

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'iyáti' 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

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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.

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 VSPLAINASE
Website Posting Time/Date _____
Posting End Date: 07-11-2021
Eligible for Action: 07-12-2021

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'iyati' 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).

1 D. The Navajo Nation Council is the governing body of the Navajo Nation, empowered
2 to promulgate policy and enact laws of the Navajo Nation. 2 N.N.C. §§ 102 (A) and
3 164 (A).
4

5 **SECTION TWO. FINDINGS**

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

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

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

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

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

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

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

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

- 1 I. Removing the statutory requirements regarding domicile and tribal membership may
2 enlarge the pool of applicants and result in a qualified applicant hired as Chief
3 Prosecutor.
- 4 J. The Chief Legislative Counsel, Navajo Nation Attorney General, and Deputy Attorney
5 General positions have been held by non-Navajos in the past.
- 6 K. It is critical to fill the Chief Prosecutor position with a qualified candidate who has the
7 necessary education, experience, and skills to fulfill the duties, responsibilities, and
8 authority of the Chief Prosecutor, as outlined in 2 N.N.C. § 1974.
- 9 L. Removal of the statutory domicile and tribal membership requirement would expand
10 the pool of potential qualified applicants and better enable the DOJ to fill this critical
11 position.
- 12 M. Internal DOJ memorandum dated June 28, 2021, justifying support for amending the
13 statutory requirements and qualifications for the Chief Prosecutor's position are attached
14 as **Exhibits A**.

15
16 **SECTION THREE. AMENDING TITLE 2, CHAPTER 5, SUBCHAPTER 39**

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

18
19 **NAVAJO NATION CODE**
20 **TITLE 2. NAVAJO NATION GOVERNMENT**
21 **CHAPTER 5. EXECUTIVE BRANCH**
22 **SUBCHAPTER 39. DEPARTMENT OF JUSTICE**

23
24 * * * *

25 **§ 1973. Chief Prosecutor**

26 A. The Office of the Prosecutor shall be headed by a Chief Prosecutor., ~~who shall be~~
27 ~~a member of the Navajo Nation and have domicile upon the Navajo Reservation,~~
28 ~~or land under the jurisdiction of the Navajo Nation Courts for a term of six~~
29 ~~months immediately preceding his or her appointment as Chief Prosecutor.~~
30

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

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

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

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13 **SECTION FOUR. EFFECTIVE DATE**

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

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16 **SECTION FIVE. CODIFICATION**

17 The provisions of these amendments of the Navajo Nation Code shall be codified by
18 the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate
19 such amendments in the next codification of the Navajo Nation Code.

20
21 **SECTION SIX. SAVINGS CLAUSE**

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