

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0093-22_

SPONSOR: Otto Tso

TITLE: An Act Relating to the Naabik'iyáti' Committee and the Budget & Finance Committee; Approving the Fund Management Plan for the Diné Relocatee Fund

Date posted: May 06, 2022 at 5:00PM

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Office of Legislative Services
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LEGISLATIVE SUMMARY SHEET
Tracking No. 0092-22

DATE: April 21, 2022

TITLE OF RESOLUTION: AN ACT RELATING TO HEALTH EDUCATION AND HUMAN SERVICES, LAW AND ORDER, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; AMENDING 15 N.N.C. §§ 302-308, THE PLAN OF OPERATIONS OF THE NAVAJO NATION LABOR COMMISSION

PURPOSE: This resolution, if approved, will amend the Plan of Operation for the Navajo Nation Labor Commission.

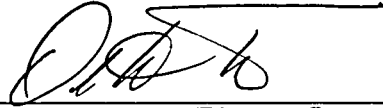
This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: Johnson
Website Posting Time/Date: _____
Posting End Date: 05-11-22
Eligible for Action: 05-12-22

Health Education & Human Services Committee
Thence
Law & Order Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION
2 24th NAVAJO NATION COUNCIL – Fourth Year, 2022

3 INTRODUCED BY

4 
5 _____
6 Otto Iso
7 (Sponsor)

8 TRACKING NO. 0092-22

9
10 AN ACT

11 RELATING TO HEALTH EDUCATION AND HUMAN SERVICES, LAW AND
12 ORDER, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION
13 COUNCIL; AMENDING 15 N.N.C. §§ 302-308, THE PLAN OF OPERATIONS OF
14 THE NAVAJO NATION LABOR COMMISSION

15
16 BE IT ENACTED:

17 SECTION ONE. AUTHORITIES

- 18 A. The Law and Order Committee is a standing committee of the Navajo Nation Council
19 and has the power to review and make recommendations to the Navajo Nation Council
20 on proposed amendments to and enactments in the Navajo Nation Code; and the
21 Committee is the legislative oversight committee for the Navajo Nation Labor
22 Commission. 2 N.N.C. §§ 164(A), 600(A), 601(B)(14) and (C)(1).
- 23 B. The Health, Education and Human Services Committee is a standing committee of the
24 Navajo Nation Council and has the power to review and recommend resolutions relating
25 to employment and labor. 2 N.N.C. §§ 400(A), 401(B)(6)(a).
- 26 C. The Naabik'iyáti' Committee is a standing committee of the Navajo Nation Council and
27 has the power to review proposed legislation which requires final action by the Navajo
28 Nation Council. 2 N.N.C. §§ 164(A)(9) and 700(A),
- 29 D. The Navajo Nation Council is the governing body of the Navajo Nation and must review
30 and approve enactments or amendments of positive law. 2 N.N.C. § 102(A) and 164(A).

1 **SECTION TWO. FINDINGS**

- 2 A. The purpose of the Navajo Nation Labor Commission (“the Commission”) is to
3 operate as a quasi-judicial body to hear, adjudicate and decide complaints filed under
4 the Navajo Preference in Employment through its rules of procedure in an unbiased
5 manner pursuant to 15 N.N.C. §§ 301-308.
- 6 B. The Commission is established and has powers prescribed in its Plan of Operation
7 as well as such additional powers as may be conferred to the Commission by law
8 pursuant to 15 N.N.C. §§ 301.
- 9 C. The Commission is the administrative oversight authority of the staff, program
10 budget and Office of Navajo Nation Labor Commission to ensure the duties and
11 responsibilities are in compliance pursuant to 15 N. N. C. § 304.
- 12 D. The Commission is authorized to formulate overall administrative and operating policies
13 pertaining to the function of the Commission and Office; and all formal substantive
14 action shall be taken by written resolution of the Commission duly certified by the
15 presiding officer or memorialized by written memorandum setting forth the action taken
16 by the Commission pursuant to 15 N. N. C. § 304.
- 17 E. There is a need to amend the Plan of Operations of the Navajo Nation Labor Commission
18 to be in compliance with Resolution Nos. CMA-13-16 and CJY-42-16, and Navajo
19 Nation Supreme Court Opinion, *Austin C. Bahe v. Navajo Nation Labor Commission and*
20 *Concerning Navajo Engineering Construction Authority*, No. SC-CV-15-18 (Nav. Sup.
21 Ct, June 29, 2018).
- 22 F. On August 25, 2021, the Navajo Nation Labor Commission by Resolution No.
23 NNLC AUGUST-25-2021 approved a Resolution to adopt and amend their Plan of
24 Operation, attached hereto as **Exhibit A**.
- 25 G. It is in the best interest of the Navajo Nation to amend 15 N.N.C. §§ 302 - 308, the Plan
26 of Operations of the Navajo Nation Labor Commission.

27
28 **SECTION THREE. AMENDMENTS TO 15 N.N.C. §§ 302 - 308**

29 The Navajo Nation hereby amends the Navajo Nation Code, Title 15 as follows:
30

1
2
3 **Title 15. Labor**

4 **Chapter 4. Navajo Nation Labor Commission**

5
6 * * *

7 **§ 302. Purposes**

8 ~~The purposes of the Commission shall be to:~~

9 ~~A. Hear and adjudicate cases as the quasi-judicial hearing body under the Navajo~~
10 ~~Preference in Employment Act.~~

11 ~~B. Conduct and hold quasi-judicial hearings in accordance with applicable Navajo~~
12 ~~Nation laws concerning Navajo employment.~~

13 ~~C. Process and decide all formal complaints/petitions.~~

14 ~~D. Adopt rules and regulations for Commission hearings.~~

15 The purpose of the Labor Commission is to operate as a quasi-judicial body to hear, adjudicate,
16 and decide all complaints filed under the Navajo Preference in Employment Act (the "Act") in
17 accordance with its rules of procedure in an unbiased manner.

18
19 **§ 303. Organization**

20 The Commission shall consist of five members.

21 A. Membership. The Commission shall consist of: (1) two members ~~of the Law and~~
22 ~~Order Committee of the Navajo Nation Council to be designated by that Committee~~
23 appointed by the Health, Education, and Human Services Committee; and (2) three
24 members appointed by the President of the Navajo Nation with the concurrence of
25 the Naabik`íyáti` Committee of the Navajo Nation Council.

26 B. Commission Members Qualifications. ~~The two members of the Law and Order~~
27 ~~Committee and the three members of the Commission appointed by the President of~~
28 ~~the Navajo Nation shall be familiar with labor practices, human resources and~~
29 ~~employment of the Navajo Nation. One appointed member shall be a Navajo worker~~
30 ~~familiar with human resources and employment practices. Neither the Executive~~

1 Director of the Division of Human Resources (“DHR”), the Directors of any
2 department within DHR, nor any person employed by DHR or its departments shall
3 be eligible to serve as a member of the Commission.

4 The five Commission members shall be 1) familiar with the Navajo Nation’s labor
5 practices, human resources and employment; 2) a member of the Navajo Nation Bar
6 in good standing, and; 3) two Commission members shall be licensed to practice law
7 in either Arizona, New Mexico or Utah.

8 C. Officers. The officers of the Commission shall be elected every ~~four (4)~~ two (2) years
9 from among the Commission by a majority vote of the Commission and shall consist
10 of a Chairperson, Vice-Chairperson, and Secretary.

11 1. Chairperson. The Chairperson ~~of the Commission~~ shall preside over
12 hearings, at meetings/deliberative sessions, and meetings /hearing of the
13 Commission, assure in an orderly manner, and shall meetings/deliberative
14 sessions/hearings in accordance with accepted Navajo Nation Labor
15 Commission rules, and sign all documents / and pleadings as required for
16 action of the Commission. related to complaints filed under the Act.

17 2. Vice-Chairperson. The Vice-Chairperson shall serve in the absence of the
18 Chairperson, and in the performance of this service this capacity, shall
19 exercise all powers and bear all the authority and responsibilities of vested
20 in the Chairperson.

21 3. Secretary. The Secretary shall ~~carry out such duties as may be prescribed.~~
22 In serve in the absence of the Chairperson and Vice-Chairperson, and in this
23 capacity, the Secretary shall ~~preside at all meetings/deliberative~~
24 ~~sessions/hearings of the Commission.~~ exercise all authority and
25 responsibilities vested in the Chairperson and or Vice-Chairperson.

26 4. The Commission may recall former members to complete pending cases. or
27 to establish a quorum when necessary.

28 D. Term of Office. Each member of the Commission shall serve for a term of four (4)
29 years and until his or her successor is appointed.

30 E. Commission Vacancies.

- 1 1. Resignation. Any A Commission member may resign by submitting written
2 notice thirty (30) days prior to the effective date ~~written notice~~ of their
3 resignation. The Commission shall accept the ~~and such~~ resignation ~~shall be~~
4 ~~accepted by the Commission~~ at the next Commission scheduled meeting.
- 5 2. Removal. ~~Any member of the~~ A Commission member shall be removed
6 ~~from the Commission~~ if:
- 7 a. Such member has been convicted of any crime reflecting upon such
8 member's honesty or ability to fulfill the fiduciary obligations
9 imposed by law upon such member; or
- 10 b. Such member violates the disclosure of conflicts of interest
11 requirements set forth in the Navajo Nation Ethics in Government
12 Law; or
- 13 c. Such member lacks diligence or commitment to fulfil the
14 responsibilities of the Commission by failing to attend three (3)
15 consecutive hearings, including meetings, absent a valid excusal or
16 good reason for non-participation.
- 17 3. ~~In the event~~ Removal of a Commission member ~~is found to be in violation~~
18 of pursuant to § 303(E)(2)(a)-(c) ~~such member shall be removed from his~~
19 ~~or her position,~~ shall be effective upon written notice of removal by the
20 Chairperson ~~of the Commission~~ or designee. The Commission shall
21 promptly submit the appropriate information and facts concerning the
22 violation and removal to the appointing authority set forth at § 303(A).
- 23 4. ~~In the event a~~ A vacancy is created on the Commission by reason of
24 resignation, removal or any other reason, ~~such vacaney~~ shall be filled by the
25 authority which is authorized to appoint members to such vacant seat, in
26 accordance with the procedure prescribed in § 303(A) and (B).
27 ~~Appointment of a replacement member shall be made within thirty (30) days~~
28 ~~after the date the appointing authority receives written notification of the~~
29 ~~vacaney.~~
- 30

1 **§ 304. Authority, ~~d~~Duties and ~~r~~Responsibilities**

2 ~~The Commission is authorized and directed to:~~

3 ~~A. Submit annual/quarterly reports of its activities to the Office of the Speaker of the~~
4 ~~Navajo Nation Council for distribution to the Law and Order Committee and the~~
5 ~~Navajo Nation Council;~~

6 ~~B. Formulate overall administrative and operating policies pertaining to the function of~~
7 ~~the Commission;~~

8 ~~C. Regulate the course of hearings and conduct of participants;~~

9 ~~D. Administer oaths and affirmations;~~

10 ~~E. Rule on motions and other procedural matters;~~

11 ~~F. Grant applications for subpoenas and rule on petitions to revoke subpoenas;~~

12 ~~G. Inquire fully into all issues and obtain a complete record upon which Commission~~
13 ~~decisions can be rendered;~~

14 ~~H. Receive, rule on, exclude, and limit evidence, lines of questioning, or testimony~~
15 ~~which are irrelevant, immaterial, or unduly repetitious;~~

16 ~~I. Examine witnesses for the purpose of clarification of the facts and issues;~~

17 ~~J. Direct the submission of briefs and set the time for the filing thereof;~~

18 ~~K. Issue finding of fact, conclusions of law and order, and impose appropriate damages,~~
19 ~~sanctions, fines and other relief for non-compliance;~~

20 ~~L. Set the amount of bond and such appropriate conditions thereto as the Commission~~
21 ~~may deem necessary;~~

22 ~~M. Prepare and submit an annual budget;~~

23 ~~N. Exereise such other authority as may be conferred by law; and~~

24 ~~O. Hold deliberative sessions/meetings/hearings at such locations on the Navajo Nation~~
25 ~~to accommodate the Commission/parties/witnesses. Upon approval by the~~
26 ~~Chairperson.~~

27 A. The Commission may adopt and implement rules of procedure governing the
28 processing of complaints and the conduct of hearings pursuant to 15 N.N.C. § 611 of
29 the Act.

30 B. The Commission shall conduct hearings on complaints filed under the Act in

1 accordance with the Commission Rules of Procedure in a fair and unbiased manner.

2 C. The Commission may refer a complaint to a Peace Maker, Special Master, or
3 Mediator upon a request by the parties or where deemed appropriate.

4
5 **§ 305. Meetings, ~~h~~Hearings, ~~d~~Deliberative ~~s~~Sessions; ~~procedure~~**

6 ~~A. Meetings/hearings/deliberative sessions shall be called by the Chairperson or~~
7 ~~designee of the Commission for business transactions or as required by pending cases~~
8 ~~filed before the Commission. Three members of the Commission shall constitute a~~
9 ~~quorum for the transaction of business.~~

10 ~~B. The Commission may hold meetings with the Law and Order Committee of the~~
11 ~~Navajo Nation Council for informational and coordinating purposes as it deem~~
12 ~~appropriate.~~

13 ~~C. The Commission shall adopt rules for the conduct of its meetings/hearings or~~
14 ~~deliberative sessions and keep a record of all its proceedings and transactions. All~~
15 ~~formal substantive action shall be taken by written resolution duly certified by the~~
16 ~~presiding officer, or memorialized by written memorandum setting forth the action~~
17 ~~taken~~

18 ~~D. Members of the Commission shall receive a two hundred fifty dollar (\$250.00)~~
19 ~~stipend and shall be reimbursed for lodging, meals, expenses and mileage (at the~~
20 ~~Navajo Nation rate) incurred in connection with the performance of their duties.~~
21 ~~Commission members shall be eligible for any insurance provided by the Navajo~~
22 ~~Nation to its employees, other boards, commissions, elected officials and other tribal~~
23 ~~entities. All Commission expenses shall be paid from the budget of the Commission.~~

24 A. Hearings. Three (3) Commission members shall constitute a quorum. Hearings shall
25 be conducted in accordance with 15 N.N.C. §611 and the Labor Commission Rules
26 of Procedure.

27 B. Meetings; Deliberative Sessions. The Chairperson or designee may call a meeting or
28 deliberative session to conduct business related to complaints filed with the
29 Commission or related operational matters. Three (3) Commission members shall
30 constitute a quorum for the transaction of business. Meetings may be held with the

1 Law and Order Committee or other entities.

2 C. Hearings, Meetings, or Deliberative Sessions may be held via teleconference or by
3 other electronic means in the event environmental conditions or other emergencies
4 present a health risk if an in-person hearing or meeting were to be held.

5 D. Commission members shall receive five hundred dollar (\$500.00) stipend for
6 attending hearings, meetings or deliberative sessions, and: shall be reimbursed for
7 expenses incurred while performing their duties, including lodging, meals, and
8 mileage at the Navajo Nation government rate. Commission members shall be
9 eligible for any insurance provided by the Navajo Nation for its employees.

10
11 **§ 306. Personnel**

12 A. The Commission may employ independent legal counsel and personnel as it deems
13 necessary and ~~as provided in its budget~~ to carry out the duties and responsibilities
14 herein set forth of the Commission.

15 ~~B.—The Commission office personnel shall provide administrative support to the~~
16 ~~Commission including, but not limited to:~~ consist of an Executive Director who
17 serves under the general direction of the Chairperson or designee. The Executive
18 Director is authorized to employ and supervise administrative support staff.

- 19 1. ~~Accepting and processing complaints, petitions, and related pleadings;~~
20 2. ~~Recording hearings and meetings;~~
21 3. ~~Administering oaths to witnesses;~~
22 4. ~~Accepting and maintain evidence;~~
23 5. ~~Providing information to the public, parties, legal counsel and other Navajo~~
24 ~~Nation offices regarding the operations, requirements or public records of~~
25 ~~the Commission, subject to principles of due process and the Navajo Nation~~
26 ~~Privacy and Access to Information Act;~~
27 6. ~~Providing official records of the Commission to the Supreme Court as~~
28 ~~necessary for appeals and petitions concerning Commission decisions; and~~
29 7. ~~Other duties as necessary to carry out the purposes and responsibilities of~~
30 ~~the Commission as provided herein.~~

1 ~~C. The Commission office personnel shall consist of an Executive Director and such~~
2 ~~other support staff as needed and provided for in the Commission budget to provide~~
3 ~~administrative support to the Commission. The Executive Director shall be under the~~
4 ~~general direction and guidance of the Commission through its Chairperson. The~~
5 ~~Executive Director shall be authorized to employ and supervise additional personnel~~
6 ~~as needed and provided for in the Commission budget to carry out the purposes of~~
7 ~~the Commission. All personnel of the Commission office shall be employed and~~
8 ~~compensated pursuant to the Navajo Nation Personnel Policies Manual.~~
9 The Commission administrative support staff shall consist of an Office Specialist,
10 and a Recorder, or other personnel as deemed necessary.

11
12 **§ 307. Place of Office**

13 ~~The Commission shall have its principal office and staff be located in Window Rock,~~
14 ~~Navajo Nation, (Arizona). The Commission may expand its offices as needed and provided for~~
15 ~~in the Commission budget.~~

16
17 **§308. Amendment**

18 ~~This Plan of Operation may be amended from time to time by the Intergovernmental~~
19 ~~Relations Committee of the Navajo Nation Council. Prior to any such amendment, the Health,~~
20 ~~Education and Human Services Committee shall review and recommend any change or~~
21 ~~proposed amendment to this Plan of Operation.~~

22
23 * * *

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25
26 **SECTION FOUR. CODIFICATION**

27 The provisions of these amendments of the Navajo Nation Code shall be codified by the Office
28 of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended
29 provisions in the next codification of the Navajo Nation Code.

1 **SECTION FIVE. SAVINGS CLAUSE**

2 Should any provisions of these amendments be determined invalid by the Navajo Nation
3 Supreme Court, or the District Courts of the Navajo Nation, without appeal to the Navajo
4 Nation Supreme Court, those amendments that are not determined invalid shall remain the law
5 of the Navajo Nation.

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7 **SECTION SIX. EFFECTIVE DATE**

8 The Navajo Nation Code amendment enacted herein shall be effective pursuant to pursuant to
9 2 N.N.C. § 221(B).

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