

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0147-24_

SPONSOR: Lomardo Aseret

TITLE: An Act Relating to the Law and Order Committee, Health, Education, and Human Services Committee, Naabik'íyáti Committee, and the Navajo Nation Council; Amending the Domestic Abuse Protection Act, 9 N.N.C. §1601, ET SEQ. and Amending the Navajo Preference in Employment Act, 15 N.N.C. §604

Date posted: July 02, 2024 at 7:45PM

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0147-24

DATE: July 2, 2024

TITLE OF RESOLUTION: AN ACT RELATING TO THE LAW AND ORDER COMMITTEE, HEALTH, EDUCATION, AND HUMAN SERVICES COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE, AND THE NAVAJO NATION COUNCIL; AMENDING THE DOMESTIC ABUSE PROTECTION ACT, 9 N.N.C. §1601, *ET SEQ.* AND AMENDING THE NAVAJO PREFERENCE IN EMPLOYMENT ACT, 15 N.N.C. §604

PURPOSE: This resolution, if approved, would make amendments to the Domestic Abuse Protection Act and the Navajo Preference in Employment Act.

Final Authority: Navajo Nation Council

Vote Required: Simple Majority

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each Council Delegate to review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD
Website Posting Time/Date _____
Posting End Date: 07-07-24
Eligible for Action: 07-08-24

Law & Order Committee
Thence
Health Education & Human Services Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION
2 25th NAVAJO NATION COUNCIL – Second Year, 2024

3 INTRODUCED BY

4 
5 _____
6 (Prime Sponsor)

7
8 TRACKING NO. 0147-24
9

10 AN ACT
11 RELATING TO THE LAW AND ORDER COMMITTEE, HEALTH, EDUCATION,
12 AND HUMAN SERVICES COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE, AND
13 THE NAVAJO NATION COUNCIL; AMENDING THE DOMESTIC ABUSE
14 PROTECTION ACT, 9 N.N.C. §1601, *ET SEQ.* AND AMENDING THE NAVAJO
15 PREFERENCE IN EMPLOYMENT ACT, 15 N.N.C. §604
16

17 BE IT ENACTED:

18
19 **Section One. Authority**

- 20 A. The Law and Order Committee of the Navajo Nation Council is empowered to review
21 and make recommendations to the Navajo Nation Council on proposed amendments to
22 and enactments to the Navajo Nation Code, pursuant to 12 N.N.C. § 601(B)(14).
23 B. The Health, Education, and Human Services Committee is empowered to review and
24 recommend resolutions relating to employment and labor matters, pursuant to 2 N.N.C.
25 § 400(A) and 401(B)(6)(a).
26 C. All proposed legislation requiring final action by the Navajo Nation Council shall be
27 assigned to the Naabik'iyáti' Committee, pursuant to 2 N.N.C. §§ 164(A)(9) and
28 700(A).
29 D. The Navajo Nation Council must review and approve enactments or amendments of
30 positive law, pursuant to 2 N.N.C. §§ 164(A).

1
2 **Section Two. Findings.**

- 3
4 A. The Navajo Preference in Employment Act (“NPEA”), 15 N.N.C. § 601 *et seq*, was
5 established to protect the health, safety, and welfare of Navajo workers. Employers are
6 to maintain a safe working environment and provide employment conditions which are
7 free of prejudice, intimidation, and sexual harassment, among other purposes. 15 NNC
8 §604 (B)(9), §602 (A)(6).
- 9 B. In BFAP-15-17, a Task Force was created to review and recommend changes to
10 “Conditions of Appropriations” as defined in 12 N.N.C. §810. The Task Force included
11 members of the Executive and Legislative Branch.
- 12 C. The Task Force provided amendments to the Navajo Preference in Employment Act
13 (“NPEA”), 15 N.N.C. § 601 *et seq*, which were passed by the Navajo Nation Council
14 in resolution CS-52-17. **Exhibit A.**
- 15 D. The Navajo Preference in Employment Act (“NPEA”) provides employees a process
16 to file and resolve grievances under a general harassment provision with minimal
17 disruption to work environment and other coworkers. *see* 15 N.N.C. § 603, Definitions.
- 18 E. The Task Force discovered the unintended effect of this provision was excessive
19 grievance filings against supervisors who were accused of “harassing” employees when
20 providing feedback or task direction to employees.
- 21 F. Additionally, employees were obtaining restraining orders, under the Domestic Abuse
22 Prevention Act, 9 N.N.C. §1601 *et seq.*, against supervisors in instances where the
23 dispute had solely arisen in the context of employment
- 24 G. As a result, the NEPA amendment in resolution CS-52-17 included a provision to
25 prevent employees from filing action under the Domestic Abuse Prevention Act, 9
26 N.N.C. § 1601, *et seq.*, as an employment grievance remedy against a supervisor or
27 coworker when the dispute arises out of the employment relationship. **Exhibit A.**
- 28 H. The Domestic Abuse Protection Act (“DAPA”), 9 N.N.C. §1601 *et seq.*, was not
29 concurrently updated to reflect the NEPA amendment that restricted the issuance of
30 Domestic Violence Protection Orders (“DVPO”) in matters arising out of an
employment dispute, harassment, or other conduct as outlined with in the NEPA.

1 Consequently, employees and employers continue to seek and obtain DVPO's in
2 disputes arising out of employment relationships.

- 3 I. Additionally, the amendment did not address whether "employment relationships"
4 included matters where Navajo Nation Officials, elected or appointed, were carrying
5 out duties in their official capacity
- 6 J. Even though "emergency" requirements are outlined in 9 N.N.C. §1655, a petitioner
7 can receive an immediate same-day ex-parte Temporary Domestic Restraining Order
8 ("TRO") on a mere statement of harm, whether immediate or not, which creates a "race
9 to the court" to file against each other.
- 10 K. An employee's ability to easily and swiftly obtain a TRO, absent any finding of harm,
11 disrupts the flow of government functions and the critical function of daily employment
12 activities. CS-52-17 sect. 2, cl. (E) and (F)
- 13 L. The legislative intent when enacting the Domestic Abuse Protection Act, 9 N.N.C.
14 1601 *et all*, was to acknowledge the "tradition of [the Din4 People] to protect household
15 members from violence. The integrity of the Navajo family will be protected and
16 maintained by legislation which addresses domestic abuse...." CJY-53-93 clause 5.
- 17 M. Later, the Navajo Nation Violence Against Family Act was enacted through CJA-04-
18 12 for the purpose of providing additional safety and protection to family members
19 from violence.
- 20 N. The Violence Against Family Act defined "family members" as individuals who is a
21 spouse, former spouse, household member, parent, legal guardian, present or former
22 stepparent or stepchild (ren) or former in-law or relative to the second affinity, or an
23 individual whom one has a continued personal relationship. 17 N.N.C. 535 (D).
- 24 O. The intended purpose of these Acts was to provide protection to Navajo Nation families
25 and were not intended to be tools used by an employee, or individuals outside the
26 definition of "family member" provided in 17 N.N.C. 535 (D), against other employees
27 or officials acting withing their "official capacity."
- 28 P. The Navajo Nation finds it in the best interest of the Navajo Nation and the Diné People
29 to amend Title 9 and Title 15 of the Navajo Nation Code to fulfill the intent and purpose
30

1 of CS-52-17, by making the necessary amendments to the Domestic Abuse Protection
2 Act and to Navajo Preference in Employment, as set forth herein.

3
4 **Section Three. Amendments to Title 9**

5 The Navajo Nation amends the Navajo Nation Code 9 N.N.C. § 1601, as follows:

6
7
8 **NAVAJO NATION CODE ANNOTATED**
9 **TITLE 9. DOMESTIC RELATIONS**
10 **CHAPTER 13. DOMESTIC ABUSE**

11
12 ***

13 § 1604 Purpose

14 (A) The purpose of this Act is to protect all family members ~~persons~~: men, women,
15 children, elders, disabled persons, and other vulnerable persons, who are within the
16 jurisdiction of the Navajo Nation, from all forms of domestic abuse as defined by this Act
17 and by Navajo Nation law. The Act shall be liberally construed and interpreted in order to
18 achieve its purposes.

19 ***

20 (B) The Act embodies the intent of the legislature to promote the following goals:

21 ***

22 (3) To establish an efficient and flexible remedy that discourages violence against and
23 harassment of persons within a family or clan setting, or others with whom the abuser has
24 continuing contact, in line with the definition of family as provided.

25 (4) This Act shall not be used to obtain a restraining order against a supervisor, coworker,
26 or elected officials (as defined in 11 N.N.C. §2(N)) for a dispute(s) or claims arising from
27 actions conducted within their official duties.

28 ***

29 § 1605 Definitions

30 ***

1 (B) "Victim" means any family member of the following persons who have been directly
2 affected by domestic violence as defined in §1605(A):

3 ~~(1) Any member or former member of the abuser's household or immediate residence~~
4 ~~areas;~~

5 ~~(2) Any person involved in, or formerly involved in, an intimate relationship with the~~
6 ~~abuser;~~

7 ~~(3) any person who interacts with the abuser in an employment, academic,~~
8 ~~recreational, religious, social or other setting;~~

9 ~~(4) Any offspring of the abuser;~~

10 ~~(5) Any relative or clan member of the abuser;~~

11 ~~(6) Any elderly person; or~~

12 ~~(7) Any vulnerable person. Examples of vulnerability which give rise to the protection of~~
13 ~~this Act include, but are not limited to, emotional and physical disabilities and~~
14 ~~impairments.~~

15 (c) "Abuser" means any family member ~~person~~ who engages in conduct defined as domestic
16 abuse under § 1605(A) against any of the persons defined as victims under § 1605(B).

17 ***

18 (e) "Family member" means any individual who is a spouse, former spouse, household
19 member, parent, legal guardian, present or former stepparent or stepchild(ren), or former in-
20 law, or relative to the second affinity which includes aunts, uncles, nieces, nephews, cousins,
21 grandparents, grandchildren, or an individual whom one has a continued personal relationship.

22 ***

23 § 1651 Jurisdiction

24 (A) Courts

25 ***

26 (6) An employee may not file an action under the Domestic Abuse Provision Act, 9
27 N.N.C. § 1601, et seq., to seek to restrain a supervisor, coworker, or elected officials
28 as defined in 11 N.N.C. §2(N) for a dispute arising out of their official duties.

29 ***

30 § 1655 Temporary protection orders, ex parte

1 (A) Petition, motion and order.

2 1. Upon the filing of a Petition for Domestic Abuse Protection Order and Motion
3 for Temporary Protection Order the court shall immediately grant or deny the
4 petitioner's Motion for Temporary Protection Order without a hearing or notice
5 to the respondent. The court shall grant the motion if it determines that an
6 emergency exists.

7 a. A petitioner shall demonstrate an emergency by showing that:

8 (1) The respondent recently committed acts of domestic abuse resulting
9 in physical or emotional injury to the petitioner or another victim, or
10 damage to property; or

11 (2) The petitioner or another victim is likely to suffer harm if the
12 respondent is given notice before the issuance of a protection order; or

13 (3) The petitioner or another victim believes they are in immediate and
14 present danger of domestic abuse.

15
16 ***

17 **NAVAJO NATION CODE ANNOTATED**

18 **TITLE 15. LABOR**

19 **CHAPTER 7. NAVAJO PREFERENCE IN EMPLOYMENT ACT**

20 ***

21 § 604 Navajo Employment Preference

22 ***

23 B. Specific requirements for Navajo preference:

24 ***

25 9. All employers shall maintain a safe and clean working environment and provide
26 employment conditions which are free of prejudice, intimidation, including sexual
27 harassment. The employee alleging a violation of this subsection shall have the burden
28 of proof to show that violation by a preponderance of the evidence. An employee may
29 not file an action under the Domestic Abuse Protection Act, 9 N.N.C. §1601, *et seq.*,
30 to seek to restrain a supervisor, coworker, or elected officials as defined in 11 N.N.C.

1 §2(N) ~~or co-worker~~ for disputes arising out of their official duties. ~~employment~~
2 relationship.

3
4
5 **Section Five. Codification**

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

9
10 **Section Six. Directive to Judicial Branch**

- 11 1) The Navajo Nation Council hereby directs the Judicial Branch to present to the Law
12 and Order Committee within six months updated courts rules, regulations, and pro se
13 packets, including but not limited to the application for protection orders, in
14 conformance with these amendments.
- 15 2) The Navajo Nation Council hereby directs the Judicial Branch to create pro se packets
16 for the victim and the accused and to present these amendments to the Law and Order
17 Committee within six months in conformance with this resolution.

18
19 **Section Six. Saving Clause**

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

23
24 **Section Seven. Effective Date**

25 The provisions of the amendments to the Domestic Abuse Protection Act are effective
26 in accordance with 2 N.N.C. § 221(B).