



23rd NAVAJO NATION COUNCIL LEGISLATION SPONSORSHIP WITHDRAWAL

I, Dwight Witherspoon, Primary
Sponsor of proposed legislation hereby withdraw my
sponsorship of the proposed legislation. The legislation
tracking number is 215-19.

If there are any co-sponsors, they may re-sponsor the same
bill by beginning a new legislation.

SPONSOR SIGNATURE:

Dwight Witherspoon

DATE:

8/13/18

LEGISLATIVE SUMMARY SHEET

Tracking No. 0215-18

DATE: June 21, 2018

TITLE OF RESOLUTION: RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES; AMENDING THE NAVAJO NATION PERSONNEL POLICIES MANUAL, SECTION X.B.3.c (1) –(4), ADMINISTRATIVE INVESTIGATORY LEAVE WITHOUT PAY, AND EXTENDING INVESTIGATORY LEAVE FROM FIVE DAYS TO TWENTY DAYS.

PURPOSE: This resolution will amend the Navajo Nation Personnel Polices Manual, Section X.B.3.c (1) – (4).

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

5-DAY BILL HOLD PERIOD: SNOTAH
Website Posting Time/Date: 5:02pm 4/20/18
Posting End Date: 10/30/2018
Eligible for Action: 7/1/2018

1 PROPOSED STANDING COMMITTEE RESOLUTION
2 23rd NAVAJO NATION COUNCIL- Fourth Year, 2018

3 INTRODUCED BY

4 
5

6 Primary Sponsor

7
8 TRACKING NO. 0215-18
9

10 AN ACTION

11 RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES; AMENDING
12 THE NAVAJO NATION PERSONNEL POLICIES MANUAL, SEC. X.B.3.c.1 – 4,
13 ADMINISTRATIVE INVESTIGATORY LEAVE WITHOUT PAY, AND
14 EXTENDING INVESTIGATORY LEAVE FROM FIVE DAYS TO TWENTY DAYS
15

16 BE IT ENACTED:

17 **Section One. Authority**

- 18 A. The Navajo Nation Council established the Health, Education and Human Services
- 19 (“HEHS”) Committee as a standing committee to oversee Navajo Nation efforts in
- 20 implementing and ensuring compliance with Navajo Nation employment and labor
- 21 laws and policies. 2 N.N.C. §§400(A) and (C)(3).
- 22 B. The Health, Education and Human Services Committee shall have the enumerated
- 23 powers to establish Navajo Nation policy, promulgate rules and regulations
- 24 governing the Navajo Nation’s human services. 2 N.N.C. §401(B)(1).
- 25 C. The Health, Education and Human Services Committee serves as the oversight for
- 26 the Division of Human Resources. 2 N.N.C. §401(C)(1).

27
28 **Section Two. Findings**

- 29 A. The Navajo Nation Personnel Policies Manual (“NNPPM”) may be amended from
- 30 time to time by the Health, Education and Human Services Committee at the

1 recommendation of the Division of Human Resources, which include the
2 Department of Personnel Management and the divisions of the Executive Branch
3 and Legislative Branch. Navajo Nation Personnel Polices Manual, § I (D) (Jan. 1,
4 2015).

5 B. The Administrative Service Center, Division of Community Development has
6 expressed its concern that the recent increase of Chapter employees alleged to have
7 engaged in mismanagement of chapter operations, and or, financial mismanagement
8 of chapter funds is diverting much needed time and resources from providing much
9 needed services to Navajo citizens. Exhibit A.

10 C. The Administrative Service Center, Division of Community Development has
11 expressed its concern that under the existing Navajo Personnel Policies Manuel,
12 Sec. X.B.3.c. 1 - 4, Program Managers are allowed to place employees whom are
13 alleged to have engaged in mismanagement of chapter funds, and or,
14 mismanagement of chapter operations on paid investigatory leave pending an
15 investigation of said allegation(s). See NNPPM, 2015.

16 D. The amendment to the NNPPM is to safeguard Navajo Nation funds in the event an
17 investigation regarding misconduct concludes that the charged employee has indeed
18 engaged in mismanagement of funds, and or, operations of the Chapter or other
19 departments .

20 E. It is in the best interest of the Navajo Nation to amend the Navajo Nation Personnel
21 Policies Manual to only allow administrative investigatory leave without pay.

22 23 **Section Three. Amendments**

24 The Navajo Nation hereby amends Section X.B.3. c (1) – (4) of the Navajo Nation
25 Personnel Policies Manual as follows:

26 _____
27 ****

28 X. LEAVE ADMINISTRATION

29 * * * *

30 B.3. Administrative Leave

1 B.3. c. Investigations

2 A Program Manager may place an employee on administrative leave without pay to
3 investigate alleged misconduct sufficiently serious to bar an employee from the premises to
4 protect persons or Nation resources. Such leave may not exceed ~~five~~ twenty consecutive
5 working days.

- 6 1) Immediate written notice shall be given to the employee of the leave, its purpose
7 and duration, and specific reasons therefore. The employee shall be required to
8 leave the premises immediately.
- 9 2) Upon conclusion of the investigation or the end of the administrative leave,
10 whichever occurs first, if no disciplinary action is taken, the employee shall be
11 allowed to return to work, and receive back pay compensation if necessary.
- 12 3) When disciplinary action is deemed necessary, it shall be taken in conformance
13 with the appropriate provisions of Sections XII. and XV. herein. When disciplinary
14 action results in suspension, days served on investigatory leave without pay will be
15 subtracted from any back pay compensation.
- 16 4) Extensions may be granted by the Department of Personnel Management by
17 recommendation of the Program Manager, but total administrative leave for
18 investigatory purposes shall not exceed ~~20~~ forty (40) working days.

19 **Section Four. Approval of the Amendments to the Navajo Nation Personnel Policies**
20 **Manual**

21 The Health, Education and Human Services Committee of the Navajo Nation
22 Council approves the amendment to the Navajo Nation Personnel Policies Manual
23 Section X.B.C.3. (1) – (4).

24
25 **Section Five. Effective Date**

26 The effective date of the amendments to the Navajo Nation Personnel Policies
27 Manual is the date it is certified by the presiding Chairperson of the Health,
28 Education and Human Services Committee of the Navajo Nation Council.



FOREWORD

On May 25, 2018, the Administrative Services Center, Division of Community Development (ASC-DCD) met with the Department of Justice's (DOJ) Human Litigation Unit regarding personnel issues such as funds mismanagement, basic mismanagement, and insubordination at Chapter levels. Needs for policy amendments were discussed broadly and are listed below in bullets; the proposed policy amendments ranged from action only required by the Health and Human Service Committee (HSSC) to overarching Navajo Nation Council action for matters such as "At Will" employment provisions for Community Service Coordinator (CSC) or Account Maintenance Specialist (AMS).

- Investigatory leave without pay, back pay if exonerated.
- Process to make CSC/AMS "At Will".
- CSC/AMS excuse for "no training" and resultant loop holes to defeat disciplinary action, and why the job description & assessment from Department of Personnel Management (DPM) are not merit enough to qualify as basic competency over training?
- After first infraction of fund mismanagement, signature of CSC/AMS on a Pledge for immediate removal on second violation.
- How about CSC or AMS working at two Chapters?
- Legal opinions at to approaches, affects, and feasibility of policy amendments.

SUMMARY

More recently, with the media exposing funds mismanagement at the Chapter levels ASC has had to focus more on personnel issues than beneficial community project development. All this has culminated into a recent Office of Auditor General (OAG) Reports which lists Chapter funds theft at about \$7 Million (M), exorbitant travel expenditures, and unused funds at about \$75M. *(See Exhibit 1)*

Upon investigation the facts become evident and needs for personnel action become necessary. The basic scenario is as follows: investigatory leave (with pay); the investigation must be wrapped up rapidly due to time lines; the investigation is extended; discovering and findings call for termination yet mobilization for possible grievance and appeal to the Office of Hearing and Appeals (OHA); and dealing with the union and other matters. In the end, somehow or another, the Navajo Nation pays back and the CSC/AMS moves on to another Chapter to continue business as usual.

Given the aforementioned scenario the questions that are asked are: why are there such a high turn-over with CSC/AMS; ASC, formally LGSC is not working; Local Governance Act (LGA) is not working, overhaul it; what is wrong with the Chapter Officials; why does the Navajo Nation Council keep throwing money at the Chapters when there is no accountability; who has oversight over the Chapter Officials?

Nonetheless, it is this current ASC administration's intent to garner support for policy change to prevent government waste and to establish clear protocols so that ASC can be a benefit to the Nation. As such, the following amendments are proposed to the Navajo Nation DPM, Personnel

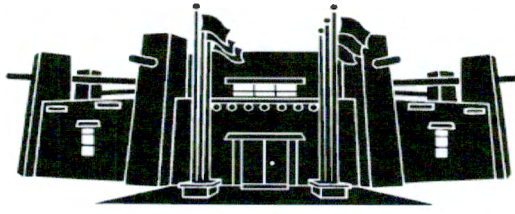
Policies (PP) at § X.B.3.C: Leave Administration, Paid Leave, Administrative Leave, Investigation:

Investigations : A Program Manager may place an employee on administrative leave without pay to investigate alleged misconduct sufficiently serious to bar an employee from the premises to protect persons or Nation resources. Such leave may not exceed ~~five~~ twenty working days.

- 1) Immediate written notice shall be given to the employee of the leave, its purpose and duration, and specific reasons therefore. The employees shall be required to leave the premises immediately.
- 2) Upon conclusion of the investigation or the end of the administrative leave, whichever occurs first, if no disciplinary action is taken, the employee shall be allowed to return to work-, and receive back pay compensation if necessary.
- 3) When disciplinary action is deemed necessary, it shall be taken in conformance with the appropriate provision of Sections XIII. And XV. Herein. When disciplinary action results in suspension, days served on Investigatory leave without pay will be subtracted for any back pay compensation.
- 4) Extensions may be granted by the Department of Personnel Management by recommendation for the Program Manager, but total administrative leave for investigatory purposes shall not exceed forty (40) ~~20~~ working days.

CONCLUSION

Navajo Nation resources are scarce and should be available to fight poverty and reduce disparities in income, health, and education; not to be wasted and manipulated by those given responsibilities. And while accountability and investigative measures are being taken, the individuals in contention should not be allowed to be on administrative leave with pay. It is the hope and aim of ASC that HSSC support and authorization be obtained. A strong message needs continued resonation to ensure that all Navajo Nation assets are safe guarded.



MEMORANDUM

TO: Honorable Dwight Witherspoon
23rd Navajo Nation Council

FROM: 
Jennifer A. Skeet, Attorney
Office of Legislative Counsel

DATE: June 21, 2018

SUBJECT: AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES; AMENDING THE NAVAJO NATION PERSONNEL POLICIES MANUAL, SECTION X.B.3.c (1) –(4), ADMINISTRATIVE INVESTIGATORY LEAVE WITHOUT PAY, AND EXTENDING INVESTIGATORY LEAVE FROM FIVE DAYS TO TWENTY DAYS.

Per your request, attached is the above-referenced proposed resolution and associated legislative summary sheet. Based on existing law, the resolution as drafted is legally sufficient. As with all legislation, it is subject to review by the courts in the event of a challenge.

The Office of Legislative Counsel confirms the appropriate standing committee(s) reviews based on the standing committees powers outlined in 2 N.N.C. §§ 301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. § 164(A)(5).

Please review the proposed resolution to ensure it is drafted to your satisfaction. If this proposed resolution is acceptable to you, please sign it where it indicates "Prime Sponsor", and submit it to the Office of Legislative Services for the assignment of a tracking number and referral to the Speaker.

If the proposed resolution is unacceptable to you, or if you have further questions, please contact me at the Office of Legislative Counsel and advise me of changes you would like made to the proposed resolution. You may contact me at (928) 871-7166. Thank you.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0215-18_

SPONSOR: Dwight Witherspoon

TITLE: An Action Relating To Health, Education And Human Services; Amending The Navajo Nation Personnel Policies Manuel, SEC. X.B.3.c.1 – 4, Administrative Investigatory Leave Without Pay, And Extending Investigatory Leave From Five Days To Twenty Days

Date posted: June 25, 2018 at 5:02 PM

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

**Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586**

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY**

LEGISLATION NO.: 0215-18

SPONSOR: Honorable Dwight Witherspoon

TITLE: An Action Relating To Health, Education And Human Services; Amending The Navajo Nation Personnel Policies Manuel, SEC. X.B.3.c.1 – 4, Administrative Investigatory Leave Without Pay, And Extending Investigatory Leave From Five Days To Twenty Days

Posted: June 25, 2018 at 5:02 PM

5 DAY Comment Period Ended: June 30, 2018

Digital Comments received:

Comments Supporting (1)	<i>1. Marian Bowman, CSC Coal Mine Canyon Chapter</i>
Comments Opposing	<i>None</i>
Inconclusive Comments (1)	<i>1. Reycita Toddy, DPM</i>



Office Assistant
Office of Legislative Services



Date/Time

Amending the NN Personnel Policies Manual; Tracking No. 0215-18

Coalmine Canyon Chapter <coalmine@navajochapters.org>

Thu 6/28/2018 10:01 AM

To: comments <comments@navajo-nsn.gov>;

Good morning!

My name is Marian Bowman, Community Services Coordinator with Coalmine Canyon Chapter. I've been employed with DCD-ASC since May 30, 2017. Our Chapter does not have a Land Line, we only have access to email and our own personal Cell phone. Our Chapter email is coalmine@navajochapters.org and my email is: marian.bowman@navajochapters.org. My Cell phone: (928) 205-5834.

Thank you for sharing the Navajo Nation Policies Manual, Section X.B.3.c (1) - (4), Administrative Investigatory Leave without pay, and extending Investigatory Leave From Five days to Twenty days.

I am in favor of this; and thank you again.

Respectfully,
Marian Bowman,
Community Services Coordinator
Coalmine Canyon Chapter



THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

CONCERNS:

TO : Comments@navajo-nsn.gov

DATE : June 29, 2018

SUBJECT: Legislation No. 0215-18

The Department of Personnel Management has these comments to offer. First, Section One under the Authority says this committee oversee Navajo Nation efforts in implementing and ensuring compliance with Navajo Nation employment and labor laws and policies; however there has been no consultation made with Department of Personnel Management.

- The proposed amendment will create potential increase in grievances because there is no just cause. At this point, the action is based on allegations.
- In many instances, the programs place an employee on Administrative Leave without identifying an investigator to conduct the investigation which results in employee returning back to work without the completion of the investigation.
- Fact finding should have taken place on this legislation to ensure no violation of employee rights.
- The length of time is too long, the 40 days should be narrowed to 30 days if this legislation is to be initiated.

Thank you.

Reycita Toddy

Charlotte Bigthumb

**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY**

LEGISLATION NO.: 0215-18

SPONSOR: Honorable Dwight Witherspoon

TITLE: An Action Relating To Health, Education And Human Services; Amending The Navajo Nation Personnel Policies Manuel, SEC. X.B.3.c.1 – 4, Administrative Investigatory Leave Without Pay, And Extending Investigatory Leave From Five Days To Twenty Days

Posted: June 25, 2018 at 5:02 PM

5 DAY Comment Period Ended: June 30, 2018

Digital Comments received:

Comments Supporting (1)	1. Sit Whitehair, President; Coalmine Chapter
Comments Opposing (1)	1. Roxanne Gorman, Department Manager III, Department for Self Reliance
Inconclusive Comments	<i>None</i>



Legislative Secretary II
Office of Legislative Services

7/6/2018 9:27am

Date/Time

July 2, 2018

Legislation: 0215-18

An Action Relating to Health, Education and Human Services: Amending the Navajo Nation Personnel Policies Manual, Section X.B.3c.1-4, Administrative Investigatory Leave Without Pay, and Extending Investigatory Leave From Five Days to Twenty Days

Comment:

The proposed legislation to change the Navajo Nation Personnel Policies Manual (NNPPM) is based on the current personnel issues and concerns by the Administrative Service Centers (ASC) within the Division of Community Development relating to funds mismanagement, basic mismanagement and insubordination existing at this particular department. This situation does not apply to many of the other Navajo Nation programs.

Keep in mind, investigatory leave is taken by a supervisor to determine if an employee has violated the NNPPM. If the investigation results in a violation, the employee is subject to disciplinary action such as leave without pay. On the other hand, if the investigation does not result in a violation, the employee can return to work with full pay. If the employee is placed on investigatory leave without pay prior to an outcome of an investigation, adverse action has been taken prematurely.

Currently per the NNPPM, a supervisor can request for an extension of the investigatory leave up to twenty days if additional time is needed to complete the investigation. The supervisor is required to provide justification to request for an extension.

The ASC Department is a general funded program and not subject to federal requirements. Navajo Nation programs that are federal funded cannot use federal funds to settle employee grievances. Should the employee be placed on investigatory leave without pay as a result of an allegation, and the allegation is determined baseless and unsubstantiated, the federal funded program will not be able to reimburse the employee for the loss of wages. The Navajo Nation becomes responsible for the repayment of the loss of wages. Is the Navajo Nation prepared to be responsible for this expense?

This legislation should not be approved. Thank you.

Respectfully,

Roxanne Gorman, Department Manager III

Department for Self Reliance

roxanne.gorman@nntanf.org

COPPERMINE CHAPTER

CHAPTER PRESIDENT

Sid Whitehair

CHAPTER VICE PRESIDENT

Lola Smith

CHAPTER

SECRETARY/TREASURER

Valerie Fowler



THE NAVAJO NATION

Western Navajo Agency- District One
P.O. Box 1323 Page, Arizona 86040

Telephone No. (928) 691 - 1109

COUNCIL DELEGATE

Tachoney Slim Jr.

GRAZING MEMBER

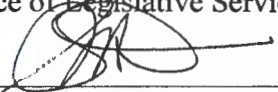
Calvin Begay

COMMUNITY SERVICE

COORDINATOR

Duane Tsinigine

TO : Executive Director,
Office of Legislative Services

FROM : 
Sid Whitehair, President
Coppermine Chapter, WNA
P.O. Box 1323 Page, Arizona 86040
(928) 691-1109
coppermine@navajochapters.org

DATE : June 29, 2018

SUBJECT : **LEGISLATION NO: 0215-18 SPONSERED BY: DWIGHT WITHERSPOON**

Pertaining to LEGISLATION NO: 0215-18

TITLE: An Action Relating to Health, Education and Human Services; Amending The Navajo Nation Personnel Policies Manual, SEC. X.B.3.c.1 – 4, Administrative Investigatory Leave without Pay, and extending Investigatory Leave From Five (5) Days to Twenty (20) Days

Sponsor: Dwight Witherspoon

As Coppermine Chapter President I am in full Support of this Amendment in Legislation No. 0215-18 in the Navajo Nation Personnel Policies and Procedures. We have had issues with mismanagement of Funds within our chapter and it was shocking that the Investigatory Leave was Paid Leave for one of our Staff Members here at Coppermine Chapter.

Accountability is what we stand for here at Coppermine Chapter for the Faith and Welfare of the Community. Thank You.

Coppermine Chapter (928) 691-1109 email @ coppermine@navajochapters.org.