LEGISLATION NO: _0079-19__  SPONSOR: Otto Tso

TITLE: An Action Relating To Law And Order, NAABIK’IYATI’ Committee And The Navajo Nation Council; Approving An Act To Amend The Navajo Nation Code, Title2, Chapter 3, Subchapter 2, Section 104 (A) Incompatible Service; Removing The Exception Permitting The Holding Of Elective County Office While A Navajo Nation Council Delegate And Title 11, Chapter 11 Navajo Election Code Subchapter 1, General Provisions Section 8(B) Qualifications For Delegates To The Navajo Nation Council

Date posted: March 29, 2019 at 3:41 PM

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DATE: February 14, 2019

AN ACT RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; APPROVING AN ACT TO AMEND THE NAVAJO NATION CODE, TITLE 2, CHAPTER 3, SUBCHAPTER 2, SECTION 104 (A) INCOMPATIBLE SERVICE; REMOVING THE EXCEPTION PERMITTING THE HOLDING OF ELECTIVE COUNTY OFFICE WHILE A NAVAJO NATION COUNCIL DELEGATE AND TITLE 11, CHAPTER 11 NAVAJO ELECTION CODE SUBCHAPTER 1, GENERAL PROVISIONS SECTION 8(B) QUALIFICATIONS FOR DELEGATES TO THE NAVAJO NATION COUNCIL

PURPOSE: The purpose of this legislation is to eliminate the exception of serving in elective county office while a member of the Navajo Nation Council.

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.
PROPOSED NAVAJO NATION COUNCIL RESOLUTION

24th NAVAJO NATION COUNCIL—First Year, 2019

INTRODUCED BY

Primary Sponsor

TRACKING NO. 0079-19

AN ACT

RELATING TO LAW AND ORDER, NAABIK’IYÁTI’ COMMITTEE AND THE
NAVAJO NATION COUNCIL; APPROVING AN ACT TO AMEND THE NAVAJO
NATION CODE, TITLE 2, CHAPTER 3, SUBCHAPTER 2, SECTION 104 (A)
INCOMPATIBLE SERVICE; REMOVING THE EXCEPTION PERMITTING THE
HOLDING OF ELECTIVE COUNTY OFFICE WHILE A NAVAJO NATION
COUNCIL DELEGATE AND TITLE 11, CHAPTER 11 NAVAJO ELECTION CODE
SUBCHAPTER 1, GENERAL PROVISIONS SECTION 8(B) QUALIFICATIONS FOR
DELEGATES TO THE NAVAJO NATION COUNCIL.

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 Naabik’iýáti’ 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.

C. The Navajo Nation Council enacts laws and sets policy for the Navajo Nation. 2
N.N.C. § 102.
SECTION TWO. FINDINGS

A. The Diné have established the Navajo Nation Council as a branch of the Navajo Nation Government. 2 N.N.C. § 101

B. In establishing the Navajo Nation Council the Diné have laid out specific qualifications for eligibility for holding the trusted office of Delegate to the Navajo Nation Council, among them being the requirement that the Delegate be an enrolled member of the Navajo Nation and be above the age of 25 years. 2 N.N.C. § 103

C. Loyalty to the sovereignty of the Navajo Nation and to fulfilling the responsibilities to the Diné as a Council Delegate are also required in that the Code expressly prohibits anyone holding elected office or in permanent employment of the United States or any state or any subdivisions thereof from also serving as elected Delegate of the Navajo Nation Council. 2 N.N.C. § 104

D. These prohibitions stem in part from the potential conflicts created when an elected official takes the oath of office to swear allegiance to the laws of the Navajo Nation and also to another sovereign be it Federal or State or subdivision thereof.

E. The Supreme Court of the Navajo Nation has held with respect to taking the oath of office that “…a person may not swear allegiance to obey and serve simultaneously the laws of the Nation and the State…” In the Matter of the Grievance of: Wagner, and concerning, Tsosie. SC-CV-01-07, slip op at 7-8 (Nav.Sup.Ct. May 14 2007)

F. The Navajo Nation chose to include an exception to the prohibition against simultaneously holding another elected office by stating that the prohibition “…shall not apply to service on a school board or elective county office.”

G. Such an exception has proven to not be in the best interest of the Diné and at times detrimental to the effective operation and work of the Navajo Nation Council and therefore is no longer necessary.

H. It is in the best interest of the Diné and the Navajo Nation Council to amend the Navajo Nation Code, Title 2, Chapter 3, Subchapter 2, § 104(A) and Navajo Nation Code, Title 11, Chapter 1, Subchapter 1, § 8(B)(11), during a Regular Session of the Navajo Nation Council, to remove the exception allowing the simultaneous holding an elective county office and the position of elected Navajo Nation Council Delegate.
SECTION THREE. Amending Title 2

The Navajo Nation Council hereby amends the Navajo Nation Code, 2 N.N.C. § 104 (A) and 11 N.N.C. § 8 (B)(11) as follows:

The NAVAJO NATION CODE
TITLE 2 NAVAJO NATION GOVERNMENT
Chapter 3 Legislative Branch
Subchapter 1. Navajo Nation Council

* * * *

§ 104. Incompatible Service

A. No person shall serve as a delegate if he or she is in the permanent employment of the United States or any state or any subdivisions thereof; nor shall and elected official of the Unites States or the several states thereof serve as a delegate. This Section shall not apply to service on a school board or elective county office.

B. No person shall be eligible for election to the Navajo Nation Council if that person is permanently employed or an elected official as described in §104 (A).

C. If any delegate, after his/her election, enters such service the delegate shall immediately forfeit his/her office as a Council Delegate.

D. No Council Delegate shall engage in the private practice of law while serving as a Navajo Nation Council Delegate.

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TITLE 11 ELECTIONS
Chapter 1. Navajo Election Code of 1990

* * * *

§ 8 Qualifications for Office

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B. Qualifications for Delegate to the Navajo Nation Council:
1. Must be at least 25 years of age on or before the date of the general election;

2. Must be an enrolled member of the Navajo Nation on the Agency Census roll of the Bureau of Indian Affairs;

3. Must not have been convicted of a felony within the last five years;

4. Must not have been convicted of any misdemeanor involving crimes of deceit, untruthfulness and dishonesty, including but not limited to extortion, embezzlement, bribery, perjury, forgery, fraud, misrepresentation, false pretense, theft, conversion, or misuse of Navajo Nation funds and property, and crimes involving the welfare of children, child abuse, child neglect, aggravated assault and aggravated battery within the last five years. Must not have been found in violation by a trial court or the Ethics and Rules Committee of the Navajo Nation Council of the Navajo Ethics in Government or Election Laws;

5. Must maintain unswerving loyalty to the Navajo Nation and must be competent and capable of upholding the oath of office;

6. Must be a registered voter in the chapter or precinct from which elected;

7. Candidates elected, who are employed by the Navajo Nation, must resign from such employment before taking the oath of office and shall not be employed by the Navajo Nation during their term of office;

8. Must be able to speak and understand Navajo and/or English;

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

10. Must have permanent residence and been continually physically present within the Navajo Nation as defined in 7 N.N.C. § 254 at least three years prior to the time of election; and

11. Must not be in the permanent employment of the United States or any state or subdivision thereof, or be an elected official of the United States or any state or subdivision thereof, with the exception of service on a school board or elective county office.
SECTION FOUR. CODIFICATION

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

SECTION FIVE. SAVING CLAUSE

Should any provision of this Act 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, the remainder of the Act shall remain the law of the Navajo Nation.

SECTION SIX. EFFECTIVE DATE

The provisions of this Act shall become effective upon the occurrence of the next scheduled elections for Navajo Nation Council.