

LEGISLATIVE SUMMARY SHEET

Tracking No. 0310-15

DATE: August 25, 2015

TITLE OF RESOLUTION: AN ACTION RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION COUNCIL; AMENDING NAVAJO NATION CODE, TITLE 7: CREATING THE NAVAJO NATION BUSINESS COURT

PURPOSE: The resolution's purpose is to create the Navajo Nation Business Court.

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

5-DAY BILL HOLD PERIOD: None
Website Posting Time/Date: 9:30am 9/4/15
Posting End Date: 9/9/2015
Eligible for Action: 9/10/2015

Law & Order Committee
THENCE
Naa'bik'íyáti' Committee
THENCE
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
23rd NAVAJO NATION COUNCIL -- First Year, 2015
INTRODUCED BY


(Prime Sponsor) *Kae Allen Begay Jr.*

TRACKING NO. 0310-15

AN ACTION
RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO
NATION COUNCIL; AMENDING NAVAJO NATION CODE, TITLE 7: CREATING
THE NAVAJO NATION BUSINESS COURT

BE IT ENACTED:

Section One. Findings.

- A. The Navajo Nation Council may create other Navajo Nation courts. 7 N.N.C. § 201 (B).
- B. The Navajo Nation Council gave the Law and Order Committee legislative oversight over the Judicial Branch. 2 N.N.C. § 601(C)(1).
- C. The Law and Order Committee of the Navajo Nation Council reviews and makes recommendations to the Navajo Nation Council proposed amendments to the Navajo Nation Code. 2 N.N.C. § 601(B)(14).
- D. The Naabik'íyáti' Committee of the Navajo Nation Council reviews proposed legislation which requires final action by the Navajo Nation Council. 2 N.N.C. § 164(A)(9)
- E. Enactments of positive law must be reviewed and approved by resolution by the Navajo Nation Council. 2 N.N.C. § 164(A).
- F. The Law and Order Committee's purpose is "[t]o improve the administration of justice on the Navajo Nation by ensuring a justice system that is independent from political influence and that is accountable and responsible to the Navajo Nation in its administration and operations" and "[t]o protect the rights and interests of the Navajo

1 People by improving the quality and effectiveness of the justice system within the Navajo
2 Nation. 2 N.N.C. § 600 (C)(1) and (2) (2012) *see also* CJA-03-13.

3 G. In 1985, the Navajo Nation Council enacted the Judicial Reform Act with the goal of
4 strengthening the Navajo Nation Courts by creating the Navajo Nation Supreme Court
5 that will hear appeals and render final judgments based on “law, equity, and tradition.”
6 CD-95-85 Whereas Cl. 13 (1985).

7 H. Pursuant to CD-68-89, resolved clause 6, “[t]he Navajo Tribal Council further authorizes
8 and directs that any amendment to...the 1985 Judicial Reform Act, 7 N.T.C., Section 101
9 et. seq., shall require two thirds ($\frac{2}{3}$) vote of the full membership of the Navajo Tribal
10 Council...these amendments shall be presented at the regular session of the Navajo Tribal
11 Council.” CD-68-89 Resolved Cl. 6 (1989).

12 I. The Law and Order Committee believes creating the Navajo Nation Business Court is
13 necessary in order to improve the administration of justice, improve the judicial quality
14 and effectiveness, and protect the Navajo People’s rights and interest. 2 N.N.C. § 600
15 (C)(1) and (2).

16 17 **Section Two. Amending Navajo Nation Code Title 7**

18 The Navajo Nation amends the Navajo Nation Code, Title 7 as follows:

19 _____
20
21 Title 7. Courts and Procedure
22 Chapter 3. Judicial Branch
23 Subchapter 4a. Navajo Nation Business Court
24

25 **§ 294. Establishment and Eligible Cases**

26 A. There is established the Navajo Nation Business Court.

27 B. The criteria for assignment or transfer to the Navajo Nation Business Court are:

28 1. Civil cases filed on or after January 1, 2016, and
29
30

- 1 2. Cases, as defined in 7 N.N.C. § 394 (B)(3), in which at least fifty thousand
2 (\$50,000) dollars compensatory damages are alleged, or claims seeking
3 primarily injunctive or declaratory relief, and
4 3. Cases which satisfy one or more of the following:
5 a. Relate to the internal affairs of businesses (i.e., corporations, limited
6 liability companies, general partnerships, limited liability partnerships,
7 sole proprietorships, professional associations, real estate investment
8 trusts, and joint ventures), including the rights or obligations between
9 or among shareholders, partners, and members, or the liability or
10 indemnity of officers, directors, managers, trustees or partners;
11 b. Involve claims of breach of contract, fraud, misrepresentation, breach
12 of fiduciary duty or statutory violations or relationships;
13 c. Constitute a shareholder derivative or commercial class action;
14 d. Involve commercial real property disputes other than residential
15 landlord-tenant disputes and foreclosures;
16 e. Involve business claims between or among two or more business
17 entities or individuals as to their business or investment activities
18 relating to contracts, transactions, or relationships between or among
19 them;
20 f. Arise from technology licensing agreements, including software and
21 biotechnology licensing agreements, or any agreement involving the
22 licensing of any intellectual property right, including patent rights;
23 g. Constitute an action alleging violations of noncompete,
24 nonsolicitation, or confidentiality agreement, or an antitrust, trade
25 secret, or securities-related action;
26 h. Professional malpractice claims brought in connection with the
27 rendering of professional services to a business enterprise;
28 i. Commercial construction contract dispute and/or commercial
29 construction defect claims.
30

1 **§ 295. Excluded Cases**

2 The following cases are excluded from the Navajo Nation Business Court:

- 3 A. Personal injury or wrongful death;
4 B. Professional malpractice claims;
5 C. Residential landlord-tenant matters, including residential foreclosure actions;
6 D. Employee/employer disputes, except where pendent or incidental to the matters listed
7 in 7 N.N.C. § 294(B);
8 E. Health care liability;
9 F. Where the only claim is a professional fee dispute;
10 G. Where the Navajo Nation is a party;
11 H. Administrative appeals from the Office of Hearings and Appeals and the Navajo
12 Nation Labor Commission, including tax and zoning matters.

13 **§ 296. Composition**

- 14 A. The Navajo Nation Business Court shall consist of one district court judge, who shall
15 be assigned by the Chief Justice.
16 B. The Navajo Nation Business Court judge shall be state and Navajo Nation licensed
17 attorney who has five years business experience.

18 **§ 297. Rules and Procedure**

19 The Navajo Rules of Civil Procedure, the Navajo Rules of Evidence and Navajo Rules of
20 Court shall apply to the Navajo Nation Business Court. In addition, the Navajo Nation
21 Business Court shall have broad discretion to establish Navajo Rules of the Business Court
22 and to develop case management procedures to allow for more efficient handling of cases
23 and produce quicker resolutions with reduced litigation in accordance with 7 N.N.C. § 601.

24 **§ 298. Appellate Review**

25 The Navajo Nation Supreme Court shall have jurisdiction to hear appeals from final Navajo
26 Nation Business Court judgments and other final orders as provided in 7 N.N.C. § 302.
27

28 ***

29
30 [Intentionally left blank]

Title 7. Courts and Procedure

Chapter 3. Judicial Branch

Subchapter 3. District Courts

§253. Jurisdiction-Generally

C. The Navajo Nation Business Court shall have original exclusive jurisdiction over all cases outlined in 7 N.N.C. § 294 (B).

Title 7. Courts and Procedure

Chapter 3. Judicial Branch

Subchapter 7. Justices and Judges

§354. Qualifications for judicial appointment

A. District Courts. The following standards and qualifications shall apply to all judicial appointments to the District Court of the Navajo Nation:

3. Education. Each applicant shall have earned, at a minimum, an Associate of Arts or Science degree from an accredited institution of higher education. An applicant who has earned a higher educational degree shall be preferred, with particular preference being given to a law degree (J.D. or LL.M.). Navajo Nation Business Court applicants must hold a Juris Doctor (J.D.) degree from an ABA accredited law school.

4. Experience. Each applicant shall have at least four years direct work experience in a law related area and shall have a working knowledge of Navajo and applicable federal and state laws. Those applicants with experience working with the Navajo Nation Courts or with state and federal courts shall be preferred. Navajo Nation Business Court applicants must have five years business experience.

1 **Section Three. Appropriation**

2 The Judicial Branch shall appropriate funding for the Navajo Nation Business Court in their
3 Fiscal Year 2017 budget in accordance with 12 N.N.C. §840.

4 **Section Four. Codification**

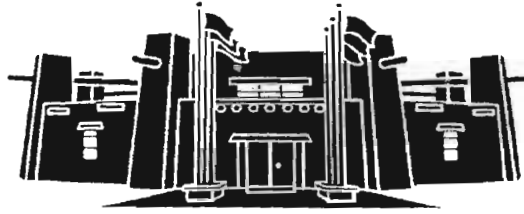
5 The provisions of the Act which amend or adopt new sections of the Navajo Nation Code
6 shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall
7 incorporate such amended provisions in the next codification of the Navajo Nation Code.

8 **Section Five. Savings Clause**

9 Should any provision of this Act be determined invalid by the Navajo Nation Supreme Court
10 or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court,
11 the remainder of the Act shall remain the law of the Navajo Nation.

12 **Section Six. Effective Date**

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

TO: Honorable Kee Allen Begay, Jr.
Navajo Nation Council Delegate

FROM: C West
Carolyn R. West, Attorney
Office of Legislative Counsel

DATE: August 25, 2015

SUBJECT: OLC Service Request Number 15-470-1: An Action Relating to Law and Order, Naabik'íyáti' Committee and Navajo Nation Council; Amending Navajo Nation Code, Title 7: Creating the Navajo Nation Business Court

As requested, I prepared the above-reference proposed resolution and associated legislative summary sheet. Based on existing law, the resolution drafted is legally sufficient. However, as with all legislation, the proposed resolution is subject to review by the courts in the event of a challenge. You are encouraged to review the proposed resolution to ensure this is drafted to your satisfaction.

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

If you are satisfied with the proposed resolution, please sign as "Primary Sponsor" and submit to the Office of Legislative Services where the proposed resolution will be given a tracking number and sent to the Office of the Speaker for assignment.

If the proposed legislation is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like to make.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0310-15_____

SPONSOR: Kee Allen Begay, Jr.

TITLE: An Action Relating To Law and Order; Naa'bik'ivati' and Navajo Nation Council; Amending Navajo Nation Code, Title 7: Creating the Navajo Nation Business Court

Date posted: September 4, 2015 at 9:36am

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 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.: 0310-15

SPONSOR: Honorable Kee Allen Begay, Jr.

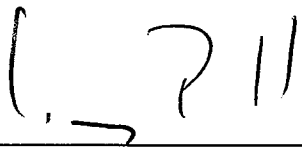
TITLE An Action Relating To Law and Order; Naa'bik'iyati' and Navajo Nation Council; Amending Navajo Nation Code, Title 7: Creating the Navajo Nation Business Court.

Posted: September 4, 2015 at 9:36am

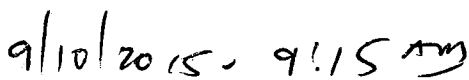
5 DAY Comment Period Ended: September 9, 2015

Digital Comments received:

Comments Supporting (1)	1. Calvin Lee, Jr.; Professional Corporation Attorneys
Comments Opposing (1)	1. Karen Francis; Government Relations Officer, Judicial Branch of the Navajo Nation.
Inclusive Comments (1)	1. Lawrence A. Ruzow



**Executive Director
Office of Legislative Services**



Date/Time

Legislation No. 0310-15

Karen Francis <karenfrancis@navajo-nsn.gov>

Wed 9/9/2015 4:18 PM

To: comments <comments@navajo-nsn.gov>;

1 attachment

Public Comment on Legislation No. 0310-15.pdf;

Please see attached memorandum commenting on proposed Legislation No. 0310-15. Thank you.

Karen Francis, *Government Relations Officer*
Office of the Chief Justice
JUDICIAL BRANCH OF THE NAVAJO NATION
Office: (928) 871-6920
Fax: (928) 871-6761
E-mail: karenfrancis@navajo-nsn.gov
www.navajocourts.org

Judicial Branch of the Navajo Nation
Administrative Office of the Courts



Memorandum

TO: Honorable Delegates
23rd NAVAJO NATION COUNCIL

FROM: Karen Francis, *Government Relations Officer*
JUDICIAL BRANCH OF THE NAVAJO NATION

SUBJECT: **Proposed Legislation No. 0310-15**

DATE: September 9, 2015

I am submitting the following public comment on proposed Legislation No. 0310-15.

Legislation No. 0310-15 proposes the creation of a business court within the Judicial Branch of the Navajo Nation. The branch has several concerns regarding this proposal, which are outlined in this memorandum.

A. The legislation will create an unfunded mandate.

If this proposed legislation is approved by the Navajo Nation Council, it will amount to an unfunded mandate. The Judicial Branch is substantially underfunded. There are five vacant judge positions in the FY 2016 proposed budget that will be budgeted at \$1. Creating another judge position with the stated qualifications will be a recurring cost that will require an increased allocation of funding to the Branch and due to the qualifications, will result in a judge position with a salary that is higher than the current starting salary of a Navajo Nation District Court Judge.

B. The stated qualifications will make the position difficult to fill.

The qualifications stated in the proposed legislation require an applicant to have 1) a J.D. degree, 2) a state bar license and 3) "five years of business experience," in addition to all of the standard qualifications of a district court judge applicant. These requirements will make this position extremely difficult to fill. There are already five vacant District Court

Judge positions and one vacant Associate Justice position on the Navajo Supreme Court, none of which require the additional qualifications stated in the legislation. Many of these positions have remained vacant for years as it is very hard to find qualified candidates for these offices. Finding a qualified applicant for the proposed position will be considerably more difficult because most applicants whom have a J.D. degree lack the five years of business experience required by the legislation. Further, the requirement of “business experience” is not defined in the legislation and is therefore vague and open to interpretation.

C. The resulting business court judge will have a low caseload.

Compared to other types of cases that are filed in the Navajo Nation District Courts, the number of commercial cases filed with our courts is relatively low. The following chart shows the number of such cases from FY 2011 to June 2, 2015 and the averages for FY11 to FY14.

Business and commercial cases

	FY2011	FY2012	FY2013	FY2014	FY 2015 (to 06-02-15)	AVERAGE (FY2011 to FY2014)
Business Transaction	7	3	2	3	0	3.75
Consumer Law	2	2	3	0	1	1.75
Employment Contract	0	4	1	1	1	1.5
Lease Agreement	6	29	24	9	4	17
Loan Agreement	4	3	1	1	1	2.25
Repossession	914	701	632	706	251	738.25
Sales Contract	3	7	4	13	2	6.75
Service Contract	6	3	0	6	0	3.75
Tenant Eviction	0	0	0	5	1	1.25
TOTAL	942	752	667	744	261	776.25

Includes statistics from the following judicial district courts: Aneth, Chinle, Crownpoint, Dilkon, Kayenta, Shiprock, Tuba City, To'hajiilee, Window Rock

Based on this information it is clear that the proposed legislation will result in the creation of a court that will have a position that will be difficult to fill, is expensive to fund and maintain, and whose caseload will be small. The Judicial Branch would like to bring these concerns to the attention of policy makers.

Thank you for the opportunity to submit public comment.

Legislation 0310-15 ; Amending Navajo Nation Code, Title 7: Crating the Navajo Business Court

Lawrence Ruzow <laruzow@gmail.com>

Thu 9/10/2015 6:59 AM

To:comments <comments@navajo-nsn.gov>;

People:

My comments are provided in my personal capacity and not on behalf of any present or past client or employer.

The idea of a Business Court for the Navajo Nation first arose back in the 1980's about the time the Navajo Nation Council adopted a Corporation Code and the Uniform Commercial Code to encourage economic development.

A Business Court might well encourage economic development, but unless and until there is a fully staffed Supreme Court and Judiciary and the Navajo Nation Council demonstrates it is willing to comply with Navajo Nation Supreme Court decisions it disagrees with, even the best Business Court in the country is not going to overcome the perception that doing business in the Navajo Nation carries with it an unacceptable level of business risk.

Two other things the Council may want to consider: 1) how many cases would an analysis of the District Court's current docket show would be heard by the Business Court? 2) would some Navajo public perception be that the Navajo Nation has two justice systems--one staffed by State Bar Member judges for people (Navajos/non-Navajos) with money and a less well-qualified judiciary for the grass-roots Navajos?

Best for the Fair.

Larry
Lawrence A. Ruzow
602-826-6281

Calvin Lee, Jr. & Associates
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Attorneys

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September 9, 2015

BY PERSONAL DELIVERY

ATTENTION: Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515

**Re: Legislation No. 0310-15; Creating the Navajo Nation Business Court
Sponsor Kee Allen Begay**

Good Afternoon, Mr. Platero:

I am sending this letter to support the legislation denoted above.

I believe this legislation is timely and will hopefully provide for speedy and fair resolution of complex business litigation. This new business court should also provide for more economic activity within the Nation and provide for more use of the arbitration code and similar alternative dispute resolution mechanisms.

I would ask that the Law and Order committee provide for an indefinite number of judges to be made available for such courts. While I believe that the business court judge should have business experience I would stress that the business court judge should have at least five years of experience as a practicing attorney in the private sector.

Entrepreneurs should feel comfortable that a fellow entrepreneur is on the bench and can understand and appreciate the concerns of the Navajo business community. Thank you for your time.

Regards,

CALVIN LEE, JR., & ASSOC. PC

By



Calvin Lee, Jr. Esq.

cc: file