

RESOLUTION OF THE
NAVAJO ANTION COUNCIL

22nd NAVAJO NATION COUNCIL - Fourth Year, 2014

AN ACT

RELATING TO LAW AND ORDER AND NAABIK'ÍYÁTI'; AMENDING THE NAVAJO
NATION ELECTION CODE AT 11 N.N.C §§ 8, 21 AND 240 FOR PURPOSES OF
CLARIFYING QUALIFICATIONS PROVISIONS AND DELEGATING TO THE NAVAJO
ELECTION ADMINISTRATION THE AUTHORITY TO ENFORCE QUALIFICATIONS
PROVISIONS

BE IT ENACTED:

Section One. Findings

1. Section 8 of the Navajo Nation Election Code set forth the qualifications of elective office for candidates. These qualifications include age, voter registration, and enrollment with the Navajo Nation. 11 N.N.C. § 8. Other provisions address ethics provisions and criminal convictions.

2. The Navajo Election Administration reviews all applications filed by candidates. Under section 23 of the Election Code, the Administration is authorized to disqualify candidates who do not meet the qualifications for office. Regarding this, candidates who are disqualified have a right to request hearing before the Office of hearings and Appeals. 11 N.N.C. §23(B). Due process, including right to counsel, is afforded at these administrative hearings. Rule 2, *Rules for Administrative Hearings under the Election Code, Office of Hearings and Appeals*.

3. Candidates that are determined qualified for office are placed on the ballot for election. Upon election, successful candidates are certified, take an oath and assume office for a term of 4 years.

4. School board members and members of the Navajo Board of Education, upon assuming office, are specifically required to maintain all qualifications of office throughout their terms or be subject to removal through proceedings initiated by the Navajo Election Administration. 11 N.N.C. §240(D) and (E). This requirement of maintaining qualifications of office throughout a term is not clear with respect to other elected positions. Further, the process of removing elected officials, once in office, is not clearly specified. The Navajo Supreme Court, in *Pioche v. Navajo Board of Election Supervisors*, 6 Nav.R. 360, 362 (*fn 1*) (March 1, 1991), indicated that the power to administratively decertify an elected official must be specified by statute.

5. Section 240 of the Navajo Election Code provides that the Navajo Nation Council can remove the President, Vice President, Council Delegates and District Grazing Officials for certain matters, including criminal convictions for felonies and particular misdemeanors. The misdemeanors specified are those offenses "involving deceit, untruthfulness, and dishonesty, including but not limited to extortion, embezzlement, bribery, perjury, forgery, fraud, misrepresentation, false pretense, theft, conversion, or misuse of Navajo Nation funds and property, and crimes involving the welfare of children, child abuse, child neglect, aggravated assault and aggravated battery." 11 N.N.C. §240(A)(1)(f) and (B)(1)(f).

6. Although section 240 of the Election Code states the offenses for which the Council can remove officials (at least those listed thereunder), the section does not specify the procedural steps. The section also does not address hearing procedures and due process, such as notice requirements and the right to legal counsel. Lack of specific "due process safeguards" was one of reasons the Navajo Supreme Court ruled that the Navajo Nation Council could not exercise its authority under section 240(C) in placing the statutorily-listed elected officials on administrative leave. See, *Morgan v. Shirley*, SC-CV-02-10, page 44 (June 2, 2010, effective May 28, 2010).

7. The Navajo Nation Council is a policy-making body. Currently, proceedings before the Council do not include quasi-judicial hearings. For felonies and the misdemeanor offenses listed under section 240, the process of removal should be amended and made uniform. The Navajo Election Administration, not the Navajo Nation Council, should be the administrative body delegated the authority to remove the President, Vice President, Council Delegates and District Grazing Officials for felonies and misdemeanors committed while in office, at least the particular misdemeanors listed under the statute.

8. All removal procedures should start with the Navajo Election Administration, with any necessary hearings conducted by the Office of Hearings and Appeals. The authority to determine qualifications for candidates has already been delegated to the Navajo Election Administration. 11 N.N.C. §23(B). This authority should be specifically extended to include the removal of officials after such officials assume office. The Election Administration and the Office of Hearings and Appeals should be able to address the issue of whether elected officials should be removed from office for not maintaining the qualifications of office or conviction of felonies and certain misdemeanors while in office.

9. For these reasons stated herein, the Navajo Board of Election Supervisors passed resolution on October 11, 2012 requesting amendments to the Navajo Election Code. BOESO-032-12. This resolution is attached as Exhibit "A." For similar reasons, the Chinle Agency Council as also supported changes in the Election Code. See Exhibit "B," a resolution of the Chinle Agency Council.

Section Two. Amendments to Title 11, Navajo Nation Code

The Navajo Nation Council hereby amends the Navajo Nation Election Code by clarifying the qualification provisions for all elected officials. The Election Code is amended as follows:

**Title 11, Navajo Nation Code
Chapter 1. Navajo Election Code of 1990
Subchapter 1. General Provisions**

§8. Qualifications for Office

F. Maintaining qualifications during term of office; Convictions; removal

1. "Upon assuming an elective office, an official shall maintain the qualifications required of the respective office, as provided herein, throughout the term of such office. A ~~Further,~~ conviction during a term of office of an offense for which candidates can be disqualified pursuant to applicable Navajo Nation law shall be grounds for automatic removal of an elected official unless otherwise required by a removal procedure under Navajo Nation law."

2. Officials no longer eligible to hold office are subject to removal pursuant to provisions of 11 N.N.C. §240(D).

Subchapter 2. Filing for Elections

§ 21. Candidacy application

B. The candidate application form shall be in the form specified by the Board and shall contain:

1. The name of candidate as it will appear on the official ballot;
2. A notarized, sworn statement by the candidate that (a) he or she is legally qualified to hold the office; (b) that he or she meets the qualifications ~~set forth in 11 N.N.C. §§~~ required by Navajo Nation law; (c) that his or her candidate application is in the form and manner prescribed by law, and (d) that he or she may be removed as a candidate in the event his or her application contains a false statement;
3. Any convictions for felonies and misdemeanors ~~pursuant to §§ (A), (B), (C), and (D) within the last five (5) years and the place, date, law violated and circumstances surrounding these convictions~~ affecting qualifications for office; and
4. The name and address of the financial agent of record for the candidate.

**Subchapter 13. Removal of Officials;
Placement of Officials on Administrative Leave; Recall; Filling
Vacancy**

§ 240. Removal and placement on administrative leave

A. The President, Vice-President and delegate to the Navajo Nation Council are subject to removal by the Navajo Nation Council for just cause.

1. Just cause shall include, but ~~shall not be necessarily~~ limited to:
 - a. Insanity, when judicially or medically determined.
 - ~~b. Conviction by any court of any felony.~~
 - e b. Council members failing to attend Council meeting as required by law.
 - ~~c.~~ President or Vice-President absent for three consecutive months without permission of the Navajo Nation Council.
 - e d. Habitual indulgence in alcoholic beverages.
 - ~~f. Conviction of any misdemeanor involving deceit, untruthfulness, and dishonesty, including but not limited to extortion, embezzlement, bribery, perjury, forgery,~~

~~fraud, misrepresentation, false pretense, theft, conversion, or misuse of Navajo Nation funds and property, and crimes involving the welfare of children, child abuse, child neglect, aggravated assault and aggravated battery.~~

g e. Breach of fiduciary trust duties to the Navajo People.

h f. Malfeasance or misfeasance of office.

2. Such official can be removed by at least two-thirds vote of the full membership of the Navajo Nation Council.

B. The District Grazing Committee Members are subject to removal by the Navajo Nation Council for just cause.

1. Just cause shall include, but shall not be necessarily limited to:

a. Insanity, when judicially or medically determined.

~~b. Conviction by any court of any felony.~~

e b. Failure to attend three (3) consecutive District Grazing Committee meetings.

~~d~~ c. Absence for three consecutive months without permission of the District Grazing Committee.

e d. Habitual indulgence in alcoholic beverage.

~~f. Conviction of any misdemeanor involving deceit, untruthfulness, and dishonesty, including but not limited to extortion, embezzlement, bribery, perjury, forgery, fraud, misrepresentation, false pretense, theft, conversion, or misuse of Navajo Nation funds and property, and crimes involving the welfare of children, child abuse, child neglect, aggravated assault and aggravated battery.~~

g e. Breach of fiduciary trust duties to the Navajo People.

h f. Malfeasance or misfeasance of office.

2. Such official can be removed by at least two-thirds vote of the Navajo Nation Council.

C. The Navajo Nation Council may by majority vote of the Council, place the President, Vice-President or any of its members on administrative leave, with or without pay, where there are

reasonable grounds to believe that such official has seriously breached his or her fiduciary trust to the Navajo People and such leave will serve the best interests of the Navajo People.

~~D. The Navajo Election Administration shall, upon notice and opportunity for response, remove school board members no longer possessing the necessary qualifications for office. Regarding his or her removal, an individual may within ten (10) calendar days file with the Office of Hearings and Appeals a statement of grievance pursuant to 11 N.N.C. §341. All elected officials including Chapter Officers, School Board members, NBOES, and all others elected under the Navajo Nation Law failing to maintain qualifications for office and not subject to automatic removal, as specified by Navajo Nation law, or convicted while in office for any offense affecting qualifications for office shall be removed as follows:~~

1. The Navajo Election Administration, upon adequate documentation, shall provide written notice to an official that he or she has failed to maintain the qualifications of office and that his or her position will be declared vacant.

2. An official receiving notice that his or her position will be declared vacant, may file a statement of grievance with the Office of Hearing and Appeals as provided by 11 N.N.C. §341.

~~E. The Navajo Election Administration shall, upon notice and opportunity for response, remove Navajo Nation Board of Education members no longer possessing the necessary qualifications for office. Regarding his or her removal, an individual may within 10 calendar days file with the Office of Hearings and Appeals a statement of grievance pursuant to 11 N.N.C. § 341.~~

Section Three. Effective date

The Navajo Nation Council hereby declares that the effective date of this amendment shall be in accordance with the applicable provisions of Navajo law and subject to the signing of the legislation by the Navajo Nation President, or in the event of a veto, upon its override by the Navajo Nation Council.

Section Four. Codification

The provisions of this Act which amend sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall include this Act in the next codification or supplement of the Navajo Nation Code, to the extent practicable.

Section Five. Savings Clause

Should any provisions 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, or any other court of competent jurisdiction, those portions of this Act 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 in 14 favor and 5 opposed, this 30th day of January 2014.

Johnny Naize, Speaker
Navajo Nation Council

Date

Motion: Honorable Walter Phelps
Second: Honorable Roscoe Smith

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 _____ 2014.

Ben Shelly, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2014, for the reason(s) expressed in the attached letter to the Speaker.

Ben Shelly, President
Navajo Nation