

THE NAVAJO NATION
LEGISLATIVE BRANCH
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LEGISLATION NO: 0145-19

SPONSOR: Kee Allen Begay Jr.

TITLE: An Action Relating To Law And Order, NAABIK'IYATI' Committee And Navajo Nation Council; Establishing The Navajo Nation Business Court; Amending Navajo Nation Code, Title 7, Court And Procedure

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0145-19

DATE: June 7, 2019

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

PURPOSE: The purpose of this legislation is to establish a Navajo Nation Business Court within the District Courts of the Navajo Nation.

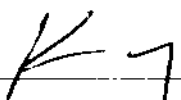
This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: 2388
Website Posting Time/Date: _____
Posting End Date: 6.19.19
Eligible for Action: 6.20.19

Law & Order Committee
Thence
Naa'bik'iyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL -- First Year, 2019

INTRODUCED BY



(Prime Sponsor) *Kee Allen Begum Jr*

TRACKING NO. 0145-19

AN ACT

RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO
NATION COUNCIL; ESTABLISHING THE NAVAJO NATION BUSINESS COURT;
AMENDING NAVAJO NATION CODE, TITLE 7, COURTS AND PROCEDURE

BE IT ENACTED:

Section One. Authority

- A. The Law and Order Committee has legislative oversight over the Judicial Branch. 2 N.N.C. § 601(C)(1).
- B. 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).
- C. The Naabik'iyáti' 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)
- D. Enactments of positive law must be reviewed and approved by resolution by the Navajo Nation Council. 2 N.N.C. § 164(A).
- E. 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).

3 F. The Navajo Nation Council may create other Navajo Nation courts. 7 N.N.C. § 201 (B).

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

8 H. Pursuant to CD-68-89, "[t]he Navajo Tribal Council further authorizes and directs that
9 any amendment to...the 1985 Judicial Reform Act, 7 N.T.C., Section 101 *et. seq.*, shall
10 require two-thirds (2/3) vote of the full membership of the Navajo Tribal Council...these
11 amendments shall be presented at the regular session of the Navajo Tribal Council." CD-
12 68-89, Resolved Clause 6.

13
14 **Section Two. Findings**

15 A. A business court is trial court that specializes in disputes related to specified business
16 activities.

17 B. A Navajo Nation business Court will allow a judge with at least five years of business
18 experience to hear and make determinations on cases involving commercial or business
19 disputes brought to the Navajo Nation District Courts.

20 C. The creation of business courts or courts with specialized dockets is an increasing trend
21 in the United States. As of 2010, there were "over 40 court programs within 22 states."
22 **Exhibit A**, Lee Applebaum, "The Steady Growth of Business Courts" Future Trends in
23 State Courts (2011).

24 D. The creation of the Navajo Nation Business Court will improve the administration of
25 justice, improve judicial quality and effectiveness, and protect the rights and interests of
26 litigants that appear before Navajo courts.

27
28 **Section Two. Amending Navajo Nation Code Title 7**

29 The Navajo Nation amends the Navajo Nation Code, Title 7 as follows:
30 _____

1
2 Title 7. Courts and Procedure
3 Chapter 3. Judicial Branch
4 Subchapter 3. District Courts

5 ***

6 **§253. Jurisdiction-Generally**

7 ***

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

10
11 Title 7. Courts and Procedure
12 Chapter 3. Judicial Branch
13 Subchapter 4a. Navajo Nation Business Court

14
15 **§ 294. Establishment and Eligible Cases**

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

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

- 18 1. Civil cases filed on or after March 31, 2020, and
19 2. Cases, as defined in 7 N.N.C. § 394 (B)(3), in which at least fifty thousand
20 (\$50,000) dollars compensatory damages are alleged, or claims seeking
21 primarily injunctive or declaratory relief, and

22 3. Cases which satisfy one or more of the following:

- 23 a. Relate to the internal affairs of businesses (i.e., corporations, limited
24 liability companies, general partnerships, limited liability partnerships,
25 sole proprietorships, professional associations, real estate investment
26 trusts, and joint ventures), including the rights or obligations between
27 or among shareholders, partners, and members, or the liability or
28 indemnity of officers, directors, managers, trustees or partners;

29 b. Involve claims of breach of contract, fraud, misrepresentation, breach
30 of fiduciary duty or statutory violations or relationships;

- 1 c. Constitute a shareholder derivative or commercial class action;
2 d. Involve commercial real property disputes other than residential
3 landlord-tenant disputes and foreclosures;
4 e. Involve business claims between or among two or more business
5 entities or individuals as to their business or investment activities
6 relating to contracts, transactions, or relationships between or among
7 them;
8 f. Arise from technology licensing agreements, including software and
9 biotechnology licensing agreements, or any agreement involving the
10 licensing of any intellectual property right, including patent rights;
11 g. Constitute an action alleging violations of non-competition or non-
12 solicitation clauses, confidentiality agreements, or an antitrust, trade
13 secret, or securities-related action;
14 h. Professional malpractice claims brought in connection with the
15 rendering of professional services to a business enterprise;
16 i. Commercial construction contract dispute and/or commercial
17 construction defect claims.

18
19 **§ 295. Excluded Cases**

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

- 21 A. Personal injury or wrongful death;
22 B. Professional malpractice claims;
23 C. Residential landlord-tenant matters, including residential foreclosure actions;
24 D. Employee/employer disputes, except where pendent or incidental to the matters listed
25 in 7 N.N.C. § 294(B);
26 E. Health care liability;
27 F. Where the only claim is a professional fee dispute;
28 G. Where the Navajo Nation is a party;
29 H. Administrative appeals from the Office of Hearings and Appeals and the Navajo
30 Nation Labor Commission, including tax and zoning matters.

1 **§ 296. Composition**

- 2 A. The Navajo Nation Business Court shall consist of one district court judge, who shall
3 be assigned by the Chief Justice.
4 B. The Navajo Nation Business Court judge shall be a state and Navajo Nation licensed
5 attorney who has at least five years business experience.

6 **§ 297. Rules and Procedure**

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

12 **§ 298. Appellate Review**

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

15 ***

16 Title 7. Courts and Procedure
17 Chapter 3. Judicial Branch
18 Subchapter 7. Justices and Judges

19 ***

20 **§354. Qualifications for judicial appointment**

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

23 ***

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

30

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

6 ***

7
8 **Section Three. Directive to the Judicial Branch to Include Funding for the Business**
9 **Court in the Navajo Nation Fiscal Year 2020 Budget Process**

10 The Judicial Branch shall request an appropriation for the Navajo Nation Business Court in
11 its Fiscal Year 2020 budget in accordance with 12 N.N.C. §840.

12
13 **Section Four. Codification**

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

17
18 **Section Five. Saving Clause**

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

22
23 **Section Six. Effective Date**

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