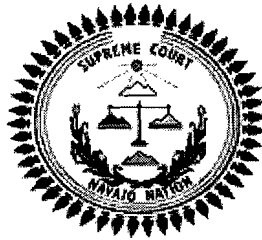


JUDICIAL BRANCH OF THE NAVAJO NATION

HERB YAZZIE
Chief Justice of the Navajo Nation

Eleanor Shirley, Associate Justice




Supreme Court

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MEMORANDUM

To: Hon. Lorenzo Bates, *Council Delegate*

Cc: Hon. Johnny Naize, *Speaker of the Navajo Nation Council*
Hon. Leonard Tsosie, *Council Delegate and Sponsor of Legis. No. 0148-11*

Fr: 
Herb Yazzie, *Chief Justice*

Date: April 14, 2011

Re: Language Revising Legislation No. 0148-11

Attached is language proposing revisions to limited sections of Legislation 0148-11, namely, to the enacting resolution and to Title II, Subchapter 9, Article 4 pertaining to the powers of the Law and Order Committee.

The language was requested by Mr. Bates and is submitted with as much careful construction as can be done given the shortness of time.

The language emphasizes the need for the Council to clarify that this legislation is intended to provide for continued government by the reduced Council on a temporary basis. It makes plain that the changes pertain to procedural matters and will not infringe on established principles of sound government. Finally, it calls for the immediate restoration of the Commission for Navajo Government Development, which shall be the body responsible for proposed permanent changes with the input and participation of the public.

The above recommended language requires corresponding changes in the Law and Order Committee section.

cc: Ben Shelly, *President of the Navajo Nation*
Harrison Tsosie, *Attorney General*
Dana Bobroff, *Deputy Attorney General*

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

22nd NAVAJO NATION COUNCIL – First Year, 2011

INTRODUCED BY:

Sponsor

TRACKING NO. _____

AN ACT

RELATING TO THE NAVAJO NATION COUNCIL; TO PROVIDE FOR CONTINUED GOVERNMENT AMENDING CERTAIN SECTIONS OF THE NAVAJO NATION CODE, TITLE 2 §§ THROUGH 835, TO CONFORM TO THE ESTABLISHMENT OF THE 24 MEMBER NAVAJO NATION COUNCIL BY MAKING TEMPORARY REVISIONS TO THE LEGISLATIVE PROCESS AND THE STANDING COMMITTEES STRUCTURE

BE IT ENACTED

Section 1. Enactment of the Council Reorganization Act of 2011.

The Navajo Nation Council hereby enacts the “Council Reorganization Act of 2011” which shall be codified at _____, ~~the 2011 Amendments of Title 2 of the Navajo Nation Code.~~

Section 2. Findings and Purpose.

1. The number of delegates to the Navajo Nation Council was reduced from 88 to 24 members by an initiative vote of the Navajo voters. Accordingly, it is necessary to reduce the number of standing committees and to modify the legislative process in order for the Council to conduct its activities on a continuing basis in order to achieve efficiency and continuity in performing its duties.

2. It has been recognized in Navajo law that the task of reorganizing the standing committees to conform to the 24 member Council is a political and management decision of the legislative branch. Only procedural changes are intended by this act for the sole purpose of reorganizing the standing committees of the 24-member Council to enable them to work and meet their responsibilities on a temporary basis, pending permanent amendments to Title II of the Navajo Nation Code.

3. The Navajo Nation Supreme Court has held that no portion of the Navajo Nation Code may be revised or amended in a manner that disturbs and undermines principles of checks and balances, separation of powers, accountability to the People, and acknowledgement of the People as the source of Navajo Nation governmental authority, even on a temporary basis. *Shirley v. Morgan*, No. SC-CV-02-10, slip op. at 7-8 (July 16, 2010).

4. The right to choose the form of Navajo government, including the power to amend Title 2, is reserved to the people as promised by the Council in *Navajo Nation Council Resolution No. CD-68-89, Whereas Clause 8*, in which the Council provided for temporary government “until the Navajo People decide through the Government Reform Project the form of government they want to be governed by.”

5. The immediate restoration of the Commission on Navajo Government Development is necessary, as held by the Navajo Nation Supreme Court. *Shirley v. Morgan*, No. SC-CV-02-10, slip op. at 9 (July 16, 2010).

6. Accordingly, the proposed act is further intended to restore the Commission on Navajo Government Development which, acting as an independent commission, shall submit proposed permanent government reforms with the consent and participation of the Navajo people.

7. It is further necessary to ~~The Navajo Nation Council desires to modify the legislative process to~~ immediately provide for reasonable public notification of, and input on, legislation, ~~The Navajo Nation Council also desires to~~ immediately establish new standards for emergency legislation and otherwise, to conform to holdings of the Navajo Nation Supreme Court.

8. ~~The Navajo Nation Council considers these amendments to be a priority.~~

9. The Navajo Nation Council determines this act ~~these amendments~~ to be in the best interest of the Navajo Nation.

Section 3. Sunset Clause

This act expires upon adoption by the Council of the Commission on Navajo Government Development's proposed government reforms or on April ____, 2012, whichever is sooner.

TITLE 2. NAVAJO NATION GOVERNMENT

CHAPTER 3. LEGISLATIVE BRANCH

SUBCHAPTER 9. STANDING COMMITTEES

Article 4. Law and Order Committee

§600. Establishment; membership; purposes

A. The Law and Order Committee is hereby established as a standing committee of the Navajo Nation Council.

B. The Committee shall consist of five members.

C. The Committee shall use Nitsáhákees, Nahat'á, Iiná and Siihásin in exercising legislative oversight over courts, administrative legal tribunals, criminal defense, legal defense of the indigent, juvenile justice, corrections, law enforcement emergency management, for the following purposes:

1. To 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. Justice system includes the Judiciary Branch and all administrative legal tribunals.

2. To protect the rights and interests of the Navajo People by improving the quality and effectiveness of the justice system within the Navajo Nation.

3. To preserve and enhance ~~establish and develop~~ the Navajo Nation justice system infrastructure including justice system facilities and to promote institutional planning and coordination among and between justice-system-related entities.

4. To enhance cooperation and coordination between Navajo Nation courts and courts of the various states and the federal government including their administrative legal tribunals.

5. To enhance the operations and coordination of all departments within the Navajo Nation Division of Public Safety in order to increase the availability, quality, and effectiveness of public safety services on the Navajo Nation.

6. To enable the Navajo Nation to more effectively provide efficient public safety services on the Navajo Nation.

7. To support effective cooperation and coordination between Navajo Nation law enforcement agencies and that of the various states and federal government law enforcement agencies.

8. To enhance juvenile justice programs through coordination with appropriate Committees, the Judicial Branch, Executive Branch programs, and federal, state, tribal and local governmental agencies.

§ 601 Powers

A. The Committee shall have all prudent powers necessary and proper to exercise its purposes set forth above.

B. The Committee shall have the following enumerated powers

1. To grant final approval for:

a. Agreements negotiated by justice systems entities, administrative legal tribunals and public safety programs with other federal, state, international, tribal, regional, and local governmental agencies, subject to Naa'bik'iyati' Committee approval when required by law.

~~b. Qualification standards for judges and justices of all courts and administrative tribunals of the Navajo Nation and the application process to determine the most qualified candidate.~~

2. To delegate responsibilities and authorities as appropriate for efficiency and streamlining of government processes to the Division, local government units and appropriate entities other than the Judicial Branch provided that the Committee first approves rules and regulations governing such delegations and to rescind such delegations.

3. To review and evaluate the performance of probationary and permanent judges and justices pursuant to recommendations of an independent commission to be constituted of members from the NNBA, practitioners, and the public.

4. To review and approve plans of operation for all divisions, departments and programs under the Committee's oversight authority and to amend or rescind such plans of operation.

5. To review and make recommendations to the Navajo Nation Council for final approval:

~~a. Removal of a permanent judge or justice.~~

b. Legislation requiring Council approval to accomplish or impact the Committee purposes.

6. To make recommendations to the President of the Navajo Nation for action:

~~a. A panel of candidates qualified by the Law and Order Committee will be recommended to the President for selection of probationary Judge(s) or Justice(s). The President will select and submit his appointment to the Navajo Nation Council within 60 days of the Law and Order Committee and Chief Justice's recommendation.~~

~~b. The President shall only appoint Judges or Justices for permanent appointment that have been recommended by the Law and Order Committee. The President will submit those Judge and Justices for confirmation to the Navajo Nation Council within 60 days of the Committee and Chief Justice's recommendation.~~

~~c. Removal of a Judge or Justice before they complete the term of their probationary appointment.~~

7. To represent the Navajo Nation, at local, state, and federal levels, in coordination with the President of the Navajo Nation, appropriate committee of the Navajo Nation Council and the Chief Justice in advocating for legislation, funding or actions relating to the justice systems, administrative legal tribunals and public safety activities.

8. To review and make recommendations to the Navajo Nation Council on proposed amendments to and enactments in the Navajo Nation Code.

9. To review, amend, recommend and submit the annual budget for programs under the oversight of the Committee to the Budget and Finance Committee and to the Navajo Nation Council.

10. To prepare and recommend approval of a committee budget each fiscal year.

C. Oversight.

1. To serve as the oversight committee for the Judicial Branch of the Navajo Nation, all I administrative legal tribunals including but not limited to the Navajo Nation Labor Commission and the Office of Hearings and Appeals, Office of the Public Defender, Office of the Prosecutor and the Division of Public Safety.

2. The Committee shall periodically review the overall function of the programs over which it has oversight.

§ 602. Advisors

Advisors to the Committee shall include the Chief Justice, Executive Director for Division of Public Safety, Department of Justice, Legislative Counsel, Auditor General, Chief Prosecutor and Chief Public Defender.

§ 603. Meetings

Meetings shall be held on the first and third Thursday of each month.