


Last updated August 10, 2018


Available on this site are selected Navajo Nation Council/Judiciary Committee/Law and Order Committee Resolutions relevant to the functions and processes of the Judicial Branch, Courts and Peacemaking.

Navajo Nation Code: Most of the statutes in the Navajo Nation Code are not available on this website due to copyright issues. We are able to provide the [Navajo Nation Bill of Rights](#) and [The Fundamental Laws of the Diné, Diné bi beenahaz'áanii](#). Otherwise, we are able only to link to the full texts of Navajo Nation Council Resolutions that may be the enacting resolution, an amendment, background or history to the statutes. Navajo Nation statutes may be found in hardbound or CD ROM versions of the Navajo Nation Code Annotated (2005) published by Thomson West and are available online to Westlaw subscribers. The text of the the Navajo Nation Code along with amendments enacted can also be found on the Navajo Nation Council website or through this [link](#).

These links will take you to indexes of important statutes. 7 N.N.C. §§ 101 - 1119 - [Courts and Procedure](#); 9 N.N.C. §§1 - 1817 [Domestic Relations](#)

Selected Navajo Nation Resolutions

08/06/18	CJY-64-18	Relating to Resources and Development, Law and Order, Naabik'iyati' Committees and the Navajo Nation Council; Amending Title 13 of the Navajo Nation Code Relating to Dog and Cat Control and Title 3 of the Navajo Nation Code Relating to Agriculture and Livestock
08/06/18	CJY-63-18	Relating to Health, Education and Human Services, Law and Order, and Naabik'iyati' Committees and the Navajo Nation Council; Enacting the Civil Rights of Individuals with Disabilities Act of 2018; Deleting Title 10, Chapter 13, §1402; Creating the "Civil Rights of Individuals with Disabilities" in Title 13, Chapter 55, §§ 4501-4510; Amending the Navajo Preference in Employment; Amending Title 13, Chapter 57, §§ 4801-4809, the Plan of Operations for the Navajo Nation Advisory Council on Disabilities.
05/07/18	CAP-43-18	Relating to Health, Education and Human Services, Resources and Development, Law and Order, Naabik'iyati' Committees and the Navajo Nation Council; Enacting the Revenge Porn Act and Amending Title 17 Sex Offenses
02/11/18	CJA-09-18	Relating to Law and Order, Health, Education and Human Services, Naabik'iyati' and the Navajo Nation Council; Amending the Navajo Nation Criminal Code at 17 N.N.C. §§ 203, 209, 303.01, 318 and 319 For Purposes of Addressing Cyberbullying
02/09/18	CJA-01-18	Relating to Law and Order and Naabik'iyati' Committees; and the Navajo Nation Council; Amending 2 N.N.C. §(B), Agreements Not Requiring Committee or Council Approval
10/27/17	CO-60-17	An Action Relating to Law and Order, Health, Education and Human Services, Naabik'iyati' Committee and the Navajo Nation Council; Amending "The Navajo Preference in Employment Act" at 15 N.N.C. §§ 603,604 (B) (8) to Provide for the Addition of Program Managers of the Executive Branch as a Class of Employees Exempt from the Just Cause Provisions of the Act

11/06/17	<u>CO-59-17</u>	Relating to Law and Order Committee, Naabik'iyáti' and the Navajo Nation Council; Amending Title 17 of the Navajo Nation Code
10/01/17	<u>CS-52-17</u>	Relating to the Law and Order, Health, Education and Human Services, Budget and Finance, Naabik'iyáti Committees, and the Navajo Nation Council; Amending 12 N.N.C. §810 and §820 of the Appropriations Act; Amending §604 of the Navajo Preference in Employment Act.
08/07/17	<u>CJY-48-17</u>	Relating to Health, Education and Human Services, Law and Order, Naabik'iyáti' Committee and Navajo Nation Council; Amending Navajo Nation Code, Title 17 and Enacting the Law Against Human Trafficking 2017
06/19/17	<u>LOCJN-09-17</u>	Relating to Law and Order Committee; Approving the Judicial Conduct Commission Plan of Operation and Rules and Procedure
4/30/17	<u>CAP-28-17</u>	Relating to Law and Order Committee, Naabik'iyáti' and the Navajo Nation Council; Amending the Navajo Nation Code at 11 N.N.C. §§ 22 and 23 by Shortening the Candidate Application Review Period from 30 to 13 Days
04/30/17	<u>CAP-19-17</u>	Relating to Law and Order Committee, Naabik'iyáti' and the Navajo Nation Council; Amending the Navajo Nation Code at Title 2 at 2 N.N.C. § 3769
08/04/16	<u>CJY-42-16</u>	Relating to Law and Order, Health, Education and Human Services and Naabik'iyáti' and the Navajo Nation Council; Amending 15 N.N.C. §303(B), Navajo Nation Labor Commission Organization Section
08/03/16	<u>CJY-38-16</u>	Relating to Law and Order, Naabik'iyáti' and the Navajo Nation Council; Amending the Navajo Nation Code at 17 N.N.C. § 2105, Offender Registration and Notification Act
04/06/16	<u>CMA-13-16</u>	Relating to Law and Order, Health, Education and Human Services and Naabik'iyáti' and the Navajo Nation Council; Amending the Navajo Preference in Employment Act at 15 N.N.C. §§ 604, 611 and 614,
02/11/16	<u>CJA-11-16</u>	Relating to Law and Order, Naabik'iyáti' and the Navajo Nation Council; Amending Navajo Nation Code, Title 17: Amending the Navajo Nation Sex Offender Registration and Notification Act of 2012
11/01/15	<u>CO-42-15</u>	Relating to Law and Order, Naabik'iyáti' and the Navajo Nation Council; Amending Navajo Nation Code Title 7 By Requiring Navajo Nation Supreme Court Chief Justice to Hold a Juris Doctor Degree
07/27/15	<u>LOCJY-06-15</u>	Relating to Law and Order; Designating Judge Allen Sloan As Acting Chief Justice for the Navajo Nation Supreme Court
06/05/15	<u>CMY-17-15</u>	Relating to Law and Order, Naabik'iyáti' and the Navajo Nation Council; Amending the Navajo Nation Ethics in Government Law and Election Code by Requiring All Ethics Judgments to be Satisfied Prior to Candidacy for Elective Public Office
12/01/14	<u>CN-52-14</u>	Relating to Law and Order, Naabik'iyáti' and the Navajo Nation Council; Amending Sentencing Provisions of Title 17, Criminal Code of the Navajo Nation.

Navajo Nation Council Resolution No. **CMA-13-16**

signed into law by President Russell Begaye
on April 6, 2016.

Effective date **April 6, 2016.**

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL - Second Year, 2016

AN ACTION

RELATING TO LAW AND ORDER, HEALTH, EDUCATION AND HUMAN SERVICES,
AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; AMENDING
THE NAVAJO PREFERENCE IN EMPLOYMENT ACT AT 15 N.N.C. §§ 604, 611
AND 614

BE IT ENACTED:

Section One. Findings

- A. The Navajo Nation empowered the Navajo Nation Law and Order Committee to review and recommend proposed Navajo Nation Code enactments and amendments. 2 N.N.C. § 601(B) (14) (2012); see also CJA-03-13.
- B. The Health, Education and Human Services Committee exercises oversight over employment matters. 2 N.N.C. § 401(C) (6) (2012).
- C. The Navajo Nation Council Speaker shall assign "[a] proposed resolution that requires final action by the Navajo Nation Council to...the Naabik'íyáti' Committee"; this resolution proposes a positive law amendment and requires the Navajo Nation Council's approval. 2 N.N.C. § 164 (A) (9) (2012) and 2 N.N.C. § 164 (A) (2012) see also CO-45-12.
- D. Currently, the general burden under the Navajo Preference in Employment Act ("NPEA") is on the employer to prove by a preponderance of the evidence that the law was not violated. 15 N.N.C. § 611(B). Preponderance of the evidence is defined as "just enough evidence to make it more likely than not that the fact the claimant seeks to prove is true." See <http://legal-dictionary.thefreedictionary.com>
- E. When an employee makes a grievance under 15 N.N.C. § 604(B) (9) specifically claiming harassment, the burden of proof is unclear.

- F. Under current Labor Commission rules, the employee alleging harassment has the burden to establish first that the employer harassed him or her. See Labor Commission Rules attached as Exhibit A.
- G. The proposed revision to 15 N.N.C. § 604(B)(9) would make it clear that in harassment cases the employee has the burden to establish the violation based on the unique nature of such a claim.
- H. The proposed revision to 15 N.N.C. § 611(B) would shift the burden of proof from the respondent to a burden of proof that both parties - petitioner and respondent - share equally.
- I. The proposed revision to 15 N.N.C. § 614 would apply the same shared burden of proof to cases filed by Navajo Nation Government Employees.

Exh. A

Section Two. Amendments to Title 15 of the Navajo Nation Code

The Navajo Nation hereby amends the Navajo Nation Code, Title 15, §§ 604, 611 and 614 as follows:

TITLE 15. LABOR

CHAPTER 5. NAVAJO PREFERENCE IN EMPLOYMENT ACT

§ 604. Navajo employment preference

B. Specific requirements for Navajo preference:

9. All employers shall maintain a safe and clean working environment and provide employment conditions which are free of prejudice, intimidation and including sexual harassment. The employee alleging a violation of this subsection shall have the burden of proof to show that violation by a preponderance of the evidence.

§ 611. Hearings

B. Burden of proof. ~~In any compliance review, complain proceeding, investigation or hearing, the burden of proof shall be upon the respondent to show compliance with the provisions of this Act by a preponderance of the evidence.~~ In any hearing, the employee alleging violation shall have the burden of proof to show violation by a preponderance of evidence.

§ 614. Grievance Procedure for Navajo Nation Government Employees

- A. An employee of the Navajo Nation Executive or Legislative Branch or a non-Local Governance Act Certified Chapter, or applicant for employment with the Navajo Nation Executive or Legislative Branch or non-Local Governance Act Certified Chapter, who alleges a violation of this Act shall file a grievance as provided by the Navajo Nation Personnel Policies Manual. The hearing officer may award the employee or applicant any remedy authorized by Section 612(A) of this Act. Directed verdict shall be discouraged in favor of a hearing to hear evidence from all parties.
- B. Any employee of the Navajo Nation Judicial Branch or an applicant for employment with the Navajo Nation Judicial Branch who alleges a violation of the Act shall file a grievance as provided by the Judicial Branch Employee Policies & Procedures. The hearing board may award the employee or applicant any remedy authorized by Section 612(A) of this Act.

- C. Except as otherwise provided in this Act, in any compliance review hearing, the employee alleging violation shall have the burden of proof to show violation by a preponderance of evidence. Directed verdict shall be discouraged in favor of a hearing to hear evidence from all parties.
- ~~E.~~ D. Any party to the grievance may appeal a final decision of the hearing officer or hearing board to the Navajo Nation Supreme Court within ten (10) calendar days of receipt of the decision. The employee or applicant shall file a notice of appeal with the Navajo Nation Supreme Court and the hearing officer or hearing board.

Section Three. Effective Date

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

Section Four. Codification

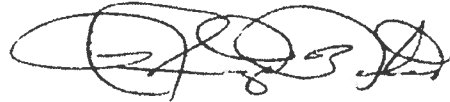
The provisions of this Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

Section Five. Savings Clause

Should any provisions of this ordinance be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, those portions of this ordinance which are not determined invalid shall remain the law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 15 in favor and 1 opposed, this 23rd day of March 2016.



LoRenzo Bates, Speaker
Navajo Nation Council

4-1-16


Date

Motion: Honorable Jonathan L. Hale

Second: Honorable Seth Damon

ACTION BY THE NAVAJO NATION PRESIDENT:

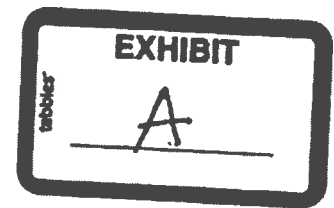
1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this 6th day of April 2016.



Russell Begaye, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2016 for the reason(s) expressed in the attached letter to the Speaker.

Russell Begaye, President
Navajo Nation



**AMENDED RULES OF PROCEDURE FOR
THE NAVAJO NATION LABOR COMMISSION**

1. **APPLICABILITY:** These rules shall apply to all proceedings before the Navajo Nation Labor Commission ("Commission") pursuant to the Navajo Preference in Employment Act ("NPEA") 15 N.N.C. §301 and §601 et. seq. These rules shall be cited as LCRP.
2. **PARTIES:** The Office of Navajo Labor Relations ("ONLR") or the individual party filing the complaint ~~shall be~~ is the Petitioner and the person alleged to have committed the violations of NPEA ~~shall be~~ is the Respondent. Petitioner shall be present at all stages of the proceedings. Respondent shall have a representative(s) present at all stages of the proceedings who has the authority to negotiate and approve a settlement agreement.
3. **INITIATION OF PROCEEDINGS:** Commission P ~~proceedings before the Commission shall be initiated when Petitioner upon the filing of~~ a written complaint ~~by a Petitioner pursuant to 15 N.N.C. §610(J).~~ A non- refundable filing fee of \$25.00 made payable to the Navajo Nation is required to initiate the processing of the complaint. The filing fee may be waived upon a written request to the Commission.
4. **REQUEST FOR PRELIMINARY INJUNCTION:** ~~Prior to filing a Charge with the ONLR, Petitioner must file an ONLR Charge prior to filing a Petition for Preliminary Injunction for Petitioner, upon notice to the Respondent, may petition the Commission for preliminary relief pursuant to 15 N.N.C. §610(K).~~ This petition shall meet the recognized requirements for an injunction. The moving party must show that he/she: (1) has a protectable interest; (2) has a high likelihood of success on the merits; (3) that irreparable injury, loss, or injury is likely to occur if the preliminary injunction is not issued; (4) that the threatened injury, loss or damage is substantial in nature; and (5) does not have an adequate remedy at law.

Petitioner shall serve the petition for preliminary injunction on the Respondent within 5 (five) days of filing the petition with the Commission.

A hearing shall be held within fifteen (15) business days of the filing of the petition for preliminary injunction.

5. CONTENTS OF COMPLAINT: The Complaint shall must be in writing, doubled spaced, and shall not exceed ten (10) pages. ~~and The Complaint shall contain:~~

- (a) a statement that Petitioner is authorized to file the complaint under the terms and conditions prescribed in 15 N.N.C. §610(j)(1)(a)-(c);
- (b) a statement that Petitioner is: (1)~~is~~ an enrolled member of the Navajo Nation; ~~or, (2) is legally married to an enrolled member of the Navajo Nation and meets the conditions prescribed in 15 N.N.C. §614 including a copy of a valid marriage certificate and proof that he/she has resided within the Navajo Nation continuously for one year, or, (3) he/she is eligible to file the complaint pursuant to *Staff Relief vs. Polacca*, 8 Nav. R. 49 (Nav. Sup. Ct. 2000).~~
- (c) Petitioner and Respondent's valid mailing address and telephone numbers. All mail sent to the parties at the address(es) provided shall be deemed served. If Respondent is a corporation, Petitioner shall provide the name and address of the corporation's registered agent to insure that Respondent receives notice of the filing of the Complaint.
- (d) the identification of the person(s) alleged to have violated the NPEA;
- (e) the date(s) on which the violations occurred, or where such acts are of a continuing nature, the period of time when the acts occurred;
- (f) a statement of the facts constituting the alleged violation(s);
- (g) all Section 604(B)(9) allegations of hostile work environment, harassment, humiliation, or intimidation shall be specifically plead and shall include specific name(s), date(s), place, and a brief description of the event(s);
- (h) the relief sought by Petitioner. ~~in accordance with the NPEA;~~
- (i) a copy of the Charge filed with ONLR shall must be attached to the complaint.

6. FILING OF DOCUMENTS: The complaint may be filed in person with at

the Commission office located off Morgan Boulevard, Training Center, Window Rock, Navajo Nation, Arizona or by certified mail, addressed to: Post Office Box 3450, Window Rock, Arizona 86515. All other documents may be sent by First Class mail to the address listed above. **Only those documents consisting of ~~7~~ ten (10) pages or less may be filed by facsimile at (928) 871-7415. Parties will pay \$2.00 per page for each faxed document that exceeds ten (10) pages.**

- 7. NOTICE OF HEARING:** A hearing shall be scheduled within sixty (60) calendar days of filing the complaint, but a hearing need not be held within sixty (60) calendar days of the filing of the complaint. A notice of hearing, a copy of the complaint, and these rules will be sent by certified mail to the parties or counsel of record. Petitioner may personally serve the complaint on a Respondent Corporation to insure that proper notice has occurred.

NOTE: The Commission is only obligated to send a copy of the complaint and notice of hearing to the Respondent upon the initial filing of the complaint. If the notice by certified mail is not delivered to the Respondent for any reason, Petitioner will be responsible for effecting service on the Respondent.

8. SERVICE; FILING OF OTHER PLEADINGS AND PAPERS:

- (a) Except as otherwise required in these rules, every pleading, motion or other papers filed after the original complaint shall be served by the filer upon all the parties or counsel of record within three (3) business days of filing said documents with the Commission. All pleadings and every paper filed with the Commission shall contain a certificate of service showing the date and manner of service.
- (b) Additional Time After Service by Mail. Whenever a party is required to do some act or take some proceedings within a prescribed time after the service of a notice or other paper upon him and the notice or paper is served by mail, five (5) days shall be added to the prescribed time.
- (c) Proposed exhibits shall be filed with the Commission and served on the opposing party, no later than ten (10) business days prior to the initial hearing. Exhibits ~~shall not be~~ filed by facsimile will not be accepted. Petitioner's exhibits shall be marked in alphabetical order. Respondent's exhibits shall be marked in numerical order. Exhibits in

excess of ten (10) or more ~~shall~~ must be tabbed, indexed and put in a 3-ring binder. Acceptance of supplemental exhibits filed less than ten (10) business days prior to the hearing is discretionary. ~~The parties shall submit complete exhibits at the evidentiary hearing.~~

- (d) The parties shall file their list of witnesses along with their address, phone number, and e-mail address, no later than ten (10) business days prior to the hearing.
 - (e) The parties shall file one (1) original and eight (8) copies of the Complaint, all pleadings, exhibits, and written documents with the Commission. The parties, ~~however~~, need only file one copy of subpoenas or proposed order(s).
 - (f) All motions, briefs, or memorandums must be answered within ten (10) calendar days after receipt by a party. Application of this rule may vary depending on whether a party is represented by counsel.
 - (g) The Commission may impose sanction(s) when a party fails to comply with any of the provisions prescribed by this rule.
9. **TIME:** In computing time under these rules, by order of the Commission, or as mandated by the NPEA, the date of the act, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a holiday, in which event, the period runs until the end of the next business day which is not a Saturday, Sunday or a holiday.
10. **CONTINUANCE OF HEARING DATE:** A hearing may be extended upon a written request showing good cause. The moving party shall indicate whether the opposing party has consented to the continuance and how much additional time is needed. A request for a continuance must be made ten (10) business days prior to the hearing date. Thereafter, no requests for continuances shall be considered, unless there is a showing of exigent or unforeseeable circumstances.
11. **ANSWER:** The Respondent shall file an ~~written~~ Answer to the complaint within twenty (20) calendar days after ~~the~~ receipt of the notice of hearing. ~~Failure to file a written Answer shall be deemed an admission of the allegations~~

~~contained in the complaint. The Answer shall be limited to three (3) pages.~~
NOTE: A Respondent who files a motion to dismiss for lack of jurisdiction is not required to file an Answer until ten (10) days after the Commission rules on the motion to dismiss. An Answer must be filed within the prescribed time where a motion to dismiss is filed on any other grounds except for lack of subject matter jurisdiction.

12. **AMENDMENTS:** An amended complaint may be filed before an Answer is served on Petitioner. An amended Answer may be filed twenty (20) calendar days after the Answer has been served on Petitioner. Otherwise, a complaint or Answer may only be amended by leave of the Commission or by written consent of the adverse party. Leave to amend shall be freely given when justice requires. Respondent shall file an Answer to an amended complaint within 15 (fifteen) calendar days of being served with the amended complaint.
13. **DEFAULT JUDGMENT:** Upon Respondent's failure to file a timely Answer, the party entitled to a default determination shall: (1) file a motion for an entry of default showing that the opposing party is in default and attaching proof of service of the complaint; (2) give notice of the motion for entry of default to the party claimed to be in default by certified mail.

An entry of default shall not be made until ten (10) calendar days after the filing and receipt of the notification of motion for entry of default judgment by the opposing party who is allegedly in default. A default shall not be entered if the party claimed to be in default pleads or otherwise defends as provided by these rules prior to the expiration of the ten (10) calendar days from the filing and notification of the motion for entry of default. A judgment by default may be issued after an entry of default has been entered by the Commission.

This rule does not apply where the Navajo Nation or any public entity, officer, employee or agent of the Navajo Nation is the Respondent. See 1 N.N.C. §555(B). Exceptions may apply where the Navajo Nation fails to participate in proceedings or fails to honor orders of the Commission. *Loley v. Dept. of Employment & Training*, 7 Nav. R. 406, 409 (Nav. Sup. Ct. 1999).

14. **SUBPOENAS:** All requests for subpoenas by a party, or on the initiative of the Commission shall be in writing. The Commission may issue a subpoena compelling the disclosure by any person evidence relevant to the complaint, including a subpoena ordering (a) the attendance and testimony of witnesses at

a deposition or hearing; (b) responses to written interrogatories; (c) the production of evidence including any relevant documents; and (d) access to evidence for the purpose of examination and copying. ~~NOTE:~~

A subpoena is not required to serve interrogatories. A ~~notice~~ certificate of service showing the date and manner of service of the interrogatories must be filed with the Commission before or at the time ~~it~~ interrogatories are served. Parties must respond to the requests for interrogatories within twenty (20) calendar days of receipt of the interrogatories. Interrogatories shall be limited to fifteen (15) questions including subparts.

Requests for subpoenas shall be filed no later than fifteen (15) business days prior to a scheduled hearing. The recipient shall have five (5) business days after receipt of the request to object to the subpoena. Upon receipt of the request and response to the subpoena, the Commission shall grant or deny the request for subpoena. The Commission has discretion to grant requests for subpoenas not made within this time period. All discovery must be completed no later than fifteen (15) days prior to the hearing.

The party requesting issuance of subpoenas shall arrange for service. A subpoena compelling the appearance of a witness for a hearing or deposition shall be served by a Navajo Police Officer or by any other person who is not a party and not less than 18 years of age, who shall execute a Return of Service. All other subpoenas may be served by certified mail. A subpoena served by ordinary first class mail shall be invalid. Parties are required to confer with each other prior to filing discovery objections or motions to compel discovery.

~~NOTE: Commission P~~ proceedings before the Commission are intended to afford the parties a prompt, informal and inexpensive process for ~~to resolve~~ ing employment disputes. ~~As such, Commission~~ These proceedings require lesser formalities than those required by both the Navajo Nation and federal discovery practice to foster the intent of the NPEA. Parties are strongly urged to refrain from engaging in extensive and costly discovery. Parties are strongly encouraged to initiate discovery as early as possible after an Answer has been filed to avoid delay.

15. CONDUCT OF HEARING:

- A. The Chairperson shall preside at the hearing at which a quorum of three (3) members of the Commission are present. The Vice-Chairperson shall serve in the absence of the Chairperson. In the absence of the Chairperson, and Vice-Chairperson, the Secretary shall preside at the hearing.
- B. Either party may file a written motion to disqualify a member of the Commission from hearing a case. The motion must be supported by an affidavit or by relevant, adequate evidence to show that actual bias exists.
- C. A Commissioner shall disclose that she/he has a past or present relationship to a party/ witness. If a party objects to that Commissioner's participation, the Commissioner shall consider whether she/he can remain fair and impartial despite the relationship. However, recusal shall not result in losing a quorum so as to deny a party access to a hearing.
- D. The Chairperson of the Commission shall regulate the course of the hearing, shall conduct the hearing in a fair and orderly manner and shall extend to all parties the right to be heard.
- E. Oaths shall be administered by the Clerk of the Commission.
- F. Use of a Navajo interpreter:
 - (1) ~~A party that wishes to present his/her case in the Navajo language shall declare such intention in the original petition, or Answer. A written request will be considered if timely filed ten (10) days prior to the hearing.~~
 - (2) A certified Navajo interpreter is preferred. The party requesting that his/her case be presented in the Navajo language a Navajo interpreter is shall be responsible for compensating the interpreter and providing notice to the opposing party that he/she intends to use an interpreter.
- G. Representation: Parties shall have the right to appear *pro se* or be represented by counsel who is a member in good standing with the Navajo Nation Bar Association ("NNBA"). Counsel shall file an entry

~~of appearance, which states that they are a member in good standing with the NNBA.~~ A non- resident attorney, who is a member in good standing with any state bar, may participate in one case per year before the Commission by filing ~~The non-resident attorney(s) shall submit a~~ written request to appear and shall associate with a NNBA member.

~~If A Respondent is a corporation,~~ it is required to be represented by counsel who is a member of the NNBA. *Perry v. Nav. Labor Commission & conc. Utah Nav. Dev. Corp.*, No. SV-CV-50-05, slip op. (Nav. Sup. Ct. Aug. 7, 2007).

- H. The Commission shall not be bound by any formal rules of evidence. The Chairperson may exclude evidence that is irrelevant, immaterial, or unduly repetitious.
- I. Each party may call, examine, and cross examine witnesses. The Commission may question any of the witnesses upon conclusion of their testimony. Either party may question those witnesses regarding only the issues raised by the Commission's inquiry.
- J. Each party shall have an opportunity to give an opening statement prior to the presentation of their case.
- K. Order of Proceedings: The Respondent has the burden of going forward with evidence that they did not violate the NPEA. After the Respondent has rested, the Petitioner may present evidence to support of his/her claim. EXCEPTION: The Petitioner has the initial burden of going forward with evidence that Respondent created a hostile work environment and/ or harassed, humiliated or intimidated Petitioner in violation of 15 N.N.C. §604(B)(9). The burden will then shift to the Respondent to show no violation of 15 N.N.C. §604(B)(9). The Petitioner may rebut the evidence presented by the Respondent.
- L. Each party may give closing arguments upon conclusion of presentation of the evidence.
- M. A party may move for a Directed Verdict at the close of the evidence offered by an opponent. A motion for directed verdict shall state specific grounds. The opponent shall have an opportunity to respond to the

motion.

N. Motions for Summary Judgment are not allowed.

Q. The burden of proof shall be on the Respondent to show compliance with the provisions of the NPEA by a preponderance of the evidence.

P. In the event a party does not make an appearance on the day set for hearing, the Commission may enter a default determination against the non-appearing party.

Q. Witnesses shall be excluded from the hearing room prior to the presentation of their testimony.

R. All hearings ~~shall be~~ are recorded. Any party may request a copy of the ~~tapes~~ a recording of the proceedings at their own expense.

S. A party may record the proceedings via any electronic audio recording device that does not interfere or obstruct the proceedings. A party may employ a court reporter upon notice to the opposing party. All transcripts generated from the foregoing are unofficial and may not be substituted as an official record of the Commission.

T. A ~~damages remedies~~ hearing may be held where the prevailing party ~~shall have~~ has the burden of proof to show that he/ she is entitled to the remedial relief requested. Opposing party will have an opportunity to respond to the remedial relief requested.

16. ~~STIPULATION OF PARTIES: SETTLEMENT AGREEMENTS:~~ All ~~stipulations settlement agreements~~ executed by the parties or counsel of record shall be submitted in writing as soon as practical. If a ~~stipulated settlement~~ agreement is made within five (5) calendar days prior to the hearing, the terms of the agreement shall be presented at the scheduled hearing, unless otherwise ordered by the Commission. **All confidential settlement agreements must be filed with the Commission which will be sealed and will remain unavailable to the public.**

17. DECISION: The decision shall be reduced to writing, signed by the Chairperson or designee. Copies of the decision shall be sent by certified mail

to all parties of record.

18. **APPEAL:** The decision of the Commission shall be final with a right of appeal to the Navajo Nation Supreme Court. An appeal must be filed with the Navajo Nation Supreme Court within ten (10) calendar days after receipt of the decision.-
19. **MODIFICATION:** The Commission reserves the right to modify these rules.
20. **EFFECTIVE DATE:** These Rules shall be in effect on and after _____, 5:00 P.M.

Rules Of Procedures for Proceedings Before the Navajo Nation Labor Commission, adopted May 10, 1991. Amended January 30, 2001 by Res. NNLC-JAN-74-01. Amended October 09, 2001 by Res. NNLC- OCT-78-01. Amended October 9, 2001 by Res. NNLC-OCT-78-01. Amended October 12, 2005 by Res. NNLC-SEPT-03-05. Amended December 19, 2006 by Res. NNLC-DEC-01-06. Amended September 25, 2007 by Res. NNLC- SEPT-01-07. Amended December 3, 2009 by Res. NNLC-DEC-01-2009. Amended October 12, 2011 by Res. NNLC-OCT-01-2011. Amended June 28, 2012 by Res. NNLC-JUN-02-2012. Amended September 5, 2013 by Res. NNLC-SEPT-02-2013. Pending Amendment, , by Res. NNLC- - _2015.

Navajo Nation Council Resolution No. **CJY-42-16**

signed into law by President Russell Begaye
on August 4, 2016.

Effective date **October 1, 2017.**

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL – Second Year, 2016

AN ACT

RELATING TO LAW AND ORDER, HEALTH, EDUCATION AND HUMAN SERVICES,
NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; AMENDING
15 N.N.C. § 303(B), NAVAJO NATION LABOR COMMISSION ORGANIZATION
SECTION

BE IT ENACTED:

Section One. Authority

- A. The Navajo Nation Council established the Law and Order Committee (LOC) as a Navajo Nation standing committee; as such empowered LOC to review and make recommendations to the Navajo Nation Council on proposed Navajo Nation Code amendments and enactments and empowered LOC with oversight authority over the Navajo Nation Labor Commission. 2 N.N.C. §§ 164 (A)(9), 600 (A), 601 (B)(14) and (C)(1) (2012) see also CJA-03-13.
- B. The Navajo Nation Council established the Health, Education and Human Services Committee (HEHS) as a Navajo Nation standing Committee; as such empowered HEHS to review and recommend resolutions relating to employment and labor. *Id.* at §§ 400(A) and 401(B)(6)(a).
- C. The Navajo Nation Council established the Naabik'íyáti' Committee as a Navajo Nation standing committee and as such proposed legislation that requires final action by the Navajo Nation Council shall be assigned to the Naabik'íyáti' Committee. *Id.* at §§ 164 (A)(9), 700 (A) (2012).
- D. The Navajo Nation Council must review and approve enactments or amendments of positive law. *Id.* at § 164 (A) (2012).

Section Two. Findings

- A. The Navajo Nation Labor Commission's purpose is to 1) hear and adjudicate cases as the quasi-jurisdictional hearing body under the Navajo Preference in Employment Act; 2) conduct and hold quasi-judicial hearings in accordance with applicable Navajo Nation laws concerning Navajo employment; 3) process and decide all formal complaints/petitions; and 4) adopt rules and regulations for Commission hearings. 15 N.N.C. §302.
- B. Several Navajo Nation Labor Commission authorities, duties and responsibilities require legal training, i.e.: rule on motions or other procedural matters; receive, rule on, exclude, and limit evidence, lines of questioning, or testimony which are irrelevant, immaterial, or unduly repetitious; examine witnesses; issue findings of fact, conclusions of law and order, and impose appropriate damages, sanctions, fines and other relief for non-compliance. *Id.* at §§ 304(E), (H), (I) and (K).
- C. Requiring the Navajo Nation Labor Commissioners to be licensed attorneys is in the Navajo Nation's best interest because the Navajo Nation Labor Commission's purpose and duties would benefit from individuals who have the appropriate legal background to sufficiently decide a case.

Section Three. Amending Navajo Nation Code Title 15

The Navajo Nation Council amends 15 N.N.C. §303(B) as follows:

NAVAJO NATION CODE ANNOTATED

TITLE 15. LABOR

CHAPTER 4. NAVAJO NATION LABOR COMMISSION

§ 303. Organization

The Commission shall consist of five members.

- A. Membership. The Commission shall consist of: (2) two members ~~of~~ appointed by the Health, Education and Human Services Committee of the Navajo Nation Council ~~to be~~

~~designated by that Committee;~~ and (3) three members appointed by the President of the Navajo Nation with the concurrence of the ~~Government Services~~ Naabik'iyáti' Committee of the Navajo Nation Council.

- B. ~~Commission Members Qualifications. The two members of the Human Services Committee and the three members of the Commission appointed by the President of the Navajo Nation shall be familiar with labor practices, human resources and employment of the Navajo Nation. One appointed member shall be a Navajo worker familiar with human resources and employment practices. Neither the Executive Director of the Division of Human Resources ("DHR"), the Directors of any department within DHR, nor any person employed by DHR or its departments shall be eligible to serve as a member of the Commission.~~

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

Section Four. Codification

The provisions of this Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions into the next codification or supplement of the Navajo Nation Code.

Section Five. Savings Clause

Should any provision of this Act be determined invalid by the Navajo Nation Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, the remainder of the Act shall remain the law of the Navajo Nation.

Section Six. Effective Date

The provisions of this Act shall become effective October 1, 2017, in accord with 2 N.N.C. § 221(B).

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 13 in favor and 5 opposed, this 21st day of July 2016.



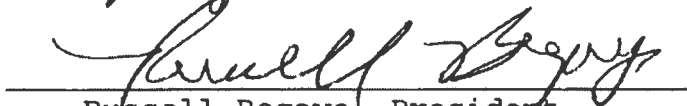
LoRenzo Bates, Speaker
Navajo Nation Council

July 28 2016
Date

Motion: Honorable Walter Phelps
Second: Honorable Lee Jack, Sr.

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this 4th day of August 2016.



Russell Begaye, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2016 for the reason(s) expressed in the attached letter to the Speaker.

Russell Begaye, President
Navajo Nation

Navajo Nation Council Resolution No. **CS-52-17**

signed into law by President Russell Begaye
on October 1, 2017.

Effective date **October 1, 2017.**

**RESOLUTION OF THE
NAVAJO NATION COUNCIL**

23RD NAVAJO NATION COUNCIL - THIRD YEAR, 2017

AN ACT

RELATING TO THE LAW AND ORDER, HEALTH, EDUCATION, AND HUMAN SERVICES, BUDGET AND FINANCE, NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; AMENDING 12 N.N.C. § 810 AND § 820 OF THE APPROPRIATIONS ACT; AMENDING § 604 OF THE NAVAJO PREFERENCE IN EMPLOYMENT ACT

BE IT ENACTED:

Section One. Authority

- A. The Law and Order Committee of the Navajo Nation Council is empowered to review and make recommendations to the Navajo Nation Council on proposed amendments to and enactments to the Navajo Nation Code. 12 N.N.C. § 601(B)(14).
- B. The Health, Education, and Human Services Committee is empowered to oversee over employment matters. 2 N.N.C. § 401(C)(6).
- C. The Budget and Finance Committee exercises oversight authority of budget and finance matters for the purposes of "recommend[ing] to the Navajo Nation Council the adoption of resolutions designed to strengthen the fiscal and financial position of the Navajo Nation and to promote the efficient use of the fiscal and financial resources of the Navajo Nation." 2 N.N.C. §300 (C)(3).
- D. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council. A proposed resolution that requires final action by the Navajo Nation Council shall be assigned the standing committee having authority over the subject matter at issue and the Naabik'íyáti' Committee. 2 N.N.C. §§ 164(A)(9) and 700(A).
- E. The Navajo Nation Council must review and approve enactments or amendments of positive law. 2 N.N.C. §§ 164(A).
- F. The Appropriations Act may be amended upon recommendation from the Budget and Finance Committee. 12 N.N.C. § 880.

NAVAJO NATION CODE ANNOTATED

TITLE 15. LABOR

CHAPTER 7. NAVAJO PREFERENCE IN EMPLOYMENT ACT

§ 604 Navajo Employment Preference

B. Specific requirements for Navajo preference:

8. All employers shall not penalize, discipline, discharge nor take any adverse action against any Navajo employee without just cause. A written notification to the employee citing such cause for any of the above actions is required in all cases. Provided, that this Subsection shall not apply to Division Directors, or to other employees and officials of the Navajo Nation who serve, pursuant to a specific provision of the Navajo Nation Code, at the pleasure of the Navajo Nation Council, the standing committees of the Navajo Nation Council, the President of the Navajo Nation, the Speaker of the Navajo Nation Council, the Chief Justice of the Navajo Nation, or those persons employed pursuant to 2 N.N.C. §§ 281(C) and 1009. This subsection shall not be used by a program director to challenge the withholding of his or her salary for failure to implement a corrective action plan of the Auditor General, as authorized by 12 N.N.C. § 9(C), or for failure to fulfill a condition of appropriation, as authorized by 12 N.N.C. § 820(R)(2) and (3).
9. All employers shall maintain a safe and clean working environment and provide employment conditions which are free of prejudice, intimidation and including sexual harassment. The employee alleging a violation of this subsection shall have the burden of proof to show that violation by a preponderance of the evidence. An employee may not file an action under the Domestic Abuse Protection Act, 9 N.N.C. § 1601, et seq., to seek to restrain a supervisor or co-worker for a dispute arising out of the employment relationship.

Section Five. Codification

The provisions of the Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

Section Six. Saving Clause

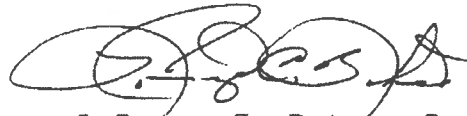
Should any provision of this Act be determined invalid by the Navajo Nation Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, the remainder of the Act shall remain the law of the Navajo Nation.

Section Seven. Effective Date

The provisions of the amendments to the Appropriations Act and the Navajo Preference in Employment Act are effective in accordance with 2 N.N.C. § 221(B).

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 13 in Favor and 03 Opposed, this 11th day of September, 2017.



LoRenzo C. Bates, Speaker
Navajo Nation Council


9-21-17

Date

Motion: Honorable Leonard Tsosie
Second: Honorable Seth A. Damon

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (c)(10), on this 1st day of October 2017.



Russell Begaye, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (c)(11), on this _____ day of _____ 2017 for reason(s) expressed in the attached letter to the Speaker

Russell Begaye, President
Navajo Nation

Navajo Nation Council Resolution No. **CO-60-17**

adopted by NNC on October 17, 2017.

Effective date _____

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL -- Third Year, 2017

AN ACTION

RELATING TO LAW AND ORDER, HEALTH, EDUCATION AND HUMAN SERVICES,
NAABIK'ÍYÁTI' COMMITTEE AND THE NAVAJO NATION COUNCIL; AMENDING
"THE NAVAJO PREFERENCE IN EMPLOYMENT ACT" AT 15 N.N.C. §§ 603, 604
(B) (8) TO PROVIDE FOR THE ADDITION OF PROGRAM MANAGERS OF THE
EXECUTIVE BRANCH AS A CLASS OF EMPLOYEES EXEMPT FROM THE JUST CAUSE
PROVISIONS OF THE ACT

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Law and Order Committee of the Navajo Nation Council, pursuant to 2 N.N.C. 601(B)(14), reviews and makes recommendations to the Navajo Nation Council on proposed amendments to and enactments in the Navajo Nation Code.
- B. The Health, Education and Human Services Committee of the Navajo Nation Council, among other duties and responsibilities, generally oversees the Division of Human Resources within the Navajo Nation. 2 N.N.C. §400(C) (1).
- C. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council. Pursuant to 2 N.N.C. § 164(A) (9), the committee reviews proposed legislation which requires final action by the Navajo Nation Council.
- D. The Navajo Nation Council enacts laws and sets policy for the Navajo Nation. 2 N.N.C. § 102.

SECTION TWO. FINDINGS

- A. Program managers of the Executive Branch of the Navajo Nation perform a crucial role in the implementation, efficiency and effectiveness of the programs of the Navajo Nation in a manner that insures a positive benefit to the Navajo People.
- B. The Navajo Nation Personnel Policies Manual describes the supervisory responsibilities of program managers as follows: "Supervisors are responsible for utilizing and applying the personnel policies consistently in dealing with human

resources issues. They are encouraged to seek advice from Department of Personnel Management and Department of Justice on the interpretation of the Personnel Policies Manual and in addressing employment issues. Supervisors are expected to provide leadership in implementing the policies and to set positive examples for employees. See Navajo Nation Personnel Policies Manual, Section I, A., Amended March 25, 2015.

- C. In order to hold program managers of each division within the Navajo Nation government accountable for the performance of their respective programs, there is a current need to make all program managers within the Executive Branch of the Navajo Nation professional at-will employees.
- D. The definition of at-will employee is when, "a supervisor can discharge an employee under this employment status for any reason at all or no reason at all, with or without notice; and the employee can leave (resign) at any time for any or no reason at all, with or without notice." See Navajo Nation Personnel Policies Manual, Section XXI, Amended April 12, 2016.
- E. The definition of "program manager" is "...anyone who has the authority to hire, terminate, discipline, or otherwise initiate personnel action. It is also intended to include all supervisors at higher levels, i.e. Department Managers, division directors." See Navajo Nation Personnel Policies Manual, Section XXI, Amended April 12, 2016.
- F. It is in the best interest of the Navajo Nation in order to improve overall program efficiency, effectiveness and accountability that all program managers serve at the pleasure of Navajo Nation Executive Branch Division Directors.
- G. It is in the best interest of the Navajo Nation to amend the Navajo Preference in Employment Act, at 15 N.N.C. §§ 603, 604 (B) (8), to provide that all program managers of the Navajo Nation Executive Branch be exempt from the just cause provisions of the Navajo Preference in Employment Act.

SECTION THREE. AMENDING TITLE 15

The Navajo Nation amends the Navajo Preference in Employment Act, at 15 N.N.C. §§ 603, 604 (B) (8) as follows:

THE NAVAJO NATION CODE ANNOTATED
TITLE 15. LABOR
CHAPTER 7. NAVAJO PREFERENCE IN EMPLOYMENT ACT

§ 603. Definitions

- A. The term "Commission" shall mean the Navajo Nation Labor Commission.
- B. The term "employment" shall include, but is not limited to, the recruitment, hiring, promotion, transfer, training, upgrading, reduction-in-force, retention, and recall of employees.
- C. The term "employer" shall include all persons, firms, associations, corporations, and the Navajo Nation and all of its agencies and instrumentalities, who engage the services of any person for compensation, whether as employee, agent, or servant.
- D. The term "Navajo" means any enrolled member of the Navajo Nation.
- E. The term "ONLR" means the Office of Navajo Labor Relations.
- F. The term "probable cause" shall mean a reasonable ground for belief in the existence of facts warranting the proceedings complained of.
- G. The term "territorial jurisdiction" means the territorial jurisdiction of the Navajo Nation as defined in 7 N.N.C. § 254.
- H. The term "counsel" or "legal counsel" shall mean: (a) a person who is an active member in good standing of the Navajo Nation Bar Association and duly authorized to practice law in the courts of the Navajo Nation; and (b) for the sole purpose of co-counseling in association with a person described in Clause (a), an attorney duly authorized, currently licensed and in good standing to practice law in any state of the United States who has, pursuant to written request demonstrating the foregoing qualifications and good cause, obtained written approval of the Commission to appear and participate as co-counsel in a particular Commission proceeding.

- I. The term "necessary qualifications" shall mean those job-related qualifications which are essential to the performance of the basic responsibilities designated for each employment position including any essential qualifications concerning education, training and job-related experience, but excluding any qualifications relating to ability or aptitude to perform responsibilities in other employment positions. Demonstrated ability to perform essential and basic responsibilities shall be deemed satisfaction of necessary qualifications.
- J. The term "qualifications" shall include the ability to speak and/or understand the Navajo language and familiarity with Navajo culture, customs and traditions.
- K. The term "person" shall include individuals; labor organizations; tribal, federal, state and local governments, their agencies, subdivisions, instrumentalities and enterprises; and private and public, profit and non-profit, entities of all kinds having recognized legal capacity or authority to act, whether organized as corporations, partnerships, associations, committees, or in any other form.
- L. The term "employee" means an individual employed by an employer.
- M. The term "employment agency" means a person regularly undertaking, with or without compensation, to procure employees for an employer or to obtain for employees opportunities to work for an employer.
- N. The term "labor organization" or "union" means an organization in which employees participate or by which employees are represented and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms and conditions of employment, including a national or international labor organization and any subordinate conference, general committee, joint or system board, or joint council.
- O. The term "petitioner" means a person who files a complaint seeking to initiate a Commission proceeding under the Act.
- P. The term "respondent" means the person against whom a complaint is filed by a petitioner.
- Q. The term "Act" means the Navajo Preference in Employment Act.

R. The term "program manager" shall be as defined in The Navajo Nation Personnel Policies Manual.

§ 604. Navajo employment preference

★ ★ ★ ★

B. Specific requirements for Navajo preference:

1. All employers shall include and specify a Navajo employment preference policy statement in all job announcements and advertisements and employer policies covered by this Act.
2. All employers shall post in a conspicuous place on its premises for its employees and applicants a Navajo preference policy notice prepared by ONLR.
3. Any seniority system of an employer shall be subject to this Act and all other labor laws of the Navajo Nation. Such a seniority system shall not operate to defeat nor prevent the application of the Act, provided, however, that nothing in this Act shall be interpreted as invalidating an otherwise lawful and bona fide seniority system which is used as a selection or retention criterion with respect to any employment opportunity where the pool of applicants or candidates is exclusively composed of Navajos or of non-Navajos.
4. The Navajo Nation when contracting with the federal or state governments or one of its entities shall include provisions for Navajo preference in all phases of employment as provided herein. When contracting with any federal agency, the term Indian preference may be substituted for Navajo preference for federal purposes, provided that any such voluntary substitution shall not be construed as an implicit or express waiver of any provision of the Act nor a concession by the Navajo Nation that this Act is not fully applicable to the federal contract as a matter of law.
5. All employers shall utilize Navajo Nation employment sources and job services for employee recruitment and referrals, provided, however, that employers do not have the foregoing obligations in the event a Navajo is

selected for the employment opportunity who is a current employee of the employer.

6. All employers shall advertise and announce all job vacancies in at least one newspaper and radio station serving the Navajo Nation, provided, however, that employers do not have the foregoing obligations in the event a Navajo is selected for the employment opportunity who is a current employee of the employer.
7. All employers shall use non-discriminatory job qualifications and selection criteria in employment.
8. All employers shall not penalize, discipline, discharge nor take any adverse action against any Navajo employee without just cause. A written notification to the employee citing such cause for any of the above actions is required in all cases. Provided, that this Subsection shall not apply to Division Directors, program managers of the Executive Branch and Legislative Branch or to other employees and officials of the Navajo Nation who serve, pursuant to a specific provision of the Navajo Nation Code, at the pleasure of the Navajo Nation Council, the standing committees of the Navajo Nation Council, the President of the Navajo Nation, the Speaker of the Navajo Nation Council, the Chief Justice of the Navajo Nation, or those persons employed pursuant to 2 N.N.C. §§ 281(C) and 1009.
9. All employers shall maintain a safe and clean working environment and provide employment conditions which are free of prejudice, intimidation and harassment.
10. Training shall be an integral part of the specific affirmative action plans or activities for Navajo preference in employment.
11. An employer-sponsored cross-cultural program shall be an essential part of the affirmative action plans required under the Act. Such program shall primarily focus on the education of non-Navajo employees, including management and supervisory personnel, regarding the cultural and religious traditions or beliefs of Navajos and their relationship to the development of employment policies which accommodate such traditions and beliefs. The cross-cultural program shall be developed and implemented through a process which involves the

substantial and continuing participation of an employer's Navajo employees, or representative Navajo employees.

12. No fringe benefit plan addressing medical or other benefits, sick leave program or any other personnel policy of an employer, including policies jointly maintained by an employer and associated labor organization, shall discriminate against Navajos in terms or coverage as a result of Navajo cultural or religious traditions or beliefs. To the maximum extent feasible, all of the foregoing policies shall accommodate and recognize in coverage such Navajo traditions and beliefs.

* * * *

SECTION FOUR. CODIFICATION

The provisions of the Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

SECTION FIVE. SAVING CLAUSE

Should any provision of this Act be determined invalid by the Navajo Nation Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, the remainder of the Act shall remain the law of the Navajo Nation.

SECTION SIX. EFFECTIVE DATE

The provisions of this Act shall become effective in accord with 2 N.N.C. § 221(B) and shall be applicable to all program manager positions as they become vacant because of retirement, resignation, termination, promotion, layoff and transfer other than to acting status as determined by the Department of Personnel Management or a year from the date upon which it receives the signature of the President of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 08 in favor and 07 opposed, this 17TH day of October 2017.



LoRenzo C. Bates, Speaker
Navajo Nation Council

Oct. 27. 2017

Date

Motion: Honorable Lee Jack, Sr.

Second: Honorable Otto Tso

Speaker Bates not voting

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (c)(10), on this _____ day of _____ 2017.

Russell Begaye, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (c)(11), on this _____ day of _____ 2017 for reason(s) expressed in the attached letter to the Speaker

Russell Begaye, President
Navajo Nation

Navajo Nation Council Resolution No. **CJY-63-18**

signed into law by President Russell Begaye
on August 6, 2018.

Effective date **August 6, 2018.**

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL -- Fourth Year, 2018

AN ACT

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND ORDER,
AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL;
ENACTING THE CIVIL RIGHTS OF INDIVIDUALS WITH DISABILITIES ACT OF
2018; DELETING TITLE 10, CHAPTER 13, §1402; CREATING THE "CIVIL
RIGHTS OF INDIVIDUALS WITH DISABILITIES" IN TITLE 13, CHAPTER 55,
§§ 4501-4510; AMENDING THE NAVAJO PREFERENCE IN EMPLOYMENT ACT;
AMENDING TITLE 13, CHAPTER 57, §§ 4801-4809, THE PLAN OF OPERATIONS
FOR THE NAVAJO NATION ADVISORY COUNCIL ON DISABILITIES

BE IT ENACTED:

Section One. Authority

- A. The Navajo Nation Council established the Health, Education, and Human Services Committee (HEHSC) as a Standing Committee, and empowered HEHSC to establish Navajo Nation policy governing health, social services, education, human services and general government services of the Navajo Nation and its tribal organizations, entities and enterprises; and to review and recommend resolutions relating to social services, health, education, veterans and veteran's services, employment, and labor. 2 N.N.C. §§ 400, 401(B)(1) and (6)(a).
- B. The Navajo Nation Council established the Law and Order Committee (LOC) as a Standing Committee, and empowered LOC to review and make recommendations to the Navajo Nation Council on proposed amendments to and enactments to the Navajo Nation Code. 2 N.N.C. §§ 600(A), 601(B)(14).
- C. The Navajo Nation Council established the Naabik'íyáti' Committee as a Standing Committee, and directed that any resolution requiring final action by the Navajo Nation Council shall be assigned to that committee prior to consideration by the Navajo Nation Council. 2 N.N.C. §§ 700(A), 701 (A)(3).
- D. Final approval of all enactments of positive law rests with the Navajo Nation Council. 2 N.N.C. §164(A).

Section Two. Findings

- A. According to an analysis of 2000 U.S. Census data by the Navajo Nation Division of Economic Development, 70.4% of all Navajos aged 65 and over are individuals with disabilities, in the population of Navajos aged 16-64, 27.5% are individuals with disabilities, and in the population of Navajos aged 5-15, 4.6% are individuals with disabilities. See Navajo Nation Data from US Census 2000, attached as **Exhibit A**. In harmony with traditional and common law, it is the policy of the Navajo Nation to respect, revere and protect all individuals, their communities, and their unique qualities. It must not be forgotten that in Diné teachings, a human being is more than his or her limitations. Consistent with Navajo traditional and common law and the Navajo Bill of Rights, the Navajo Nation finds that discrimination against any individual with a disability is *naayéé'* and not only violates the fundamental individual rights of Navajos but also disrupts efforts to maintain *hózhó* across all of Diné Bikéyah.
- B. On April 25, 1979, the Navajo Nation Council approved the Navajo Affirmative Action Plan to ensure that "Navajo [individuals with disabilities] have equal access to employment opportunities and to public buildings in the Navajo Nation," and adopted a plan of operation for the Navajo Nation Advisory Council on Disabilities. See CAP-12-79, attached as **Exhibit B**.
- C. The Affirmative Action Plan was grounded on the premise that "all persons should have an opportunity to realize their greatest potential to the extent of their mental and/or physical capabilities," and directed affirmative steps to be taken by numerous Navajo Nation programs to ensure non-discrimination in hiring and employment and access for the individuals with disabilities to all public buildings, private businesses, and public activities and services. See **Exhibit B**.
- D. Later, in the Navajo Sovereignty in Education Act of 2005, the Navajo Nation Council included a section entitled *Vocational Rehabilitation and Opportunities for Individuals with Disabilities*, which directed all public and private entities to cooperate with the Navajo Nation Advisory Council on Disabilities in recognizing "[p]eople with disabilities as potentially productive members of society", and in making "reasonable accommodation to the special needs of persons with disabilities, including the need for site accessibility, in regard to employment, housing, public accommodations,

social services, transportation, recreation, educational and training opportunities and community services and assure the availability of these services on an equitable, non-discriminatory basis." 10 N.N.C. §1402(A). See CJY-37-05, attached as **Exhibit C**.

- E. In addition to the Navajo Nation Advisory Council on Disabilities referred to above, there are references in the statutes to both the Navajo Nation Advisory Council on the HANDI-Capable (10 N.N.C. §1402) and the Navajo Nation Council on Handicapped (13 N.N.C. §§4801-4809). The Navajo Nation Council finds that all such designations are intended to refer to the Navajo Nation Advisory Council on Disabilities (NNACD), as set forth in 13 N.N.C. §§ 4801-4809, as amended herein. No other entities would be eliminated by this change, and this amendment is meant only to eliminate the confusion bred by multiple and obsolete references to the same body.
- F. On November 17, 2014, Navajo Nation President Ben Shelly issued Executive Order No. 14-2014, "Ensuring the Rights of Navajos with Disabilities to Full Access to All Navajo Nation Buildings and Services" and while this Executive Order mandated that "all Navajo Nation Divisions, Departments, Enterprises or Entities shall develop, update or amend current policies and procedures to insure that services are provided in an equitable and non-discriminatory manner so that individuals with disabilities have access to community services, employment opportunities, housing, social services, transportation, recreation, education, training, and elections", such agency action is far from complete, leaving individuals with disabilities vulnerable to policies and procedures that may lead to inaccessibility, discrimination, or both. See Executive Order No. 14-2014, attached as **Exhibit D**.
- G. The Navajo Nation Council finds that despite the clearly stated policy and intent of the Navajo Nation to ensure that individuals with disabilities have full access to employment, housing and public services, that goal has never been realized, and individuals with disabilities remain at a severe disadvantage in having full access to equal opportunity in all those areas.
- H. The Navajo Nation Council finds that the most likely reasons for that failure have been the lack of funding for and any clear authority of the Navajo Nation Advisory Council on Disabilities; the absence of mandatory directives to programs on the Navajo Nation, whether those programs be public or

private; and the absence of provisions in Navajo law for the enforcement of the rights of individuals with disabilities.

- I. The Navajo Nation Council therefore finds that the most effective means of ensuring that individuals with disabilities are provided equal access to employment, housing, education, services and buildings, be they governmental or private in nature, is to incorporate those rights into the Navajo Nation Code and to replace 10 N.N.C. § 1402 with more substantive civil rights at 13 N.N.C. §§ 4701-4705 to make the law both specific and enforceable.

Section Three. Enacting the Civil Rights of Individuals with Disabilities Act of 2018

A. PURPOSE

By amending various sections of the Navajo Nation Code, this Act identifies and defines the civil rights of individuals with disabilities, and provides remedies and mechanisms for enforcement of those rights.

B. ENACTMENT

THE CIVIL RIGHTS OF INDIVIDUALS WITH DISABILITIES ACT OF 2018, consisting of amendments to 15 N.N.C. § 604(B), 10 N.N.C. § 1402, 13 N.N.C. §§ 4501-4510 and 4801-4809, and, is hereby enacted as set forth herein.

Section Four. Amendment of Title Fifteen of the Navajo Nation Code

The Navajo Nation Council hereby amends 15 N.N.C. § 604(B) as follows:

**NAVAJO NATION CODE ANNOTATED
TITLE 15. LABOR AND EMPLOYMENT
CHAPTER 7. NAVAJO PREFERENCE IN EMPLOYMENT ACT**

§604. NAVAJO EMPLOYMENT PREFERENCE

B. Specific Requirements for Navajo Preference:

7. All employers shall use non-discriminatory job qualifications and selective criteria in employment. No

person otherwise qualified for a job shall be denied selection for or retention in employment because of his or her disability so long as reasonable accommodations can be made that will allow that person to perform his or her employment duties. See the Civil Rights of Individuals with Disabilities Act of 2018, 13 N.N.C. § 4504.

C. Irrespective of the qualifications . . . :

3. Among a pool of applicants or candidates who are solely Navajo and meet the necessary qualifications, the Navajo with the best qualifications shall be selected or retained, as the case may be.

Section Five. Amendment of Title Ten of the Navajo Nation Code

The Navajo Nation Council hereby amends 10 N.N.C. § 1402 as follows:

NAVAJO NATION CODE ANNOTATED TITLE 10. EDUCATION CHAPTER 13. ADULT EDUCATION

~~§1402. VOCATIONAL REHABILITATION AND OPPORTUNITIES FOR INDIVIDUALS WITH DISABILITIES~~ [Reserved]

~~A. All Navajo people are entitled to participate fully in the economic, social, cultural and political life of the Navajo Nation regardless of the person's disability. All public and private entities within the Navajo Nation shall cooperate with the Navajo Nation Advisory Council on the HANDI-Capable in implementing this policy. Every public and private entity within the Navajo Nation shall:~~

- ~~1. Recognize Navajo people with disabilities as potentially productive members of society;~~
- ~~2. Encourage the Navajo population with disabilities to reach optimum levels of economic independence and political, societal and cultural participation; and~~
- ~~3. Make reasonable accommodation to the special needs of persons with disabilities, including the need to site accessibility, in regard to employment, housing, public accommodations, social services, transportation,~~

~~recreation, educational and training opportunities, and community services and assure the availability of these services on an equitable, non-discriminatory basis.~~

~~B. The Navajo Nation Advisory Council on the HANDI-Capable is responsible for assuring that all Navajo people have the opportunity to realize their potential to the extent of their physical and mental capabilities. The Council has such powers and responsibilities as are prescribed in its Plan of Operation and in other applicable Navajo Nation law. The Council shall work with other appropriate Navajo Nation governmental entities and with all service providers, public and private, to:~~

- ~~1. Establish coordination and joint planning for delivery of services to Navajo persons with disabilities from birth through adulthood as close to home as possible;~~
- ~~2. Establish a continuum of appropriate services for all degrees of disability and all stages of the life cycle;~~
- ~~3. Eliminate service gaps and avoid duplication of services; and~~
- ~~4. Maximize available resources.~~

Section Six. Amendment of Title Thirteen of the Navajo Nation Code

The Navajo Nation Council hereby amends 13 N.N.C. §§ 4501-4510 as follows:

NAVAJO NATION CODE ANNOTATED

TITLE 13. HEALTH AND WELFARE

CHAPTER 53. ~~{Reserved}~~ CIVIL RIGHTS OF INDIVIDUALS WITH DISABILITIES

~~§§ 4501 to 4527. {Reserved}~~

§ 4501. Purpose

In harmony with traditional and common law, it is the policy of the Navajo Nation to respect, revere and protect all individuals, their communities, and their unique qualities. It must not be forgotten that in Diné teachings, a human being is more than his or her limitations. Consistent with Navajo traditional and common law and the Navajo Bill of Rights, the Navajo Nation finds that discrimination against any individual with a disability is naayéé' and disrupts efforts to maintain hózhó across all of Diné Bikéyah.

Education and Human ~~Social~~ Services Committee of the Navajo Nation Council at least once annually to give a full report of the activities, findings, and recommendations of the ~~council~~ NNACD.

Section Seven. Codification

The provisions of this Act that amend existing sections or adopt new sections of the Navajo Nation Code shall be codified by The Office of Legislative Counsel, and incorporated into the next codification or supplement of the Navajo Nation Code.

Section Eight. Savings Clause

Should any provision of this Act be determined invalid in the courts of the Navajo Nation, the remainder of the Act shall remain the Law of the Navajo Nation.

Section Nine. Effective Date

This Act shall become effective in accordance with 2 N.N.C. §221(B).

CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 14 in Favor and 02 Opposed, on this 18th day of July 2018.



LoRenzo C. Bates, Speaker
23rd Navajo Nation Council

July 27, 2018

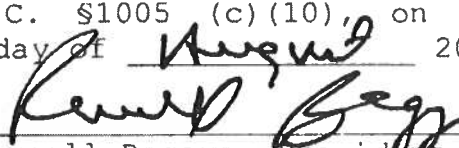
Date

Motion: Honorable Steven Begay
Second: Honorable Nathaniel Brown

Speaker Bates not voting

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I, hereby, sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (c)(10), on this 6th day of August 2018.



Russell Begaye, President
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (c)(11), on this _____ day of _____ 2018 for reason(s) expressed in the attached letter to the Speaker

Russell Begaye, President
Navajo Nation