

Class "C" Resolution  
No BIA Action Required.

RESOLUTION OF THE  
NAVAJO TRIBAL COUNCIL

Repealing Title 15, Chapter 7 of the Navajo  
Tribal Code and Enacting in Place Thereby,  
the Navajo Preference in Employment Act

**WHEREAS:**

1. The Navajo Tribal Council is the governing body of the Navajo Nation; and

2. It is imperative that enrolled members of the Navajo Tribe are recognized as duly entitled individuals to preference in employment within or near the Navajo Nation; and

3. Too many instances occur where employers, doing business within or near the boundaries of the Navajo Nation or engaged in any contract with the Navajo Nation, fail to provide notice or ensure job opportunities to Navajo workers; and

4. Title 15, Chapter 7 of the Navajo Tribal Code must be revised to meet the needs of Navajo workers seeking employment within or near the Navajo Reservation; and

5. The Advisory Committee of the Navajo Tribal Council has reviewed the proposed Navajo Preference in Employment Act and does recommend to the Navajo Tribal Council by Resolution ACJY-138-85 the repeal of Title 15, Chapter 7 of the Navajo Tribal Code and the enactment in its place, the Navajo Preference in Employment Act, attached hereto as Exhibit "A"; and

6. The Office of Navajo Labor Relations and the Navajo Tribal Council's Labor and Manpower Committee has recommended new sections to Title 15, Chapter 7 of the Navajo Tribal Code to enforce Navajo preference laws in employment; and

7. It is in the best interest of the Navajo people that the Navajo Tribal Council adopt such an act for the benefit of all Navajo workers seeking employment within or near the Navajo Reservation.

**NOW THEREFORE BE IT RESOLVED THAT:**

The Navajo Tribal Council hereby repeals in its entirety, Title 15, Chapter 7 of the Navajo Tribal Code and enacts in its place, the Navajo Preference in Employment Act, attached hereto and incorporated herein as Exhibit "A".

**BEST AVAILABLE COPY**

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 63 in favor and 0 opposed, this 1st day of August, 1985.



**Chairman  
Navajo Tribal Council**

Section 1. TITLE:

- A. This act shall be cited as the Navajo Preference in Employment Act and is hereby codified as Title 15 Chapter 7 of the Navajo Tribal Code.

Section 2. PURPOSE:

- A. The purposes of the Navajo Preference in Employment Act are:
1. To provide employment opportunities for the Navajo work force;
  2. To provide training for the Navajo people;
  3. To promote the economic development of the Navajo reservation;
  4. To lessen the Navajo Nation's dependence upon off reservation sources of employment, income, goods and services;
  5. To foster the economic self-sufficiency of Navajo families; and
  6. To protect the health, safety, and welfare of Navajo workers.
- B. It is the intention of the Navajo Tribal Council that the provisions of this Act be construed and applied to accomplish the purposes set forth above.

Section 3. DEFINITIONS:

1. The term "Board" means the Board of Directors of the Office of Navajo Labor Relations.
2. 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.
3. The term "employer" as used in this Chapter shall include all persons, firms, associations, corporations, and the Navajo Tribe and all of its agencies and instrumentalities, who engage the services of any person for compensation, whether as employee, agent, servant, or independent contractor.
4. The term "Navajo" means any enrolled member of the Navajo Tribe.

5. The term "ONLR" means the Office of Navajo Labor Relations.
6. The term "probable cause" shall mean a reasonable ground for belief in the existence of facts warranting the proceedings complained of.
7. The term "within" the Navajo reservation refers to the areas within the territorial jurisdiction of the Navajo Nation pursuant to 7 NTC §254. The term "near" the Navajo Nation means such areas in which Navajo Indian preference is permissible, under federal law.

#### SECTION 4. NAVAJO EMPLOYMENT PREFERENCE:

- A. All employers doing business within or near the boundaries of the Navajo Nation, or engaged in any contract with the Navajo Nation shall:
  1. Give preference in employment to enrolled members of the Navajo Tribe. Preference in employment shall include specific Navajo affirmative action plans and timetables for all phases of employment to achieve the tribal goal of employing Navajos in all job classifications including supervisory, and management positions.
- B. Specific Requirements for Navajo Preference
  1. All employers shall include and specify a Navajo Indian employment preference policy statement in all job announcements and advertisements and employer policies covered by this Chapter.
  2. All employers shall post in a conspicuous place on its premises for its employees and applicants a Navajo preference policy notice prepared by the Office of Navajo Labor Relations.
  3. Any seniority system of an employer shall be subject to this Chapter and all other labor laws of the Navajo Nation. Such a seniority system shall not operate to defeat nor prevent the application of Navajo Preference Laws.
  4. The Navajo Nation when contracting with the federal or state government 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.
  5. All employers shall utilize Tribal employment sources and job services for employee recruitment and referrals.

6. All employers shall advertise and announce all job vacancies in at least one newspaper and radio station serving the Navajo reservation.
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
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.

C. Minimum Employment Qualifications Requirements

1. In the application of Navajo preference in Employment made by all employers, any Navajo applicant who meets the minimum qualifications for a job, or who can do the work required for a job shall be considered qualified, regardless of the qualification of any non-Navajo applicants.
2. For purposes of minimum job qualification determinations made by all employers, education, training, job-related experience, and ability to do the work required may be considered.

SECTION 5. REPORTS:

- A. All employers doing business or engaged in any project or enterprise within or near the Navajo Nation shall submit employment information and reports as required to the Office of Navajo Labor Relations. Such reports, in a form acceptable to the Office of Navajo Labor Relations, shall include all information necessary and appropriate to determine compliance with the provisions of this Chapter. All reports shall be submitted on a weekly, monthly, or quarterly basis, as determined by the Office of Navajo Labor Relations.

SECTION 6. RIGHTS OF NAVAJO WORKERS:

- A. The basic rights of Navajo workers to organize, bargain collectively, strike, and peaceable picket to secure their rights under the laws of the United States and the Navajo Nation, shall not be abridged in any way by the Navajo Nation, its political subdivisions, any private or public employer, or agency within or near the Navajo Nation. The

right to strike and picket does not apply to employees of the Navajo tribal government, its agencies, or enterprises.

- B. It is declared to be the public policy of the Navajo Tribe of Indians that the right of person to work on the Navajo Reservation or any other land subject to the jurisdiction of the Navajo Tribe, whether in private employment or for the Navajo Tribe or any of its subdivisions, enterprises, or wholly owned corporations, as now or hereafter constituted, shall not be denied or abridged on account of membership or non-membership in any labor organization.

**SECTION 7. PREVAILING WAGE:**

- A. All employers doing business within or near the boundaries of the Navajo Reservation or engaged in any contract with the Navajo Nation shall pay the prevailing wage for the type of work performed. The prevailing wage shall be determined by the Office of Navajo Labor Relations. The Office of Navajo Labor Relations shall make wage surveys and collect wage data for the purpose of determining prevailing wage rates.

**SECTION 8. HEALTH AND SAFETY OF NAVAJO WORKERS:**

- A. No employer located within or near the Navajo Reservation or contracting with the Navajo Nation shall engage in work practices which endanger the health and safety of Navajo workers. Work practices prohibited by this Section shall be established by regulations promulgated pursuant to Section 16 of this Chapter. The Safety Department of the Navajo Tribe shall be responsible for compliance with all health and safety regulations.

**SECTION 9. CONTRACT PROVISIONS REQUIRING COMPLIANCE WITH LABOR LAW:**

- A. All contracts and subcontracts entered into by any employer to be performed within or near the boundaries of the Navajo Reservation, are subject to the provisions set forth in this Chapter and any regulations promulgated hereunder, and all such contracts and subcontracts are subject to termination at the discretion of the Advisory Committee of the Navajo Tribal Council for noncompliance with the provisions as set forth herein; All such contracts and subcontracts shall contain a provision whereby the employer promises to comply with the provisions of this chapter and shall provide for termination of the contract or subcontract by the Advisory Committee of the Navajo Tribal Council in case of breach of such promise by the employer.

- B. In cases of bids let and contract for construction:
1. Every notice and advertisement for bids shall contain specific reference to the Guidelines for Navajo Manpower Utilization Requirements;
  2. Every contract for construction entered into shall contain all provisions necessary to insure the contractor's compliance with the Guidelines for Navajo Manpower Utilization Requirements.
- C. In cases of agreements, leases, or permits, which ultimately results in construction or employment activity taking place within or near the Navajo Nation:
1. All leases, agreements, or permits issued by the Navajo Tribe, including mineral leases, shall contain a provision whereby the lessee, contractor, permittee, or any sub-lessee, sub-contractor, assignee, agent or other related third party thereof agrees to comply with the labor provisions contained herein. Failure to comply with this mandate shall be grounds for breach and forfeiture of the lease-hold interest or other interest granted by the Navajo Nation.

**SECTION 10. ENFORCEMENT OF THE NAVAJO PREFERENCE IN EMPLOYMENT ACT**

- A. This Chapter shall be monitored and enforced by the Office of Navajo Labor Relations (ONLR). The ONLR shall have the authority to (1) conduct any fact finding investigation; (2) to subpoena witnesses, documents, records, or any other written material to assist in determining if the Navajo Preference in Employment Act has been violated; (3) to take appropriate administrative actions or remedies.
- B. The ONLR shall investigate all complaints based upon alleged violations of the Navajo Preference in Employment Act as set forth in this Chapter:
1. The complaint shall be in writing, and shall be signed and verified by the complainant. All complaints shall be handled confidentially.
  2. The complaint shall contain: a) an appropriate identification of the complainant(s) and the person(s) alleged to have committed the violations; b) the date(s) on which the violations occurred, or where such acts are of a continuing nature, the period of time which acts occurred; c) a clear and concise statement of the facts constituting the alleged violation.
  3. Either an individual or the Office of Navajo Labor Relations on its own initiative may file a complaint to initiate an investigation.

- C. Upon a finding of probable cause that the Navajo Preference in Employment Act has been or is being violated, the ONLR shall (1) notify the employer of the violation (2) where deficiencies are found to exist, take steps to secure compliance and remedial action by informal means through conference, conciliation, or persuasion. Before the employer can be found in compliance, it must submit a specific commitment in writing to correct such deficiencies. The commitment shall include the precise action to be taken, and dates for completion.
- D. If a solution cannot be obtained through voluntary and informal means, the ONLR shall file a formal complaint with the Board. The Board shall initiate a formal hearing proceeding pursuant to Section 11.
- E. If the Board concludes that the Navajo Preference in Employment Act has been violated by an employer, after hearing, it may then:
1. Issue a determination and enforcement orders to effectuate the purposes of the Navajo Preference in Employment Act.
  2. Refer matters involving contracts, agreements, leases and permits to the Advisory Committee of the Navajo Tribal Council for appropriate cancellation or forfeiture action.
- F. Non-retaliation provision. It shall be unlawful for an employer to discipline, discharge, threaten, or otherwise discriminate against an employee in any manner concerning the employee's compensation, terms, conditions, location, or privileges of employment because such person has opposed an employment practice, or has made a charge, testified, or assisted in any manner in any investigation, proceeding, or hearing under this Chapter.

#### SECTION 11. HEARING:

- A. The Board shall conduct the hearing at a location to be designated by the Board. The Board shall issue a notice of hearing. The hearing shall be held within (30) days of the filing of the formal complaint.
1. Notice : The Board is hereby authorized to issue notices of hearings. The time and place of the hearing shall be clearly described in the notice. All notice of alleged charges shall set forth in clear and simple terms the nature of the alleged violations and shall state (1) the violations may be contested at a hearing before the Board of the Office of Navajo Labor Relations, and (2) any party may appear by counsel and cross examine adverse witnesses.



2. The Board is hereby authorized to administer oaths and compel attendance of any person at a hearing and to compel production of any documents.
  3. In the event a party does not make an appearance on the day set for hearing, the Board is hereby authorized to enter a default determination against the non appearing party.
- B. Burden of Proof: In any compliance review, complaint proceeding, investigation, or hearing, the burden of proof shall be upon the employer to show compliance with the provisions of this Chapter.
- C. Hearing: The Board shall conduct the hearing in a fair and orderly manner and extend to all parties the right to be heard.
1. The Board shall not be bound by any formal rules of evidence.
  2. The employer, contractor, subcontractor, or parties to the dispute shall have the opportunity to answer and shall have the right to legal counsel, present witnesses, and cross-examine adverse witnesses.
  3. The Board shall issue its decision by a majority vote of a quorum present and shall be signed by the Chairman of the Board.
  4. Copies of the decision shall be sent to all parties of record in the proceeding by certified mail, return receipt.
  5. Records of the proceeding shall be recorded. Any party may request a transcript of the proceeding at their own expense.
  6. The decision of the Board shall be final with a right of appeal only on questions of law to the Court of the Appeals of the Navajo Nation.

Section 12. Sanction:

- A. In the event the employer is found by the Board, after notice and hearing, that it has not complied with this Chapter, the Board may:
1. Issue remedial orders which may include, but are not limited to, the displacement of non-Navajo employees, backpay, and re-instatement.
  2. Notify the employer of the violation and grant a reasonable amount of time to be set by the Board within which to comply with the labor laws of the tribe.

3. Declare an employer, contractor, subcontractor in contempt of the Board if said party or witness fails to abide by any determination or orders.
4. Assess damages and fines for non-compliance and award payment as deemed appropriate.
5. Seek an injunction from the Tribal Court to seal off the jobsite until such time as the employer, contractor, or subcontractor have complied with the orders of the Board.

#### Section 13. Appeal:

- A. Any party to the complaint shall have a right to appeal in writing to the Court of Appeals of the Navajo Nation within (10) days after receipt of the decision.

#### SECTION 14. NON-NAVAJO SPOUSES:

- A. When a non-Navajo is legally married to a Navajo, he or she shall be entitled to consideration for employment under the Navajo preference policy. Proof of marriage by a valid marriage certificate shall be required. In addition such Non-Navajo spouse shall be required to have resided within the territorial jurisdiction of the Navajo Nation for a continuous one-year period immediately preceding the application for Navajo preference consideration.
- B. Upon meeting the above requirements, such consideration shall be limited to preference in employment where the spouse would normally be in a pool of non-Navajo workers. In this instance, Navajo preference would place the non-Navajo spouse in the applicant pool of Navajos for consideration. However, preference priority shall still be given to all Navajo applicants who meet the minimum job qualifications within that pool.

#### SECTION 15. LIE-DETECTOR TEST:

- A. No employer, employment agency, person, firm, or association, shall request or require any employee or prospective employee to submit to, or take a polygraph examination as a condition of obtaining employment or of continuing employment with such employer or discharge or discipline in any manner an employee for failing, refusing, or declining to submit to or take a polygraph examination.
- B. For purposes of this section, "polygraph" means any mechanical or electrical instrument or device of any type used or allegedly used to examine, test, or question individuals for the purpose of determining truthfulness. This provision shall not apply to federal or state government employees.

**SECTION 16. DELEGATION OF AUTHORITY:**

- A. The Board of the Office of Navajo Labor Relations and the Labor and Manpower Committee of the Navajo Tribal Council, with the approval of the Advisory Committee of the Navajo Tribal Council, are hereby delegated the authority to promulgate regulations necessary for the enforcement and implementation of the provisions of this Chapter.

**SECTION 17. ALL PRIOR INCONSISTENT LAW IS REPEALED:**

- A. All prior Tribal laws, rules, regulations, and provisions of the Navajo Tribal Code previously adopted which are inconsistent with this Chapter are hereby repealed.

**SECTION 18. EFFECTIVE DATE AND AMENDMENT OF THE ACT:**

- A. The effective date of this Chapter shall be 60 days after the passage of the Navajo Preference in Employment Act by the Navajo Tribal Council and shall remain in effect until modified or repealed in accordance with Navajo Tribal law.

**SECTION 19. SEVERABILITY OF THE ACT:**

- A. If any provision of this Chapter or the application thereof to any person, association, entity or circumstances is held invalid, such invalidity shall not affect the remaining provisions or applications thereof.

