

# **FOUR MODELS OF T26 AMENDMENTS**

By Rodgerick T. Begay, Assistant Attorney General  
Chapter Unit, Navajo Nation Department of Justice



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# **April 20, 1998 – LGA is passed**

## **NN Council Resolution No. CAP-34-98**

- §1 Executive/Legislative; Separation of Powers; Checks & Balances, etc.
- §3 Chapter creation (similar to CM-28-58)
- §101-§103: Governance Certification Process.
- §1001 Duties and Responsibilities of Chapter Officials (similar to ACS-115-80)
- §1002 Meetings, notice, and compensation (similar to ACS-115-80)
- §1003 Order of Business. (similar to ACS-115-80)
- §1004 Chapter administration (administers Five Management System)
- §2001 Ordinance procedure (similar to 1995 home rule charter process)
- §2002 Chapter contract requirements (similar to 2 N.N.C. §223).
- §2003 Accounting, Appropriations, Budget Process, Insurance.
- §2004 Zoning (CLUP). (some provisions originate from CAU-72-65).
- §2005 Eminent Domain. (cross reference 16 N.N.C. §1401-§1403).



# Original Framework

- Each Chapter develops a Five Management System (FMS).
- FMS reviewed by Auditor General and recommends FMS to RDC for certification.
- RDC approval = Governance Certification. (see also TCDCN-94-98)
  - LGA Certified Chapters can exercise §103 powers.
    - In order to practice §103 powers to administer land such as zoning ordinances, the Community Land Use Plan must also be certified by RDC.
  - LGA Certified Chapters can practice all five management systems.
    - Chapter personnel policies; not NNPPM.
    - Chapter procurement policies; not NN Procurement Regulations.
    - Chapter property management policies.
    - Chapter fiscal management system.
    - Chapter records management system.



# Actions Impacting the Original Framework

- 1998:
  - NN Council grants “independent grant of authority.” CS-79-98.
  - Budget & Finance Committee Resolution No. BFO-140-98.
- 2000: Public Employment Program (PEP).
- 2001: Summer Youth Employment Program.
- 2001: Housing Discretionary Fund Policy.
- 2002: Sales Tax Revenue Fund Management Plan.
- 2007: LGA amendment did not become law but 5 Chapters adopt 2007 FMS.
- 2010: Attorney General Opinion and 2010 FMS.
- 2012: Quorum Reduction available to all 110 Chapters.
- 2014: Unhealthy Food & Beverage Tax Funds.



# Non-LGA vs. LGA FMS

## Non-LGA Certified

- Personnel
  - CSC & AMS = NN employees
  - PEP & Youth = Chapter employees
- Procurement
  - NN Procurement Regulations
- Property
- Fiscal
  - 2010 FMS
- Records
  - 2010 FMS

## LGA Certified

- Personnel
  - CM & AA = Chapter employees
  - PEP & Youth = Chapter employees
- Procurement, Property, Fiscal, and Property.
  - 5 Chapters have unique policies
  - 5 Chapters use 2007 template
  - 35 Chapters use 2010 template



# Non-LGA vs. LGA Land Management

## Non-LGA Certified

- Some CLUP are not yet certified
- Some CLUP are certified.
  - Cannot exercise zoning.

## LGA Certified

- If CLUP not yet certified, a LGA Certified Chapter cannot consider zoning ordinances.
- Certified CLUP
  - zoning ordinance power.
  - RDC approval required for business site leasing authority.
  - Cannot issue home site leases because regulations to delegate home site leasing authority have not been promulgated.



# Supervision

- Short History:
  - 1979 – Chapter Officials supervise Chapter Staff.
  - 1991 – Council Delegates supervise Chapter CSC.
  - 1998 – TCDC preferred to have Council Delegates supervise the CSC.
    - **Officials are prohibited from the direct involvement and management of the Chapter Administration. 26 N.N.C. §1001(E)**
    - **Separation of Powers and Checks & Balances. 26 N.N.C. §1(B)**
      - Legislative = Chapter Officials and Chapter membership.
      - Executive = Chapter Administration.
- 1999: Local Governance Support Centers (LGSC).
  - CSC Program transferred from the Legislative Branch to the Executive Branch
  - General Administrative Direction of the CSC by the LGSC.
  - Direct Local Supervision of the CSC by a Chapter Official.
- Administrative Service Centers (ASC)
  - 2014 – DLS removed
  - 2018 – DLS returns
  - 2022 – Chapter Officials must first obtain training on supervision.



# LGA Certified Power AFOG

- Council and President
  - Council = Legislative. 5 to 9 elected members. Chapter members do not participate in meetings unless they reserve that power. Council confirms appointments and can remove appointees. Can override veto.
  - President = Chief Executive is elected. Appoints other executives/officers. Veto power. Does not vote in Council meetings unless there's a tie.
- Commission-Manager
  - Commission = Legislative. 5 to 9 elected members. Chapter members likely do not vote in Commission meetings.
  - Manager = Appointed by the Commission. Executes policies.
- Council of Nat'aa and Atsilasdai Executive
  - Council = Legislative. Elected Chapter President, VP, S/T, plus 2-7 Council members appointed by the Council.
  - Atsilasdai = Appointed by the Commission. Appoints department heads/officers.





# Four Models is NOT Chapter Reform

## Prior Efforts

- 2007 – FMS Act
- 2010 – AG Opinion.
- 2012 – Local Empowerment Act - 164 Review.
- 2016 – Regionalization Referendum vetoed. CAU-45-16.
- 2018 – Draft by DOJ, Auditor General, ERO, and DCD.
- 2020- ONGD – Chapter Government Reform proposals

## Other Jurisdictions

- Council-Manager
- Home Rule
- County-Commission
- Commission-Manager
- Council-Mayor
  - Council-Mayor-Manager
  - Strong Mayor
  - Weak Mayor



# Option One

## GENERAL FRAMEWORK

- 1) Remaining 65 non-governance certified Chapters become LGA Certified.
  - Requires adoption of template FMS
- 2) The Chapter President or VP supervises the Chapter Manager

## PROS & CONS

- Pros:
  - All Chapters can equally exercise §103 powers such as adopting an AFOG.
  - No need to treat Chapters differently.
- Cons
  - Supervision by Chapter President or VP requires an amendment to §1001(E) and/or clarification to the policy of Separation of Powers and Checks & Balances.
  - Supervision by Chapter President or VP without supervisory experience and/or taking action in violation of personnel rules.
  - Audits and Corrective Action Plans indicate inability to follow the FMS.



# Option Two

## GENERAL FRAMEWORK

- 1) Keep the 65 non-LGA Certified Chapters but create a new section 103(A) to allow these Chapters to exercise some basic authorities.
  - Example:
    - Contracts up to \$100k.
  - Still cannot exercise all §103(D) & (E) powers.
  - Require adoption of the template FMS.
- 2) The Chapter President or VP supervises the Chapter Manager or the CSC.

## PROS & CONS

- Pros:
  - Requiring adoption of the template FMS would reconcile the authorizations made in the past 25 years.
- Cons:
  - Maintains differences between Chapters.
  - Supervision by Chapter President or VP requires an amendment to §1001(E) and/or clarification to the policy of Separation of Powers and Checks & Balances.
  - Supervision by Chapter President or VP without supervisory experience and/or taking action in violation of personnel rules.



# Option Three

## GENERAL FRAMEWORK

- 1) Remaining 65 non-governance certified Chapters become LGA Certified.
  - Requires adoption of the template FMS.
- 2) Chapter Managers are appointed by the Chapter President and serve at the pleasure of the Chapter membership.
  - Requires an amendment to §1004(D).

## PROS & CONS

- Pros:
  - All Chapters can equally exercise §103 powers such as adopting an AFOG.
  - No need to treat Chapters differently.
- Cons:
  - CAPs demonstrate that some chapters, including LGA certified Chapters are not following their FMS.
  - No guarantee that supervision by the public will work. In the past, supervision has been done by Chapter Officials, Council Delegates, LGSC staff, and ASC Staff. Each has their benefits and limitations.



# Option Four

## GENERAL FRAMEWORK

- 1) Keep 65 non-LGA Certified Chapters but add some basic powers:
  - Same as option two.
  - Remaining 65 non-LGA Certified Chapters still required to adopt the template FMS.
- 2) Chapter Officials do not supervise.
  - Non-LGA Certified
    - ASC supervises the CSC. ASC may delegate supervision to Chapter Officials who complete training on supervision.
  - LGA-Certified:
    - Chapter Managers appointed
    - Chapter Managers can be removed by Chapter Resolution

## PROS & CONS

- Pros:
  - Requiring adoption of the template FMS would reconcile the authorizations made in the past 25 years.
- Cons:
  - No guarantee that supervision by the public will work for LGA Certified Chapters. In the past, supervision has been done by Chapter Officials, Council Delegates, LGSC staff, and ASC Staff. Each has their benefits and limitations.



# Summary

- 1 – 110 LGA Certified + Chapter President/VP supervises CM
- 2 – Keep 65 non-LGA + Chapter President/VP supervises CM/CSC
- 3 – 110 LGA Certified + CM serves at the pleasure of membership.
- 4 – Keep 65 non-LGA + CM serves at the pleasure of membership.  
CSC supervised by ASC unless delegated to a Chapter Official.



# Other Possible Amendments

- Decertification of Chapters for less than 1000 persons?
- Decertification of LGA Certified Chapter status?
- Clarify how chapters can amend their FMS which would be by the ordinance procedures, not by simple chapter resolution.
- Eliminate Naabikiyati Committee involvement in §103?
- Clarify the ordinance procedure in §2001.
- Community Land Use Planning Committees (CLUPC) post-certification.
- Clarify Agency Councils, District Councils, and Regional Councils.
- Ramah, Alamo, Tohajiilee.
- Nahata Dziil Community Governance.
- State of Emergency declarations.



# Navajo Nation Department of Justice Chapter Unit

- Rodgerick T. Begay, Assistant Attorney General, [rbegay@nndoj.org](mailto:rbegay@nndoj.org)
- Lorenzo Curley, Principal Attorney, [lcurlley@nndoj.org](mailto:lcurlley@nndoj.org)
- Cynthia Freeman, Attorney Candidate, [cfreeman@nndoj.org](mailto:cfreeman@nndoj.org)
- Colleen Silversmith, Attorney Candidate, [cpbenally@nndoj.org](mailto:cpbenally@nndoj.org)
- Dory Goldberg, Attorney Candidate, [dgoldberg@nndoj.org](mailto:dgoldberg@nndoj.org)
- Lorina Smith, Senior Legal Secretary, [lsmith@nndoj.org](mailto:lsmith@nndoj.org)
- (928) 871-6932

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