

**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'iyáti' 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'iyáti' 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.

- G. Approval of this resolution by the Budget and Finance Committee constitutes a recommendation for the purposes of section 880 of the Appropriations Act.

Section Two. Findings.

- A. A Task Force was created to discuss the use of Conditions of Appropriations in the Navajo Nation's Comprehensive Budget. The Condition of Appropriation Task Force (Task Force) is comprised of members of the Executive and Legislative Branch in accordance with the Budget and Finance Committee Resolution, BFAP-15-17.
- B. The Navajo Nation Council has the authority to issue Conditions of Appropriation as part of the Navajo Nation Comprehensive Budget. This authority is provided in the Appropriations Act at 12 N.N.C. § 810 (I).
- C. The Office of the President and Vice President presented recommendations to the Task Force for consideration. The objective of these recommendations was to make efficient use of the authority granted to the Navajo Nation Council in the Appropriations Act, while avoiding conflicts with the exercise of the President's line-item veto authority.
- D. The proposed amendments to the Appropriations Act (12 N.N.C. §800 *et seq.*) and the Navajo Preference in Employment Act (15 N.N.C. § 601 *et seq.*) are the results of additional input by Task Force members.
- E. The current version of the Navajo Preference in Employment Act (NPEA) provides Navajo Nation employees with the opportunity to file grievances under a general harassment provision. The unintended effect of this provision is that supervisors are perceived as harassing employees when providing feedback or task direction to employees. Additionally, employees have used the protections provided in the Domestic Abuse Protection Act (9 N.N.C. §1601 *et seq.*) to obtain restraining orders against supervisors where a dispute has arisen in the context of an employment relationship.
- F. The proposed amendments to the NPEA are needed in order to ensure program managers have the ability to require employees to perform the tasks necessary to fulfill and implement a Condition of Appropriation.

Section Three. Amendments to Title 12

The Navajo Nation amends the Navajo Nation Code 12 N.N.C. §§ 810 and 820, as follows:

NAVAJO NATION CODE ANNOTATED
TITLE 12. FISCAL MATTERS
CHAPTER 7. APPROPRIATIONS

§ 810. Definitions

I. "Condition of Appropriation" or Expenditure means a condition specific contingency, placed on an appropriation or expenditure by the Navajo Nation Council at the time the appropriation or expenditure is made, which requires performance of specific tasks by a program within a specific time period within the fiscal year. creating legal conditions precedent to the expenditure of funds. ~~The condition may require that failure to perform the specific tasks within the time period set out by the Navajo Nation Council will result in restrictions on future expenditure of Appropriated funds or any other funds received by the Navajo Nation on which a condition of appropriation or expenditure is placed may not be lawfully expended the funds until the condition of appropriation or expenditure is met. It is the responsibility of the Controller to ensure that funds are expended in accordance with the conditions placed on the appropriation or expenditure.~~

§ 820. Overall budget policiesR. Condition of Appropriation.

1. The Navajo Nation Council may include one or more Condition of Appropriation in a resolution approving the comprehensive budget.
2. A Condition of Appropriation will only be directed to the specific program having direct responsibility to fulfill the required task or tasks, and not to a general branch or division.

3. A condition may require a freeze on the expenditure of travel funds of the program, or a withholding of up to ten percent (10%) of the gross salary of the program director of the program tasked with fulfilling the condition, if the condition is not performed within a specified time period within the fiscal year. The restriction on expenditures will continue until the condition is fulfilled, as found by the Budget and Finance Committee pursuant to Subsection 5. A program director's salary cannot be withheld if his or her salary is already being withheld for failure of the program to fulfill another Condition of Appropriation, or for failure to implement a corrective action plan issued by the Auditor General pursuant to 12 N.N.C. § 9(C). The withholding of salary shall not apply to a program director hired after the Budget and Finance Committee has imposed salary withholding on the prior program director's salary unless, after consultation with the new program director, the Office of the Controller, and the Office of Management and Budget, and upon recommendation of the appropriate Council committee with oversight over the program, the Budget and Finance Committee, by resolution, votes to impose such withholding. The director may grieve that action by filing a complaint with the Office of Hearings and Appeals within ten (10) working days of the Budget and Finance Committee's action. The decision of the Office of Hearings and Appeals will be final, and there shall be no right of appeal to any court.
4. Prior to the approval of a Condition of Appropriation, the Navajo Nation Council shall consult with the director of the program required to fulfill the condition, as well as the Office of the Controller, and the Office of Management and Budget. The consultation shall include a discussion of the feasibility of the program fulfilling the Condition, including within the time period proposed by the Council, and any alternatives to the proposed Condition.
5. If a Condition of Appropriation is not fulfilled within the time period required, the Budget and Finance Committee, after consultation with the program director, the Office of the Controller, and the Office of Management and Budget, and upon the recommendation of the appropriate Council committee with oversight over the program, may, by resolution, vote to (1) implement the restriction on the program's expenditures authorized by Subsection 3, (2) extend the time period for the program to fulfill the condition, or (3) vacate the condition if it is infeasible for the program to fulfill. If the Budget and Finance Committee requires the withholding of

the program director's salary, the withholding shall be effective only after the Committee's action, and cannot be applied retroactively to withhold salary already earned by the program director.

6. If, pursuant to Subsection 3, the Budget and Finance Committee approves the withholding of the program director's salary, the director may grieve that action by filing a complaint with the Office of Hearings and Appeals within ten (10) working days of the Budget and Finance Committee's action. The decision of the Office of Hearings and Appeals will be final, and there shall be no right of appeal to any court.

7. If, after imposition of a restriction authorized by Subsection 3, the program believes it has fulfilled the Condition of Appropriation, it shall present evidence of fulfillment of the condition to the Budget and Finance Committee through presentation of a report. If, after consultation with the Office of the Controller and the Office of Management and Budget, the evidence provided shows fulfillment of the condition, the Budget and Finance Committee shall, by resolution, vote to declare the condition fulfilled, and lift the restriction. Any accrued amount of salary withheld from the program director will then be returned to the director. If the Budget and Finance Committee decides the condition is not fulfilled, it shall make such finding and, by resolution, vote to continue or lift the restriction. If the Budget and Finance Committee votes to continue any withholding of a program director's salary, the director may grieve that action by filing a complaint with the Office of Hearings and Appeals within ten (10) working days of the Budget and Finance Committee's action. The decision of the Office of Hearings and Appeals will be final, and there shall be no right of appeal to any court.

8. If, at the end of the fiscal year, the condition has not been met, any salary withheld from the program director shall be forfeited. There shall be no challenge to any forfeiture.

Section Four. Amendments to Title 15

The Navajo Nation amends the Navajo Nation Code 15 N.N.C. § 604, as follows:

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

23rd Navajo Nation Council

Special Session

Monday, September 11, 2017

Legislation 0234-17 (Main Motion)

Motion: Leonard Tsosie

Second: Seth Damon

ALL DELEGATES:

	Yea	Nay
BATES, LoRenzo C.		
BEGAY, Kee Allen Jr.		✓
BEGAY, Norman M.		
BEGAY, Steven	✓	
BEGAYE, Nelson	✓	
BENNETT, Benjamin L.		
BROWN, Nathaniel		
CHEE, Tom T.	✓	
CROTTY, Amber K.		
DAMON, Seth	✓	
DANIELS, Herman	✓	
FILFRED, Davis		
HALE, Jonathan L.		
JACK, Lee Sr.	✓	
PERRY, Jonathan		
PETE, Leonard H.	✓	
PHELPS, Walter	✓	
SHEPHERD, Alton Joe	✓	
SLIM, Tuchoney Jr.	✓	
SMITH, Raymond Jr.		✓
TSO, Otto	✓	
TSOSIE, Leonard	✓	
WITHERSPOON, Dwight	✓	
YAZZIE, Edmund		

GRAND TOTAL

13 | 2

CERTIFICATION:



Honorable LoRenzo C. Bates
Speaker