

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0251-21_

SPONSOR: Edison J. Wauneka

TITLE: An Act Relating to Law and Order, Budget and Finance, and Naabik'iyáti' Committees, and the Navajo Nation Council; Establishing a Referendum for Diné Voters to Decide Whether to Increase the Number of Navajo Nation Council Delegates from 24 to 48, Beginning with the November 2026 Navajo Nation General Election

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0251-21

DATE: November 15, 2021

TITLE OF RESOLUTION:

AN ACT RELATING TO LAW AND ORDER, BUDGET AND FINANCE AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; REFERRING REFERENDUM MEASURE ON QUESTION WHETHER TO AMEND TITLE 2 TO INCREASE THE NUMBER OF NAVAJO NATION COUNCIL DELEGATES FROM 24 TO 48 MEMBERS BEGINNING WITH THE NOVEMBER 2026 NAVAJO NATION GENERAL ELECTIONS

PURPOSE: This resolution, if adopted, would refer a referendum measure on the question of whether Title 2 should be amended to increase the number of Navajo Nation Council Delegates from 24 to 48 members beginning with the November 2026 Navajo Nation General Elections.

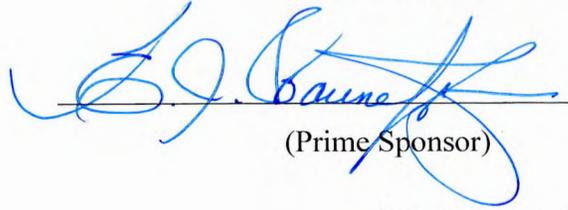
This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: VSTMedHouse
Website Posting Time/Date: _____
Posting End Date: November 27, 2021
Eligible for Action: November 28, 2021

Law & Order Committee
Thence
Budget & Finance Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION
2 24th NAVAJO NATION COUNCIL – Third Year, 2021

3
4 Introduced by:

5 
6 _____
7 (Prime Sponsor)

8
9 Tracking No. 0257-21

10
11 AN ACT
12 RELATING TO LAW AND ORDER, BUDGET AND FINANCE, AND
13 NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL;
14 ESTABLISHING A REFERENDUM FOR DINÉ VOTERS TO DECIDE
15 WHETHER TO INCREASE THE NUMBER OF NAVAJO NATION
16 COUNCIL DELEGATES FROM 24 TO 48, BEGINNING WITH THE
17 NOVEMBER 2026 NAVAJO NATION GENERAL ELECTION

18
19 BE IT ENACTED:

20
21 SECTION ONE. AUTHORITY

- 22 A. The Law and Order Committee of the Navajo Nation Council is authorized to review and
23 make recommendations to the Navajo Nation Council regarding proposed amendments to
24 the Navajo Nation Code. 2 N.N.C. §601(B)(14).
- 25 B. The Budget and Finance Committee of the Navajo Nation Council is authorized to
26 “coordinate and review all fiscal, financial and investment activities of the Navajo Nation
27 and its enterprises, as well as other agencies, federal, state, regional and private, expending
28 or seeking to expend funds within the Navajo Nation or for the benefit of the Navajo
29 People.” 2 N.N.C. §301(B)(5).
- 30 C. The Naabik'iyáti' Committee of the Navajo Nation Council is authorized to review proposed

1 resolutions requiring final action by the Navajo Nation Council. 2 N.N.C. §164(A)(9).

2 D. The Navajo Nation Council, as the elected and governing body of the Navajo Nation, sets
3 policy for the Navajo Nation. 2 N.N.C. §102(A). Pursuant to 11 N.N.C. §403(A), the Navajo
4 Nation Council may refer a referendum for public vote.

5
6 **SECTION TWO. FINDINGS**

7 A. Currently, the Navajo Nation Council has a membership of 24 delegates. 2 N.N.C. §102(A).

8 The 24 number of delegates was previously established by an initiative vote of Diné voters.

9 B. Pursuant to the Navajo Nation Election Code, Navajo Nation laws may be enacted through
10 a public initiative or referendum by public vote. 11 N.N.C. §§401 *et seq.*

11 C. The Navajo Nation Election Code, at 11 N.N.C. §409(C), provides:

12 _____
13 C. Legislation adopted by a referendum/initiative election shall be amended or repealed
14 only:

15 1. By the outcome of a vote on a subsequent referendum or initiative election concerning
16 the same subject matter as that of the referendum/initiative which originally adopted the
17 legislation; or

18 2. For a Navajo Nation-wide referendum or initiative election, by 3/4 vote of the full
19 membership of the Navajo Nation Council at a regular session of the Navajo Nation
20 Council.

21 _____
22 D. The Navajo Nation Supreme Court has stated:

23 “Under Fundamental Law, the Navajo People, as well as the Council, may make laws for
24 the good of the community; the People's authority to make laws is not delegated to them by
25 the Council [citing 1 N.N.C. §201 and §206]. The referendum and initiative processes are
26 modern acknowledgments of this authority [citing, 11 N.N.C. §§401, *et seq.*]. Such
27 authority is also acknowledged by the Diné leaders who approved the Treaty of 1868, who
28 agreed that future alienation of Navajo land required a three-quarters vote of the Navajo
29 People. *Treaty of 1868 between the United States and the Navajo Tribe of Indians*, June 1,
30 1868, Art. 10, 15 Stat. 667, 670. The Council may reasonably regulate the People's authority

1 to make laws through setting qualifications for voters in such referenda and initiatives,
2 [citation omitted] but the ultimate power to govern the Nation always remains with the
3 People. There is no question that the People as ‘Navajo voters’ may amend this, or any other
4 law through the referendum or initiative process;” *In the Matter of Two Initiative*
5 *Petitions Filed by Navajo Nation President Joe Shirley, Jr.* 9 Nav. R. 200, 203 (Nav. Sup.
6 Ct. 2008).

7 E. According to the Navajo Supreme Court, “the People may reduce or increase the size [of
8 the Council]; there is no language in Section 102(A) to suggest otherwise.” *Id.*, at 204.
9 The Supreme Court ultimately ruled: “[t]he Navajo Nation Council may not amend Section
10 102(a) independently; it must defer to the will of the Navajo People.” *Id.* at 204.

11 F. The Commission on Navajo Government Development (“CNGD”) was established by the
12 Navajo Nation Council to implement reforms necessary to ensure an accountable and
13 responsible government. See Resolution No. CD-68-89. The CNGD was established with
14 quasi-independent authority. 2 N.N.C. §970. Today, the purposes of the CNGD include
15 reviewing and evaluating aspects of the existing governmental structure of the Navajo
16 Nation, including central and local governments. 2 N.N.C. §971.

17 G. In Resolution No. NGD-0902-19 the CNGD recommends that the Navajo Nation Council
18 establish a referendum for Navajo voters on whether the Council should be increased from
19 24 to 48 delegates. **EXHIBIT A.**

20 H. To ensure the protection of the fundamental rights and freedoms of the Diné to participate
21 in their democracy, Diné voters should determine through referendum whether the size of
22 the Navajo Nation Council should be increased from 24 to 48 members. Diné voters should
23 be provided this opportunity at the November 8, 2022 Navajo Nation General Election.

24
25 **SECTION THREE. ESTABLISHING A REFERENDUM FOR DINÉ VOTERS TO**
26 **DECIDE WHETHER TO INCREASE THE NUMBER OF NAVAJO NATION**
27 **COUNCIL DELEGATES FROM 24 TO 48**

28 A. The Navajo Nation Council hereby establishes a referendum measure for Diné voters to
29 decide whether to increase the number of Navajo Nation Council delegates from 24 to 48.
30 If this measure is approved by the voters and enacted, it shall be effective beginning with

1 the Navajo Nation 2026 General Election.

2 B. Subject to the authority of the Navajo Board of Election Supervisors as set forth in 11
3 N.N.C. §403(A) and §407, the measure referred herein shall be placed on the November 8,
4 2022 Navajo Nation General Election ballot with the language to read as follows:

5 _____
6 **Official Title:** REFERENDUM INCREASING THE NAVAJO NATION COUNCIL
7 FROM 24 TO 48 DELEGATES.

8 **Descriptive Summary:** This referendum gives Diné voters the opportunity to decide by
9 majority vote whether the number of delegates to the Navajo Nation Council should be
10 increased from 24 to 48, beginning with the November 2026 Navajo Nation General
11 Election.

12 **Brief Statement of Legal Effect:**

13 A. "YES" vote is in favor of increasing the number of delegates to the Navajo Nation
14 Council from 24 to 48, beginning with the November 2026 Navajo Nation General
15 Election. A "YES" vote will have the effect of amending Title 2 of the Navajo Nation
16 Code as set forth in the complete text of the legislation referred by this referendum
17 measure.

18 B. "NO" vote is against increasing the number of delegates to the Navajo Nation Council
19 from 24 to 48. A "NO" vote will have no effect on the current status of Navajo Nation
20 law, thereby allowing the current number of 24 delegates to remain as is.

21 **Referendum Ballot Question:** "Shall the number of delegates to the Navajo Nation
22 Council be increased from 24 to 48 delegates, beginning with the November 2026 Navajo
23 Nation General Election?"

24 _____ "YES" - the number of delegates shall be increased from 24 to 48

25 _____ "NO" - the current number of 24 delegates shall remain as is

26 _____
27
28 **SECTION FOUR. COMPLETE TEXT OF PROPOSED TITLE 2 AMENDMENT FOR**
29 **THE REFERENDUM**

30 The Navajo Nation Council hereby refers the complete text of proposed legislation for the

1 referendum to amend Title 2 of the Navajo Nation Code as follows:

2
3 **Title 2. Navajo Nation Government**

4 **Chapter 3. Legislative Branch**

5 **Subchapter 1. Navajo Nation Council**

6 * * * *

7 **§ 102. Powers; Composition**

8 A. The Navajo Nation Council shall be the governing body of the Navajo Nation and shall
9 consist of ~~24~~ 48 delegates.

10 * * * *

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13 **SECTION FIVE. REVIEW BY NAVAJO BOARD OF ELECTION SUPERVISORS**

14 The Navajo Board of Election Supervisors shall review the proposed referendum measure for
15 purposes of ensuring compliance with provisions of the Navajo Nation Election Code, including
16 11 N.N.C. §§ 401, 402 and 407.

17
18 **SECTION SIX. VOTE REQUIRED**

19 Pursuant to 11 N.N.C. § 406(A), the measure referred herein shall pass by majority of votes
20 cast. *See also, Nelson v. Initiative Committee to Reduce Navajo Nation Council*, 9 Nav. R.
21 350, 358 (Nav. Sup. Ct. 2010).

22
23 **SECTION SEVEN. APPORTIONMENT PLAN**

24 If the referendum is approved, and upon certification of the voting results:

25 A. The Navajo Board of Election Supervisors shall consult with the Office of the Speaker and
26 the Department of Justice, and other consultants as appropriate, regarding the development
27 of a Chapter apportionment plan for the 48-member Navajo Nation Council.

28 B. A proposed Chapter apportionment plan based on a 48-member Council shall be prepared
29 and timely submitted to the 25th Navajo Nation Council for its approval. Along with the
30 proposed apportionment plan, all amendments to the Navajo Nation Code, which may be

1 necessary as a result of the adoption of the apportionment plan, shall also be presented to the
2 Navajo Nation Council for its approval.
3

4 **SECTION EIGHT. CODIFICATION**

- 5 A. The approved amendment shall be codified by the Office of Legislative Counsel.
6 B. The Office of Legislative Counsel is authorized to make any changes in the Election Code
7 that may be necessary as a result of the approved amendment and apportionment plan.
8

9 **SECTION NINE. EFFECTIVE DATE**

10 This Legislation of the Navajo Nation Council shall become effective pursuant to 2 N.N.C. §
11 221(B), subject to referendum vote as provided herein.
12

13 **SECTION TEN. SAVING CLAUSE**

14 If any portion of this Legislation, or the 2 N.N.C. amendment approved by the referendum
15 established herein, is determined invalid by the Navajo Nation Supreme Court, or by a District
16 Court of the Navajo Nation without appeal to the Navajo Nation Supreme Court, those portions
17 of this Legislation, or the referendum, that are not determined invalid shall remain the law of
18 the Navajo Nation.
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