the delay but addressing that issue is part and parcel of the overall discussion of how best to address changes to Title 2 to ensure the Chief Prosecutor position remains filled.

Second, there are changes that can be made to the qualifications listed in the JVA. The JVA requires a minimum 8 years of professional experience, 2 of which must be management, and a juris doctorate degree. Other special requirements include the person must be Navajo, the domicile requirement, the person must be licensed to practice law in Arizona, New Mexico, or Utah, they must be a member in good standing with the Navajo Nation Bar Association, and they have to have a favorable background investigation. Most of the requirements currently on the JVA can be revisited. A major change that could instantly increase the applicant pool is to open up the Chief Prosecutor position to tribal advocates. Tribal advocates do the same work as attorneys, they hold the same Navajo Nation license to practice law, and they are held to the same standards as attorneys. Additionally, the work of the Office of the Prosecutor rarely, if ever, requires appearing in state or federal court, which greatly decreases the need for a NM/AZ/UT license to practice law.

In conclusion, I strongly encourage the honorable delegates to leave the requirement that the Chief Prosecutor be a member of the Navajo Nation in place.

Ahéhee', thank you for considering my thoughts and concerns.

Respectfully,

Gertrude Lee, Esq.
Former Chief Prosecutor of the Navajo Nation
Active Member, Navajo Nation Bar Association, Inc.
Licensed to practice law in New Mexico

Exhibit 1

THE NAVAJO NATION
Department of Personnel Management
JOB VACANCY ANNOUNCEMENT

REQUISITION NO:	DOJ01019785	DATE POSTED:	06/12/20
POSITION NO:	297943	CLOSING DATE:	OUF
POSITION TITLE:	CHIEF PROSECUTOR		
DEPARTMENT NAME / WORKSITE:	DOJ/OAG - Office of the Chief Prosecutor / Window Rock, Arizona		
WORK DAYS:	Monday-Friday	REGULAR FULL TIME: ☑	GRADE/STEP: BK74A
WORK HOURS:	8 a.m. to 5 p.m.	PART TIME: ☐ NO. OF HRS./WK.:	$ 118,389.60 PER ANNUM
SENSITIVE	☑	SEASONAL: ☐	$ 56.70 PER HOUR
NON-SENSITIVE	☐	TEMPORARY: ☐ DURATION :	

DUTIES AND RESPONSIBILITIES:

The Chief Prosecutor performs administrative, managerial, and prosecution work in directing the Office of the Chief Prosecutor and component districts including the Juvenile Justice and White Collar Crime programs. Administers short and long range planning, organizing, directing, strategic planning for annual, external, and supplemental budgets, and related activities of the Office of the Chief Prosecutor. Coordinates and evaluates the overall effectiveness of the assigned program offices and districts. Responsible for adhering to the Plan of Operation and establishing annual goals and objectives, and making necessary amendments. Administrative responsibilities include and are not limited to: Preparing and presenting the annual budget during all stages of the annual budget process; conducting staff and program evaluations, ensuring the appropriate services are effectively and efficiently addressed; addressing personnel recruitment, interviews, hiring, and promotions; supervising all professional at-will employees and regular status employees; Reviewing and monitoring applicable procedures/policies necessary to ensure and promote ethical and professional standards; promoting and maintaining public relations, representing the interests of the Navajo Nation and the Office of the Prosecutor(s) on local, state, national, tribal and related levels, attending meetings, serving on committees, task forces, and other related groups; overseeing the management and expenditures of the General and, if applicable, External funds ensuring compliance with financial requirements. Reviews and approves expenditures/financial documents, and secures grant funds as needed; completes personnel timesheets; addresses personnel matters, evaluations, disciplinary actions, etc.

Represents the interest of the Navajo Nation in prosecuting individuals charged with violating Titles 17 and 14 of the Navajo Nation Code, establishing a strong advocacy role on the Nation's behalf to obtain the best possible disposition within the bounds of law and professional conduct. Responsible for reviewing and assisting with all cases that are appealed from State and District Courts. Reviews and assigns cases to Attorneys, Prosecutors, Presenting Officers, and Investigators. Plans, coordinates and evaluates the overall effectiveness of the assigned district and cases; Provides technical legal guidance to central and district office staff, law enforcement agencies; Reviews, monitors and assigns cases; Determines importance of cases; develops case plans, case strategies, evidence gathering, etc.; Prepares and interprets administrative orders, motions, rules, regulation to effect the provisions of governing statutes and other requirements of the law; Performs extensive legal research; prepares memorandums, briefs, motions, orders and other required legal documents, including appellate cases. Interviews witnesses, making judgment as to their credibility. Subpoenas all appropriate witnesses, including police officers for a case scheduled for trial; responds to motions, orders, petitions, and other legal documents. Reviews incoming criminal and civil complaints received directly and indirectly from the general public and law enforcement and other agencies identifying facts and information to justify filing

This position serves at the pleasure of the Attorney General.

QUALIFICATION REQUIREMENTS: (Education, Experience and Training)

Minimum Qualifications:

- A Juris Doctorate; and eight (8) years of professional experience in the practice of law, criminal or trial experience; two (2) years of which must have been in managing and supervising a law office.

Special Requirements:

- Must be a member of the Navajo Nation and have original domicile upon the Navajo Reservation, or land under the jurisdiction of the Navajo Nation Courts for a term of six (6) months immediately preceding his or her appointment as Chief Prosecutor. (2 N.N.C. §1873.A.).
- Licensed to practice in the State of Arizona, New Mexico or Utah.
- Must be a member in good standing with the Navajo Nation Bar Association.
- A favorable background investigation.

(To receive full credit for education, certification, or licensure, transcripts, copies of degrees, certificates, and other appropriate documents must be submitted along with employment application.)

Special Knowledge, Skills and Abilities:

Knowledgeable in Navajo Nation laws, and applicable state and federal statues, rules and regulations.
Knowledgeable in Federal Indian Law, prosecution, juvenile justice and white collar crime.
Knowledge of principles of management, administration, supervision, budgeting, etc.
Knowledge of principles, practices and methods of legal research.
Knowledge of principles of evidentiary gathering of information, documents and financial records.
Knowledge of principles of criminal law and appeal procedures related to violations of Navajo Nation laws and applicable state and federal statutes, rules
Knowledge of court processes, administrative law and legal terminology.
Skilled in performing legal research, interpreting and applying complex laws; Skilled in establishing and maintaining an effective and cooperative working relationship with numerous officials of the Navajo Nation, attorneys, litigants, witnesses, and other law enforcement partners.

THE NAVAJO NATION GIVES PREFERENCE TO ELIGIBLE AND QUALIFIED APPLICANTS IN ACCORDANCE WITH THE NAVAJO PREFERENCE IN EMPLOYMENT ACT AND VETERANS' PREFERENCE.

Revised: 03.05.18

LAW AND ORDER COMMITTEE
24TH NAVAJO NATION COUNCIL

THIRD YEAR 2021

COMMITTEE REPORT

Mr. Speaker,

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

Legislation No. 0108-21: An Act Relating to Law and Order and Naabik'iyati' and Navajo Nation Council; Amending 2 N.N.C. §§1973 (A) and (C), Removing the Domicile and Tribal Membership Requirements for the Chief Prosecutor Position – Sponsor: Honorable Eugene Tso/Honorable Otto Tso

Has had it under consideration and reports the same with the recommendation that it DO PASS with no amendments

And thereafter referred to Naabik'iyati' Committee

Respectfully submitted,

Eugenia Charles-Newton, Chairwoman
Law and Order Committee
24th Navajo Nation Council

Date: July 12, 2021

Main Motion:
Motion : Honorable Vince James
Second : Honorable Otto Tso
Vote : 3-0-2

LAW AND ORDER COMMITTEE
Regular Meeting
July 12, 2021

Legislation No. 0108-21: An Act Relating to Law and Order and Naabik'iyati' and Navajo Nation Council; Amending 2 N.N.C. §§1973 (A) and (C), Removing the Domicile and Tribal Membership Requirements for the Chief Prosecutor Position – Sponsor: Honorable Eugene Tso/Honorable Otto Tso

VOTE TALLY SHEET:

Main Motion:
Motion: Honorable Vince James
Second: Honorable Otto Tso

Yea: Hon. Vince James, Hon. Eugene Tso, Hon. Otto Tso
Nay: None
Not Voting: Hon. Eugenia Charles-Newton
Excused: None
Absent: Hon. Edmund Yazzie
Vote: 3-0-2

Eugenia Charles-Newton Chairwoman
24th Navajo Nation Council

Laureen Spencer, Legislative Advisor
Office of Legislative Services

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0108-21

SPONSOR: Honorable Eugene Tso

TITLE: An Act Relating to Law and Order and Naabik'íyáti' Committees and Navajo Nation Council; Amending 2 N.N.C. §§ 1973 (A) and (C), Removing the Domicile and Tribal Membership Requirements for the Chief Prosecutor Position; Office of the Prosecutor

Posted: July 06, 2021 at 11:15 PM

5 DAY Comment Period Ended: July 11, 2021

Digital Comments received:

Comments Supporting	***None***
Comments Opposing	**1) Susie Wauneka**
Comments/Recommendations	***None***

Johnson
Legislative Tracking Secretary
Office of Legislative Services

07/12/21 3:00pm
Date/Time

July 7, 2021



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

RE: Legislation 0108-21

To Whom it May Concern:

I was very disheartened to see the recent legislation, 0108-21, AN ACTION RELATING TO LAW AND ORDER AND NAABIK'IYATI' COMMITTEES AND NAVAJO NATION COUNCIL; AMENDING 2 N.N.C. §§ 1973 (A) AND (C), REMOVING THE DOMICILE AND TRIBAL MEMBERSHIP REQUIREMENTS FOR THE CHIEF PROSECUTOR POSITION; OFFICE OF THE PROSECUTOR. I say disheartened because it's sad to see that the Navajo officials don't have enough confidence in their own Navajo people and want to take the Navajo government back to a time when there were no Navajos in high ranking positions.

Navajo is very different, in a good way, from other tribes in the United States because it creates laws to encourage and enforce the commitment to make sure Navajos are in control of their own government. However, this recommended change to Title 2 does the opposite. This legislation is saying that Navajos aren't good enough to be in high ranking positions within the government. Therefore, the Chief Prosecutor position needs to be changed to allow non-Navajos to apply. That really says a lot to me about the Attorney General and her attitude toward the people she is supposed to work for. It also says a lot to me about her boss, the President, who would support such a change.

I can understand changing the domicile requirement but why the tribal membership? There are qualified Navajos out there and I believe this position was held by two Navajo "women" before so it makes no sense to say there are no qualified Navajos now, especially when there are more and more Navajos entering the legal profession. The Attorney General should consider the legislative history of this section of Title 2, maybe she'll see the very important reason why the Council long ago wanted to have a Navajo in such a position. Just saying that it's been difficult to fill the position doesn't seem like a sufficient reason to change the make-up of the Navajo government.

What about considering a change to having a non-attorney, instead of an attorney in this position? That definitely would open up the pool too because there are many qualified Navajo Tribal Court Advocates that I'm sure would be willing to take on this position. Navajo has non-attorney judges and even the majority of the prosecutors with the Office of the Prosecutor are non-attorneys, so why not having a Navajo Tribal Court Advocate be in this position. It would be worth exploring rather than going to the extreme of opening up this position to non-Navajos.

Finally, shame on the Council Delegates who are sponsoring this legislation, which erodes at the uniqueness of Navajo. The elected officials and political appointees should be encouraging Navajos to want to be in such positions but with this change they are saying never mind, we'll just find a non-Navajo instead. Very sad to see this happening with the "Great" Navajo Nation.

Thank you for your time and consideration of my comments.

Sincerely,
Susie Wauneka, Navajo Citizen
dj_Mando@yahoo.com

24th NAVAJO NATION COUNCIL
NAABIK'ÍYÁTI' COMMITTEE REPORT
Third Year 2021

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

NAVAJO LEGISLATIVE BILL #0108-21

An Act Relating to Law and Order and Naabik'íyáti' Committees and Navajo Nation Council; Amending 2 N.N.C. §§ 1973 (A) and (C), Removing the Domicile and Tribal Membership Requirements for the Chief Prosecutor Position; Office of the Prosecutor

Sponsored by: Honorable Eugene Tso
Co-Sponsored by: Honorable Otto Tso

Has had it under consideration and reports the same that the legislation **WAS TABLED AND STAYS WITH THE NAABIK'ÍYÁTI' COMMITTEE**.

Respectfully Submitted,

Honorable Seth Damon, Chairman
NAABIK'ÍYÁTI' COMMITTEE

15 July 2021

TABLING MOTION
Motion to Table Legislation 0108-21 for no more than 30 days to have a Naabik'íyáti' Committee Work Session with the Navajo Nation Department of Justice then bring legislation 0108-21 back to the Naabik'íyáti' Committee.
Motioned by: Honorable Daniel E. Tso
Seconded by: Honorable Edison J. Wauneka
Vote: 14 in Favor, 02 Opposed (Chairman Damon Not Voting)

MAIN MOTION
Motioned by: Honorable Otto Tso
Seconded by: Honorable Pernell Halona
Vote: Vote Pending

NAVAJO NATION

1020

7/15/2021

Naa'bik'iyati' Committee Special Meeting

11:41:03 AM

Amd# to Amd#	Motion to Table Legislation	PASSED
MOT Tso, D	0108-21 to Naabikiyati Work	
SEC Wauneka, E	Session within 30 days	

Yeas : 14 **Nays : 2** **Excused : 3** **Not Voting : 4**

Yea : 14

Begay, K	Daniels	Tso, C	Wauneka, E
Begay, P	Freeland, M	Tso, D	Yazzie
Brown	Halona, P	Tso, E	Yellowhair
Charles-Newton	Henio, J		

Nay : 2

Tso, O	Crotty

Excused : 3

Stewart, W	Walker, T	Slater, C

Not Voting : 4

James, V	Nez, R	Smith	Begay, E

Presiding Speaker: Damon

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0108-21

SPONSOR: Honorable Eugene Tso

TITLE: An Act Relating to Law and Order and Naabik'íyáti' Committees and Navajo Nation Council; Amending 2 N.N.C. §§ 1973 (A) and (C), Removing the Domicile and Tribal Membership Requirements for the Chief Prosecutor Position; Office of the Prosecutor

Posted: July 06, 2021 at 11:15 PM

5 DAY Comment Period Ended: July 11, 2021

Digital Comments received:

Comments Supporting	***None***
Comments Opposing	***None***
Comments/Recommendations	**1) Juanita Francis** **2) Shawna A. Claw**

Legislative Tracking Secretary
Office of Legislative Services

07/15/21; 12:00 PM
Date/Time

14 July 2021

RE:	Legislative Number	00108-21
	Legislative Title	AN ACT RELATING TO LAW AND ORDER AND NAABIK'IYATI' COMMITTEES AND NAVAJO NATION COUNCIL; AMENDING 2 N.N.C. §§ 1973 (A) AND (C), REMOVING THE DOMICILE AND TRIBAL MEMBERSHIP REQUIREMENTS FOR THE CHIEF PROSECUTOR POSITION; OFFICE OF THE PROSECUTOR
	Legislative Description	An action related to the Law and Order and Naabik'iyati ' Committees; and Navajo Nation Council, amending 2 N.N.C. §§ l 973(A) and (C), Removing the Domicile and Tribal Membership Requirements for the Chief Prosecutor Position within the Office of the Prosecutor.
	OLC Number	21-198-01

TO WHOM IT MAY CONCERN:

Thank you for the opportunity to comment on resolution titled the "An Act Relating to Law and Order and Naabik'íyáti' Committees and Navajo Nation Council; Amending 2 N.N.C. §§ 1973 (A) and (C), Removing the Domicile and Tribal Membership Requirements for the Chief Prosecutor Position; Office of the Prosecutor."

Yá'át'ééh shi éí Juanita Francis yinishyé. Naanezht'ézhí Táchii'nii nishłį́ aadoo Kin Yaa'áanii éí bá shishchíín. Áshiihí éí dashicheii, Honágháanii éí dashinálí. Ákót'éego' éí 'asdzáni nishłį́. Nahashch'idí dęę́ naashá. My educational credentials are, I am in the final phases of my doctorate degree in Natural Resources. I have been employed in various capacities since high school with the community of Chinle and with the assistance of former Navajo Nation Council Delegate and Speaker Nelson Gorman. I have had an extensive academic journey in Science, Technology, Engineering, and Mathematics (STEM). I have also worked for various employers on and off the Navajo Nation. I have amassed much knowledge, western and traditional, in these capacities starting out as a student librarian in the old community library in Chinle due to my love of reading (the building still stands) and as an intern in the local clinic back in the 1970s. Based on my education and work experience I am highly qualified in submitting my public comment for the Legislation noted above.

Legislation Number 00108-21 is proposing to eliminate the domicile and tribal membership requirements. I am objecting to this eliminate based on the Navajo philosophy of Sa'ah Naagháí Bik'eh Hózhóón. The Navajo philosophy is based on K'é. If the requirements are eliminated allowing any nationality or ethnic person to be considered for the position of Chief Prosecutor of the Navajo Nation, s/he will not understand the concept of our Navajo Philosophy and K'é leading to greater inconsistencies than that which already exists. The interrelatedness and interconnectedness among Ni'hokáá Diyin Dine'é (Diné) will be broken when interpreting legal foundations by a non-Navajo.

The justification for the removal of requirements is compellingly lacking, highly unsubstantiated, and therefore, not warranted. The proposal does cite reason(s) for the removal of requirements; however, they are not reasons, they are merely statements. There is no supporting documentation for each reason outline. Moreover, there are other position vacancies that are listed as OUF (Open Until Filled), which are just as vital as the Chief Prosecutor position, and they have not had resolutions submitted for removal of requirements. **If** each administration were to pick and choose which positions they wish to remove domicile and tribal membership requirements for, it would become a circus and Navajo Preference would no longer be applicable. Navajo Preference is the prime basis for employment on the Navajo Nation. Already there is negative coverage about the Navajo Nation Department of Justice in regard to the federal monies as a result of the pandemic; the resolution notes the Chief Prosecutor works at the pleasure of the Attorney General.

In terms of economic, social, environmental, or judicial development on the Navajo Nation, there is no information offered. There has been no study regarding why the position fails to invite candidates. Personally, I have applied for Navajo Nation vacancies only to be told I do not meet a specific requirement (not related to domicile nor tribal membership). As I noted earlier I have quite an extension academic STEM journey, but one very detailed, very specific requirement ALWAYS disqualifies me. So, a study needs to be conducted before removal of any requirements even remotely related to Navajo Preference.

My comments regarding resolution items:

- Section Two. Findings 3, line 21 (page 2 of 4): Merely stating "keep up with the changing needs of departments." does not offer any details for the change. What has changed? What needs are no longer being addressed? And so on?
- Section Two. Findings G, lines 25-27 (page 2 of 4): About internal stability and its negative impact on functions; again, nothing supports this notion stated. Where is the study supporting this notion? What undergirds the instability, people, forms of communications, how staff communicated, etc.? What undergirds the negative impacts on functions? Performance evaluations? Compensation questions, conflicts? Standard hours of operations? How are the functions of the department being affected negatively?
- Section Two. Findings I, lines 1-3 (page 3 of 4): What has been the number of candidates who've applied since the position opened? What were the reasons they not eligible or not qualified? Was a Navajo applicant missing "one year of ….. job function"? Was it due to the supervisor being related to the candidate? How many have applied and why were they deemed unqualified?
- Section Two, Findings J, lines 4-5 (page 3), Under whose administration did this take place and what were the circumstances? Why was Navajo Preference waived in the cases from the past?
- Section Two. Findings K, lines 6-8 (page 3 of 4): Define "qualified" candidate. A legal representative working for the Navajo Nation shall be able to converse in Navajo and understand the Navajo philosophy of life. If non-Navajos start to converge upon the Navajo Nation, the Western way of knowing will supersede all Navajo knowledge. This can NOT happen. As it is there are programs, projects that are working toward reviving the Navajo language. Too many of this generation are no longer speaking Navajo nor do they know their history. What would a Western trained legal person know about the

kinship, the clan system? Will it be respected throughout the legal process? It is critical that Navajo Preference continue to prevail, not someone who is currently in office's whim. Navajo philosophy and language shall be priority.

- Section Two. Findings, M, lines 12-14 (page 3 of 4): There are no Exhibits A included in the resolution. Exhibits should be included.

Please take my comment into consideration when deciding on the resolution for removal of domicile and tribal membership requirements. This legislation is very disturbing.

Thank you,

Juanita Francis
Chinle Agency/Chapter

July 14, 2021

24th Navajo Nation Council
Attention: Honorable Council Delegates
P.O. Box 3390
Window Rock, Arizona 86515

RE: Recommendations for Legislation No. 0108-21- An Act Relating to Amending 2 N.N.C. §§ 1973 (A) and (C) removing the domicile and tribal membership requirements for Chief Prosecutor Position.

Honorable 24th Navajo Nation Council (Naat'áji Nahat'á Naa t'aniis):

Ya'at'eeh. Shi ei Shawna A. Claw yinishyé. Hooghan'łani nishłi, Tódich'ii'nii baschichiin, Tachii'nii da shicheii, doo Kinyaa'aanii da shinali. I present myself before you as an enrolled member of the Diné tribe. I respectfully appeal to your leadership to consider the following recommendations regarding Legislation No. 0108-021.

1 N.N.C. § 202, Diné bi beenahaz'áenii: - The Diné bi beenahaz'áenii embodies Diyin bitséédéé, beehaz'áanii (Traditional Law), Diyin Dine'é bitséédéé, beehaz'áanii (Customary Law, Nahasdzáán dóó Yádiłhił bitséédéé, beehaz'áanii (Natural Law), and Diyin Nohookáá Diné bi beehaz'áanii (Common Law). ...These laws provide the foundation of Diné bi nahat'á (providing leadership through developing and administering policies and plans utilizing these laws as guiding principles) and Diné sovereignty. In turn, Diné bi nahat'á is the foundation of the Diné bi naat'á (government).

As leaders (Naa 'taniis), you are tasked with the arduous responsibility to ensure accountability to your constituents and beloved Diné people. The same responsibility falls upon the role of the Chief Prosecutor. Those words in 1 N.N.C. § 202 are codified in our Naaltsoos Dootł'izh. They hold value and sanctity which can only be understood by a Diné. Níhizaad ei diyiin (Our words are sacred). The Chief Prosecutor is one of the top stewards of Diné bi beenahaz'áenii for the Diné people.

There is a confluence of governing roles that the Chief Prosecutor upholds. Those roles make this position one of significant importance for the Diné people. This Naa 'tanii role oversees vital duties that are part of the Hashkééjí Nahat'á (Judicial Branch). This includes advising the Hózhóójí Nahat'á (Executive Branch) and Naat'ájí Nahat'á (Legislative Branch). The role of this Naat'aanii position weighs heavily in the Diné people's livelihood and rights afforded to them under the Navajo Nation Bill of Rights.

These statutory laws were created to promote self-governance and maintain a system of "checks and balances." The statutory requirements are not a means of convenience/ flexibility. The Chief Prosecutor position is appointed by the Attorney General; whereas, the Chief Legislative Counsel, Navajo Nation Attorney General, and Deputy Attorney General are positions appointed by the branch chiefs. Those three positions are confirmed by Navajo Nation Council and have oversight.

Findings and Recommendations:

1. Maintain the requirement for the Chief Prosecutor to be a member of the Navajo Nation. This position is one of the highest leadership positions in Navajo Nation; thus it is crucial that the position be of the people for the people.
2. Strike and eliminate "and have domicile upon the Navajo Reservation, or land under the jurisdiction of the Navajo Nation Courts for a term of six months." Reason: The Navajo Nation housing situation and residency requirement may be problematic for applicants.
3. DOJ's "reconsideration of the statutory requirements for the Chief Prosecutor" has not exhausted all administrative means to qualify Navajo candidates for the position. DOJ may work with the Navajo Nation Department of Personnel Management to update the Job Vacancy Announcement for the Chief Prosecutor Position. The rigid JVA requirements inhibit the position to be filled, not the statutory requirements.

Things to Consider:

1. To ensure stability within the Office of the Prosecutor and meet its vital public safety responsibility, the Navajo Nation Council may consider creating a separate commission for the Office of the Prosecutor, much like the Office of the Public Defender.

Please take note that these comments are my own opinion and are not affiliated with my employer, nor do they represent my Navajo Nation and State Leadership positions. Instead, they are reflective of the Diné teachings of my elders, family, and the astute virtues to honor our Navajo Nation Laws.

Respectfully,



Shawna A. Claw, Three Turkey Ruins, AZ