TITLE: An Act Relating to Law and Order, Budget and Finance, and Naabik’íyáti’ 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

Date posted: November 22, 2021 at 5:53PM

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Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586

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

Introduced by:

(Prime Sponsor)

Tracking No. 0257-21

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

BE IT ENACTED:

SECTION ONE. AUTHORITY
A. The Law and Order Committee of the Navajo Nation Council is authorized to review and
make recommendations to the Navajo Nation Council regarding proposed amendments to
the Navajo Nation Code. 2 N.N.C. §601(B)(14).
B. The Budget and Finance Committee of the Navajo Nation Council is authorized to
“coordinate and review all fiscal, financial and investment activities of the Navajo Nation
and its enterprises, as well as other agencies, federal, state, regional and private, expending
or seeking to expend funds within the Navajo Nation or for the benefit of the Navajo
People.” 2 N.N.C. §301(B)(5).
C. The Naabik’iyáti’ Committee of the Navajo Nation Council is authorized to review proposed
resolutions requiring final action by the Navajo Nation Council. 2 N.N.C. §164(A)(9).

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

SECTION TWO. FINDINGS

A. Currently, the Navajo Nation Council has a membership of 24 delegates. 2 N.N.C. §102(A). The 24 number of delegates was previously established by an initiative vote of Diné voters.

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

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

C. Legislation adopted by a referendum/initiative election shall be amended or repealed only:

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

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

D. The Navajo Nation Supreme Court has stated:

"Under Fundamental Law, the Navajo People, as well as the Council, may make laws for the good of the community; the People's authority to make laws is not delegated to them by the Council [citing 1 N.N.C. §201 and §206]. The referendum and initiative processes are modern acknowledgments of this authority [citing, 11 N.N.C. §§401, et seq.]. Such authority is also acknowledged by the Diné leaders who approved the Treaty of 1868, who agreed that future alienation of Navajo land required a three-quarters vote of the Navajo People. Treaty of 1868 between the United States and the Navajo Tribe of Indians, June 1, 1868, Art. 10, 15 Stat. 667, 670. The Council may reasonably regulate the People's authority
to make laws through setting qualifications for voters in such referenda and initiatives, [citation omitted] but the ultimate power to govern the Nation always remains with the People. There is no question that the People as ‘Navajo voters’ may amend this, or any other law through the referendum or initiative process; ....” In the Matter of Two Initiative Petitions Filed by Navajo Nation President Joe Shirley. Jr. 9 Nav. R. 200, 203 (Nav. Sup. Ct. 2008).

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

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

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

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

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

A. The Navajo Nation Council hereby establishes a referendum measure for Diné voters to decide whether to increase the number of Navajo Nation Council delegates from 24 to 48. If this measure is approved by the voters and enacted, it shall be effective beginning with
the Navajo Nation 2026 General Election.

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

Official Title: REFERENDUM INCREASING THE NAVAJO NATION COUNCIL FROM 24 TO 48 DELEGATES.

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

Brief Statement of Legal Effect:
A. “YES” vote is in favor of increasing the number of delegates to the Navajo Nation Council from 24 to 48, beginning with the November 2026 Navajo Nation General Election. A “YES” vote will have the effect of amending Title 2 of the Navajo Nation Code as set forth in the complete text of the legislation referred by this referendum measure.

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

Referendum Ballot Question: “Shall the number of delegates to the Navajo Nation Council be increased from 24 to 48 delegates, beginning with the November 2026 Navajo Nation General Election?”

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

_____ “NO” - the current number of 24 delegates shall remain as is

SECTION FOUR. COMPLETE TEXT OF PROPOSED TITLE 2 AMENDMENT FOR THE REFERENDUM
The Navajo Nation Council hereby refers the complete text of proposed legislation for the
referendum to amend Title 2 of the Navajo Nation Code as follows:

Title 2. Navajo Nation Government
Chapter 3. Legislative Branch
Subchapter 1. Navajo Nation Council

§ 102. Powers; Composition
A. The Navajo Nation Council shall be the governing body of the Navajo Nation and shall consist of 24 delegates.

SECTION FIVE. REVIEW BY NAVAJO BOARD OF ELECTION SUPERVISORS
The Navajo Board of Election Supervisors shall review the proposed referendum measure for purposes of ensuring compliance with provisions of the Navajo Nation Election Code, including 11 N.N.C. §§ 401, 402 and 407.

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

SECTION SEVEN. APPORTIONMENT PLAN
If the referendum is approved, and upon certification of the voting results:
A. The Navajo Board of Election Supervisors shall consult with the Office of the Speaker and the Department of Justice, and other consultants as appropriate, regarding the development of a Chapter apportionment plan for the 48-member Navajo Nation Council.
B. A proposed Chapter apportionment plan based on a 48-member Council shall be prepared and timely submitted to the 25th Navajo Nation Council for its approval. Along with the proposed apportionment plan, all amendments to the Navajo Nation Code, which may be
necessary as a result of the adoption of the apportionment plan, shall also be presented to the
Navajo Nation Council for its approval.

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

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

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