

LEGISLATIVE SUMMARY SHEET
Tracking No. 0093-17

DATE: March 1, 2017

SUBJECT: AN ACTION RELATING TO LAW AND ORDER, HEALTH, EDUCATION AND HUMAN SERVICES, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; AMENDING "THE NAVAJO PREFERENCE IN EMPLOYMENT ACT" AT 15 N.N.C. § 604 (B) (8) TO PROVIDE FOR THE ADDITION OF PROGRAM MANAGERS OF THE EXECUTIVE BRANCH AS A CLASS OF EMPLOYEES EXEMPT FROM THE JUST CAUSE PROVISIONS OF THE ACT

PURPOSE: The purpose of this legislation is to amend 15 N.N.C. § 604 (b) (8) in order to exempt program managers of the Executive Branch from the just cause provisions of the Navajo Preference in Employment Act.

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 review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: 6 Notah
Website Posting Time/Date: 4:24 pm 3/6/17
Posting End Date: 3/11/2017
Eligible for Action: 3/12/2017

Law & Order Committee

THENCE

Health, Education & Human Services Committee

THENCE

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
23rd NAVAJO NATION COUNCIL -- Third Year, 2017

Naa'bik'iyáti' Committee

THENCE

INTRODUCED BY

Navajo Nation Council

Dwight Witterpan

(Prime Sponsor)

TRACKING NO. 0093-17

AN ACTION

RELATING TO LAW AND ORDER, HEALTH, EDUCATION AND HUMAN
SERVICES, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION
COUNCIL; AMENDING "THE NAVAJO PREFERENCE IN EMPLOYMENT ACT"
AT 15 N.N.C. § 604 (B) (8) TO PROVIDE FOR THE ADDITION OF PROGRAM
MANAGERS OF THE EXECUTIVE BRANCH AS A CLASS OF EMPLOYEES
EXEMPT FROM THE JUST CAUSE PROVISIONS OF THE ACT

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Law and Order Committee of the Navajo Nation Council, pursuant to 2 N.N.C. 601(B)(14), reviews and makes recommendations to the Navajo Nation Council on proposed amendments to and enactments in the Navajo Nation Code.
- B. The Health, Education and Human Services Committee of the Navajo Nation Council, among other duties and responsibilities, generally oversees education matters within the Navajo Nation. 2 N.N.C. §400(C). In respect to its areas of oversight, the Committee further recommends to the Navajo Nation Council creation of Navajo Nation entities. 2 N.N.C. § 401(B) (3).
- C. The Naabik'iyáti' Committee is a standing committee of the Navajo Nation Council. Pursuant to 2 N.N.C. § 164(A) (9), the committee reviews proposed legislation which requires final action by the Navajo Nation Council.

1 D. The Navajo Nation Council enacts laws and sets policy for the Navajo Nation. 2
2 N.N.C. § 102.

3
4 **SECTION TWO. FINDINGS**

5 A. Program managers of the Executive Branch of the Navajo Nation perform a crucial role
6 in the implementation, efficiency and effectiveness of the programs of the Navajo
7 Nation in a manner that insures a positive benefit to the Navajo People.

8 B. The Navajo Nation Personnel Policies Manual describes the supervisory
9 responsibilities of program managers as follows: "Supervisors are responsible for
10 utilizing and applying the personnel policies consistently in dealing with human
11 resources issues. They are encouraged to seek advice from Department of Personnel
12 Management and Department of Justice on the interpretation of the Personnel Policies
13 Manual and in addressing employment issues. Supervisors are expected to provide
14 leadership in implementing the policies and to set positive examples for employees.
15 *See Navajo Nation Personnel Policies Manual, Section I, A., Amended March 25, 2015.*

16 C. In order to hold program managers of each division within the Navajo Nation
17 government accountable for the performance of their respective programs, there is a
18 current need to make all program managers within the Executive Branch of the Navajo
19 Nation professional at-will employees.

20 D. The definition of at-will employee is when, "a supervisor can discharge an employee
21 under this employment status for any reason at all or no reason at all, with or without
22 notice; and the employee can leave (resign) at any time for any or no reason at all, with
23 or without notice." *See Navajo Nation Personnel Policies Manual, Section XXI,*
24 *Amended March 25, 2015.*

25 E. It is in the best interest of the Navajo Nation in order to improve overall program
26 efficiency, effectiveness and accountability that all program managers serve at the
27 pleasure of Navajo Nation Executive Branch Division Directors.

28 F. It is in the best interest of the Navajo Nation to amend the Navajo Preference in
29 Employment Act, at 15 N.N.C. § 604 (B) (8), to provide that all program managers of
30

1 the Navajo Nation Executive Branch be exempt from the just cause provisions of the
2 Navajo Preference in Employment Act.

3
4 **SECTION THREE. AMENDING TITLE 15**

5 The Navajo Nation amends the Navajo Preference in Employment Act, at 15 N.N.C. §604
6 (B) (8) as follows:

7
8
9 **THE NAVAJO NATION CODE ANNOTATED**

10 **TITLE 15. LABOR**

11 **CHAPTER 7. NAVAJO PREFERENCE IN EMPLOYMENT ACT**
12
13

14 **§ 604. Navajo employment preference**

15 * * * *

16 **B. Specific requirements for Navajo preference:**

17 1. All employers shall include and specify a Navajo employment preference
18 policy statement in all job announcements and advertisements and employer policies
19 covered by this Act.

20 2. All employers shall post in a conspicuous place on its premises for its
21 employees and applicants a Navajo preference policy notice prepared by ONLR.

22 3. Any seniority system of an employer shall be subject to this Act and all other
23 labor laws of the Navajo Nation. Such a seniority system shall not operate to defeat nor
24 prevent the application of the Act, provided, however, that nothing in this Act shall be
25 interpreted as invalidating an otherwise lawful and bona fide seniority system which is
26 used as a selection or retention criterion with respect to any employment opportunity
27 where the pool of applicants or candidates is exclusively composed of Navajos or of non-
28 Navajos.

29 4. The Navajo Nation when contracting with the federal or state governments or
30 one of its entities shall include provisions for Navajo preference in all phases of

1 employment as provided herein. When contracting with any federal agency, the term
2 Indian preference may be substituted for Navajo preference for federal purposes,
3 provided that any such voluntary substitution shall not be construed as an implicit or
4 express waiver of any provision of the Act nor a concession by the Navajo Nation that
5 this Act is not fully applicable to the federal contract as a matter of law.

6 5. All employers shall utilize Navajo Nation employment sources and job services
7 for employee recruitment and referrals, provided, however, that employers do not have
8 the foregoing obligations in the event a Navajo is selected for the employment
9 opportunity who is a current employee of the employer.

10 6. All employers shall advertise and announce all job vacancies in at least one
11 newspaper and radio station serving the Navajo Nation, provided, however, that
12 employers do not have the foregoing obligations in the event a Navajo is selected for the
13 employment opportunity who is a current employee of the employer.

14 7. All employers shall use non-discriminatory job qualifications and selection
15 criteria in employment.

16 8. All employers shall not penalize, discipline, discharge nor take any adverse
17 action against any Navajo employee without just cause. A written notification to the
18 employee citing such cause for any of the above actions is required in all cases.
19 Provided, that this Subsection shall not apply to Division Directors, program managers of
20 the Executive Branch or to other employees and officials of the Navajo Nation who
21 serve, pursuant to a specific provision of the Navajo Nation Code, at the pleasure of the
22 Navajo Nation Council, the standing committees of the Navajo Nation Council, the
23 President of the Navajo Nation, the Speaker of the Navajo Nation Council, the Chief
24 Justice of the Navajo Nation, or those persons employed pursuant to 2 N.N.C. §§ 281(C)
25 and 1009.

26 9. All employers shall maintain a safe and clean working environment and
27 provide employment conditions which are free of prejudice, intimidation and harassment.

28 10. Training shall be an integral part of the specific affirmative action plans or
29 activities for Navajo preference in employment.
30

1 11. An employer-sponsored cross-cultural program shall be an essential part of
2 the affirmative action plans required under the Act. Such program shall primarily focus
3 on the education of non-Navajo employees, including management and supervisory
4 personnel, regarding the cultural and religious traditions or beliefs of Navajos and their
5 relationship to the development of employment policies which accommodate such
6 traditions and beliefs. The cross-cultural program shall be developed and implemented
7 through a process which involves the substantial and continuing participation of an
8 employer's Navajo employees, or representative Navajo employees.

9 12. No fringe benefit plan addressing medical or other benefits, sick leave
10 program or any other personnel policy of an employer, including policies jointly
11 maintained by an employer and associated labor organization, shall discriminate against
12 Navajos in terms or coverage as a result of Navajo cultural or religious traditions or
13 beliefs. To the maximum extent feasible, all of the foregoing policies shall accommodate
14 and recognize in coverage such Navajo traditions and beliefs.

15 * * * *

19 **SECTION FOUR. CODIFICATION**

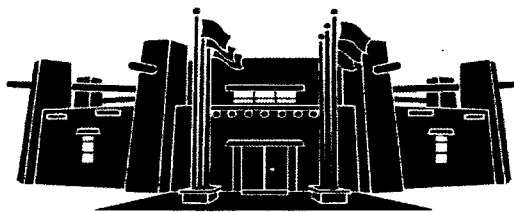
20 The provisions of the Act which amend or adopt new sections of the Navajo Nation Code
21 shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall
22 incorporate such amended provisions in the next codification of the Navajo Nation Code.
23

24 **SECTION FIVE. SAVING CLAUSE**

25 Should any provision of this Act be determined invalid by the Navajo Nation Supreme
26 Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation
27 Supreme Court, the remainder of the Act shall remain the law of the Navajo Nation.
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29 **SECTION SIX. EFFECTIVE DATE**

30 The provisions of this Act shall become effective in accord with 2 N.N.C. § 221(B).

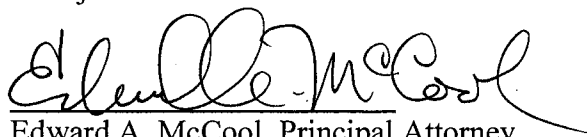


MEMORANDUM

TO:

Honorable Dwight Witherspoon
Navajo Nation Council

FROM:


Edward A. McCool, Principal Attorney
Office of Legislative Counsel

DATE:

March 1, 2017

SUBJECT: AN ACTION RELATING TO LAW AND ORDER, HEALTH, EDUCATION AND HUMAN SERVICES, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; AMENDING "THE NAVAJO PREFERENCE IN EMPLOYMENT ACT" AT 15 N.N.C. § 604 (B) (8) TO PROVIDE FOR THE ADDITION OF PROGRAM MANAGERS OF THE EXECUTIVE BRANCH AS A CLASS OF EMPLOYEES EXEMPT FROM THE JUST CAUSE PROVISIONS OF THE ACT

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

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§500, 501. 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).

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.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0093-17_____

SPONSOR: Dwight Witherspoon

TITLE: An Action Relating to Law and Order, Health, Education and Human Services, Naabik'iyati' Committee and Navajo Nation Council; Amending "The Navajo Preference in Employment Act" At 15 N.N.C. § 604 (B) (8) to Provide for the Addition of Program Managers of the Executive Branch as a Class of Employees Exempt from the just Cause Provisions of the Act

Date posted: March 6, 2017 at 4:21pm

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) 871-7590

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

Please note: This digital copy is being provided for the benefit of the Nav, ajo 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.*