



23rd Navajo Nation Council

MEMORANDUM

To : Manuel Rico, Senior Programs and Projects Specialist
OFFICE OF LEGISLATIVE SERVICES

From : Tom Platero
Tom Platero, Executive Director
OFFICE OF LEGISLATIVE SERVICES

Date : January 9, 2019

Subject : ***23rd Navajo Nation Council Expired Legislation***

Pursuant to 2 N.N.C. § 164 (A) (1), "The last day for consideration of resolutions shall be December 31st of the year immediately preceding the swearing in of the new Council", the following legislation need to be closed out and labeled as "expired":

NAVAJO NATION COUNCIL:

0399-17	0424-17	0098-18	0136-18
0183-18	0224-18	0328-18	0344-18
0356-18	0358-18	0367-18	0373-18
0385-18	0393-18	0404-18	0416-18
0422-18			

NAABIK'YATI' COMMITTEE:

0224-15	0361-16	0341-18	0406-18
0418-18	0427-18		

BUDGET AND FINANCE COMMITTEE:

0021-17	0392-17	0099-18	0261-18
0287-18	0398-18	0435-18	0436-18

HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE:

0414-18	0419-18	0451-18
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LAW AND ORDER COMMITTEE:

0114-17	0031-18	0217-18	0307-18
0353-18	0360-18	0364-18	0437-18

RESOURCES AND DEVELOPMENT COMMITTEE:

0402-15	0104-16	0121-16	0183-16
0282-16	0296-16	0370-16	0384-16
0135-17	0176-17	0386-17	0400-17
0076-18	0395-18	0415-18	0443-18

Legislation need to be closed out as soon as possible. If you have any questions, please let me know.

CONCURRENCE:



Honorable LoRenzo C. Bates, Speaker
23rd Navajo Nation Council

COPIES: Pete K. Atcitty, Chief of Staff, Office of the Speaker
Ed McCool, Acting Chief Legislative Counsel, Office of Legislative Counsel
Files

LEGISLATIVE SUMMARY SHEET
Tracking No. 0437-18

DATE: December 3, 2018

SUBJECT: AN ACTION RELATING TO LAW AND ORDER, HEALTH, EDUCATION AND HUMAN SERVICES, RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; AMENDING THE OFFICE OF THE AUDITOR GENERAL'S PLAN OF OPERATION AT 12 N.N.C. §1 *ET SEQ.*

PURPOSE: The purpose of this legislation is to approve amendments to the Office of the Auditor General Plan of Operation.

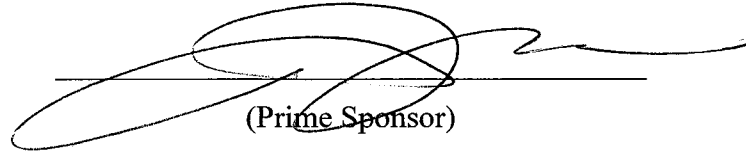
This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: None
Website Posting Time/Date: 8:30pm 12/20/18
Posting End Date: 12/25/2018
Eligible for Action: 12/24/2018

Law & Order Committee
Thence
Health, Education & Human Services Committee
Thence
Resources & Development Committee
Thence
Budget & Finance Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION
2 23rd NAVAJO NATION COUNCIL – Fourth Year, 2018

3 INTRODUCED BY

4 
5
6 (Prime Sponsor)

7
8 TRACKING NO. 0437-18

9
10 AN ACT

11 RELATING TO LAW AND ORDER, HEALTH, EDUCATION AND HUMAN
12 SERVICES, RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND
13 NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL;
14 AMENDING THE OFFICE OF THE AUDITOR GENERAL'S PLAN OF OPERATION
15 AT 12 N.N.C. §1 *ET SEQ.*

16
17 BE IT ENACTED:

18 **Section One. Authorities**

- 19 A. The Law and Order Committee of the Navajo Nation Council is empowered to
20 serve as oversight committee for the Judicial Branch of the Navajo Nation, the
21 Navajo Nation Labor Commission, the Office of Hearings and Appeals, the Office
22 of the Public Defender, Office of the Prosecutor, Division of Public Safety, the
23 Office of Ethics and Rules, and the Department of Justice. 2 N.N.C. §§ 601(C)(1)-
24 (2).
- 25 B. The Health Education and Human Services Committee of the Navajo Nation
26 Council is empowered to serve as the oversight committee for the Department of
27 Health, Division of Social Services, Division of Human Resources, Department of
28 Dine Education, Division of General Services, and the Navajo Nation Board of
29 Education. 2 N.N.C. §§401 (C)(1) and (3).
- 30

- 1 C. The Resources and Development Committee of the Navajo Nation Council is
2 empowered with the oversight of the Division of Natural Resources, Division of
3 Community Development, Navajo Nation Chapters, Division of Economic
4 Development, Division of Transportation, Environmental Protection Agency, and
5 legislative oversight of the Navajo Gaming Regulatory Office. § 501 (C)(1).
- 6 D. The Budget and Finance Committee of the Navajo Nation Council is empowered
7 with the oversight of the Office of the Auditor General. 2 N.N.C. § 301(13).
- 8 E. The Naabik'íyáti' Committee of the Navajo Nation Council reviews proposed
9 legislation which requires final action by the Navajo Nation Council. 2 N.N.C. §
10 164 (A)(9).
- 11 F. The Auditor General's Plan of Operation provides that amendments may be made "by
12 the Navajo Nation Council upon the recommendation of the Intergovernmental
13 Relations Committee of the Navajo Nation Council. The request for amendment shall
14 be originated by the Auditor General." 12 N.N.C. § 10.

15
16 **Section Two. Findings**

- 17 A. The Budget and Finance Committee of the Navajo Nation Council has oversight of
18 the Office of the Auditor General. 2 N.N.C. § 301(13). The Budget and Finance
19 Committee is also the final authority for approving corrective action plans and
20 imposing sanctions for Navajo Nation programs. 12 N.N.C. § 7(I).
- 21 B.

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23 **Section Three. 12 N.N.C. §§ 1-10**

24 The Navajo Nation Council is hereby amends the Office of the Auditor General Plan
25 of Operation as follows:

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28 **NAVAJO NATION CODE ANNOTATED**
29 **TITLE 12. FISCAL MATTERS**
30 **CHAPTER 1. OFFICE OF THE AUDITOR GENERAL**

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§ 1. Establishment

There is established the Office of the Auditor General under the Navajo Nation Council.

§ 2. Purpose

A. The purpose of the Office of the Auditor General shall be to provide continuing professional audit and ~~management~~ consulting services to the Navajo Nation government with regard to the adequacy of management and accounting systems, procedures, practices and internal controls, including but not limited to:

1. Conducting financial audits and reviews of financial records of chapters, related Navajo Nation entities and contractors to the Navajo Nation in accordance with generally accepted government auditing standards;
2. Conducting performance and audit reviews of Navajo Nation government programs, departments and divisions;
3. Providing management ~~advisory~~ consulting services to the Navajo Nation;
4. Assisting the Office of the Prosecutor and Ethics and Rules Office in the investigation of possible fraud and/or misappropriation of assets of the Navajo Nation, public corruption, violations of the Navajo Criminal Code and/or the Ethics in Government Law and corresponding regulations, and assisting with subsequent criminal prosecutions and/or administrative ethics hearings; and
5. Assisting in the building of an effective, responsive, strong and accountable government.

B. The Office of the Auditor General may, from time to time, perform professional services for organizations and entities not accounted for by the ~~Department of Financial Services~~ Office of the Controller of the Navajo Nation and obtain revenue therefore, payable to the Navajo Nation government.

§ 3. Staffing, organization and scheduling of work

1 A. There are established the positions of the Auditor General, other auditors, systems
2 analysts, support staff and such other positions as may be necessary to carry out the
3 purpose of the Office of the Auditor General.

4 B. The Auditor General shall be appointed by the Speaker, Navajo Nation Council, at
5 a negotiated salary subject to confirmation by the Navajo Nation Council and shall
6 serve at the pleasure of the Navajo Nation Council. The Auditor General shall be an
7 actively licensed Certified Public Accountant and/or Certified Internal Auditor and/or
8 ~~other comparable certification to fulfill the purpose of the office.~~ The Auditor
9 General shall be bound by a professional code of ethics and standards of the
10 accounting and auditing profession as regulated by the Board of Accountancy of the
11 licensing state or other applicable licensing agency. The Auditor General shall be
12 knowledgeable in performance, compliance and financial auditing, public
13 administration, and governmental financial and fiscal policies. The Auditor General
14 may be removed at any time by majority vote of the Navajo Nation Council. All
15 other personnel shall be hired and compensated pursuant to Navajo Nation policies
16 and procedures relating to qualifications, experience, Navajo preference, salaries, etc.,
17 and subject to workload requirements and budgetary constraints.

18 C. The Speaker, Navajo Nation Council, may appoint an Acting Auditor General to
19 serve during the vacancies of the Auditor General, pending formal action by the
20 Navajo Nation Council. Such Acting Auditor General shall be subject to the same
21 professional requirements required of the Auditor General in § 3(B), above.

22 D. An organizational chart of the Office of the Auditor General is provided in the
23 office's current Plan of Operation. This chart is subject to future changes in scope
24 and budgetary restrictions.

25 E. The scheduling of the audits for any fiscal year will be done in accordance with
26 sound professional practice, giving priority, to the extent practicable, where requested
27 or when the interests of the Navajo Nation so require.

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29 § 4. Duties, responsibilities and authority of the Auditor General

30 The Auditor General is authorized and directed to:

1 A. Formulate, implement and maintain continuing audit programs and take such
2 action as may be deemed necessary for the accomplishment of the purpose of the
3 office.

4 B. Establish and maintain all necessary liaison and communication with the officials
5 of the Navajo Nation government, entities, and chapters, mineral and business lease
6 operators and state and federal agencies for the furtherance and accomplishment of
7 the purpose of the office.

8 C. Coordinate with the Division of Community Development and the Office of the
9 Controller in the development of accounting, financial-related and audit regulations
10 for use by the chapters; and work with the Office of the Chief Prosecutor and Ethics
11 and Rules Office, ~~if necessary, as needed,~~ to secure records necessary for completing
12 ~~chapter~~ audits of all chapters regardless of its Local Governance Act-certified status,
13 and in the investigation of possible fraud, corruption, and/or misappropriation of
14 assets of the Navajo Nation. Work with the Navajo Nation Department of Justice, the
15 Office of the Prosecutor, the Ethics and Rules Office, and with external law
16 enforcement authorities when appropriate, to protect the Navajo Nation against public
17 corruption, fraud, and misappropriation of public assets, to immediately report
18 suspected violations of the Navajo Nation Criminal Code and the Ethics in
19 Government Law to the appropriate authorities, and to assist in the investigation,
20 criminal prosecution, and/or administrative ethics hearings, of any violations of
21 criminal and/or ethical laws of the Nation.

22 D. Be responsive to the requests of management for specific information, review or
23 audit of any aspect of Navajo Nation and chapter operation.

24 E. Prepare and present to the Budget and Finance Committee of the Navajo Nation
25 Council, and to the appropriate elements of management, clear and concise reports of
26 the results of internal audit reviews and examinations, prepared in accordance with
27 generally accepted auditing standards and governmental auditing standards as
28 promulgated by the Comptroller General of the United States.
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1 F. Serve as one of the principal advisors to the Navajo Nation Council regarding
2 accounting, systems and procedures, program, departmental and divisional operations
3 and financial and business matters.

4 G. Participate in management decisions when new fiscal procedures are being
5 established or existing fiscal procedures modified and also in various task forces,
6 committees and commissions.

7 H. Exercise supervisory control and direction of all personnel within the office and
8 maintain the highest standards of audit quality, ethics, independence and
9 confidentiality. Review, modify and approve audit programs, audit reports and
10 recommendations. Schedule and prioritize audits.

11 I. Represent the Office of the Auditor General in executive and legislative planning.

12 J. Represent the Navajo Nation government within the areas of responsibility and
13 authority of the office and as authorized by the Office of the Speaker, Navajo Nation
14 Council, in relations with all persons and organizations outside the Navajo Nation,
15 and in matters relating to cooperative activities with state or federal agencies,
16 pertaining to audit. Interface with the Navajo Nation's independent auditors.

17 K. Provide, to the extent necessary, training programs and library resources for the
18 development of a well-qualified professional audit staff. Maintain a continuing
19 education program designed to qualify staff personnel to meet the governmental
20 auditing standards.

21 L. Conduct limited examinations of specific financial transactions and provide other
22 administrative support services to the Navajo Nation government as and when
23 requested and as directed by the Navajo Nation Council.

24 M. Enter into agreements, as deemed necessary with Navajo Nation, state or federal
25 departments or offices for the sole purpose of accomplishing the objectives of the
26 office, subject to review by and approval of the ~~Intergovernmental Relations~~
27 Naabik'íyáti 'Committee.

28 N. Recommend amendments to the Plan of Operation and policy guidelines for the
29 Office of the Auditor General as and when necessary, to implement the objectives and
30 policies of the Navajo Nation administration.

1 O. Conduct audit follow-ups and take other necessary actions to assist in the
2 implementation of audit recommendations in accordance with requests therefore and
3 the directions of the Navajo Nation Council.

4 P. While conducting audits (financial, performance and compliance) and operations
5 appraisals of Navajo Nation programs, divisions, or chapters, give emphasis to:
6 effectiveness, accountability, responsiveness to the needs of the Navajo people,
7 adherence to goals and objectives, policies and plans of operation; safeguarding of
8 Navajo Nation assets and properties; proper use of labor, equipment, funds and
9 properties; services to the community; compliance with applicable Navajo Nation,
10 state and federal laws, agreements, policies or procedures; and adequacy and
11 efficiency of personnel.

12 Q. Conduct, or participate in the conduct of, examinations of financial statements of
13 Navajo Nation affiliated entities, contractors to the Navajo Nation and others, in
14 accordance with generally accepted auditing standards.

15 R. Conduct operations audits of Navajo Nation programs, divisions, departments and
16 Navajo Nation affiliated entities as requested by such entities or by the Navajo Nation
17 Council.

18 S. Delegate authority to members of the staff as and when necessary.

19 T. Report directly to the Speaker, Navajo Nation Council, on all operational issues
20 and be responsible thereto for the accomplishment of the purposes of the office.

21 U. In general, do everything necessary and convenient and assume such other duties
22 and responsibilities as may be deemed advisable, to accomplish the purpose of this
23 office in the best interest of the Navajo Nation.

24 V. Notify an individual employee's supervisors, the Ethics and Rules Office, and the
25 Office of the Chief Prosecutor when the Auditor General has reason to believe that a
26 Navajo Nation employee or official has knowingly made false statements or material
27 fact or provided fraudulent documents to representatives of the Office of the Auditor
28 General related to an audit or investigation.

1 W. Monitor bank accounts of all chapters regardless of the chapters status as a Local
2 Governance Act certified chapter, regardless of whether funds are located within or
3 outside the Navajo Nation.

4 X. Serve as a signatory on chapter bank accounts and other financial accounts, issue
5 subpoenas, and freeze or seize assets of the Navajo Nation.

6 Y. Y. Serve as the sole authority within the Navajo Nation for issuance of audit
7 reports or reports covering limited examinations of specific financial transactions.

8
9 § 5. Disclosure of records

10 A. Officials and employees of all Navajo Nation programs, divisions, entities,
11 chapters, and enterprises shall make their books and records available to the staff of
12 Office of the Auditor General upon request and extend every courtesy and
13 cooperation to such representatives while they are performing their official duties.

14 B. The requested information shall be made available within a reasonable period of
15 time.

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17 § 6. Audit reports, actions and follow-ups

18 A. The Auditor General shall submit all Navajo Nation program, division, chapter,
19 and enterprise audit reports with findings and recommendations to the Budget and
20 Finance Committee of the Navajo Nation Council for its review. Upon receipt of the
21 reports, review shall begin within a reasonable period of time so as to implement the
22 audit recommendation(s) in a timely manner.

23 B. The Office of the Auditor General shall conduct such post-audit follow-ups as are
24 deemed necessary. The results of such post-audit follow-ups shall be similarly
25 reported as specified by (A), above.

26
27 § 7. Procedures for addressing audit findings and implementing recommendations

28 A. Within 10 working days after receipt of the final draft of an audit report from the
29 Office of the Auditor General, the audited program will submit written comments to
30 the Auditor General that present the audited program's overall response to the final

1 draft of the audit report. The audited program may request an extension of up to five
2 working days for justified reasons ~~and~~ subject to the approval by the Auditor General.
3 Failure of an audited program to submit a response shall be deemed to constitute an
4 acceptance of the final draft of the audit report by the program. The response should
5 not exceed five pages and should generally describe how audit findings made in the
6 final draft of the audit report will be corrected. If the audited program disputes any
7 portion of the final draft of the audit report, the response shall state the reasons
8 therefor. The term "audited program" or "sanctioned program" as used in this
9 chapter includes all Navajo Nation programs, departments, divisions, chapters,
10 enterprises, or other entities of Navajo Nation government.

11 B. A copy of the audited program's response will be published as part of the audit
12 report issued to the Budget and Finance Committee, the standing committee having
13 oversight responsibility for the audited program, the Navajo Nation Council, and shall
14 be made public.

15 C. Within 30 calendar days after the release of the audit report, the audited program
16 will submit a corrective action plan to the Auditor General. The corrective action
17 plan will address each finding presented in the report in one of the following ways:

- 18 1. Audited program agrees with the audit findings and will immediately implement
19 the recommendations within a stated time period.
- 20 2. Audited program agrees with the audit findings but considers that immediate
21 implementation of the recommendation is not feasible. Audited program will state
22 the reasons why implementation should be delayed and the expected time frame for
23 implementation.
- 24 3. The audited program disagrees with the audit findings and will present information
25 to support its position within 30 days in lieu of submitting a corrective action plan.

26 D. If an audited program fails to submit a corrective action plan within the 30
27 calendar day time frame required in subsection C above, the Office of the Auditor
28 General will provide the audited program with a letter indicating the audited program
29 has an additional 30 days from the date of the letter sent by the Auditor General to
30 submit its corrective action plan. In the letter the Office of the Auditor General shall

1 outline the consequences, in subsection 1 below of not submitting the corrective
2 action plan by the end of the additional 30 days.

3 1. If an audited program fails to submit its corrective action plan at the end of the
4 additional 30 days, sanctions will be imposed under the provisions of § 9(C) on the
5 audited program and the individual or individuals responsible for submitting the
6 corrective action plan upon a legislation approved by both the oversight committee
7 and the Budget and Finance Committee. The Office of the Auditor General must
8 submit a copy of the letter it sent to the sanctioned program prior to the approval of
9 any such legislation. This letter will be included with the legislation for the review by
10 the oversight committee and the Budget and Finance Committee.

11 2. These sanctions will be immediately and automatically rescinded when an audited
12 program submits its corrective action plan in accordance with subsections (A)
13 through (C) above.

14 D. E. Upon receipt of the audited program's corrective action plan, the Auditor
15 General shall review the plan to determine its effectiveness. Upon approval of the
16 plan the Auditor General shall present the audit report, and the audited program shall
17 present the corrective action plan to the Budget and Finance Committee for review.
18 The Auditor General will comment and identify any potential deficiencies in the
19 corrective action plan, if warranted. The corrective action plan shall specify the
20 individual responsible for implementing each provision listed in the corrective action
21 plan. The Budget and Finance Committee will approve the audit report and the
22 corrective action plan by resolution.

23 ~~E. F. The audited program is required to present the corrective action plan to the~~
24 ~~standing committee or committees having oversight responsibility for the audited~~
25 ~~program as part of the legislative process shall be served with copies of the audit~~
26 ~~report and the corrective action plan.~~ The oversight committee may request the
27 ~~Auditor General to brief them~~ a briefing on the audit report by the auditor General.

28 F. G. Six months after the submission of the corrective action plan, the audited
29 program will provide to the Auditor General a written report on the status of all
30 recommendations.

1 1. The status report shall describe actions taken to implement the corrective action
2 plan and the results of those actions. The report should disclose any problems that
3 have affected the audited program's ability to implement the corrective action plan in
4 a timely manner and state how the audited program plans to address these problems.

5 2. The Auditor General will review the implementation status report and, if
6 warranted, will conduct test work to verify actions taken and/or problems
7 encountered. The Auditor General will provide a copy of the status report along with
8 the Auditor General's opinion regarding the success of the audited program's
9 implementation effort to the Budget and Finance Committee and the standing
10 committee or committees having oversight responsibility for the audited program.

11 ~~G. H. 12~~ Twelve months after the corrective action plan is approved by the Budget
12 and Finance Committee the release of the audit report, the Auditor General will
13 conduct a follow-up review to document the status of the implementation. The
14 audited program shall provide data and information, as requested by the Auditor
15 General, to verify action taken. The Auditor General shall issue a written report on
16 the audited program's progress in implementing the corrective action plan. As part of
17 the follow-up report, the Auditor General shall recommend action to be taken by the
18 Budget and Finance Committee and present the report to the standing committee or
19 committees having oversight responsibility for the audited program. The Auditor
20 General may recommend sanctions for failure to implement a corrective action plan,
21 however, based on all the facts and circumstances the Auditor General may provide
22 other recommendations, such as, but not limited to extending the time frame to
23 complete the corrective action plan or additional training. If the Auditor General
24 recommends sanctions, any follow-up report or memoranda recommending sanctions
25 upon individuals shall specifically identify who is to be sanctioned and the deficiency
26 for which he or she is to be sanctioned.

27 H. I. The Auditor General shall report the results of the follow-up review and the
28 status of the correction plan to the Budget and Finance Committee.
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1 I. J. Based on the follow-up review and any recommendations made by the standing
2 committee having oversight responsibility for the audited program, the Budget and
3 Finance Committee will determine what actions should be taken.
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5 § 8. Duties of audited programs

6 Once audit findings and a corrective action plan are approved by the Budget and
7 Finance Committee, the Navajo Nation program, division, department, chapter,
8 enterprise or entity which is the subject of the corrective action plan shall have a duty to
9 implement the corrective action plan according to the terms of the plan. Any sanctioned
10 program requiring additional follow-up reviews by the Auditor General shall be
11 obligated to pay the cost for additional reviews.
12

13 § 9 Signatory on Chapter Bank Accounts and Other Financial Accounts

14 The Auditor General shall be a signatory on all banking, investment, and other financial
15 accounts of all chapters, regardless of the Local Governance Act-certified status of the
16 chapter. The Auditor General shall not be required to co-sign chapter checks, which
17 shall be signed in accordance with the Local Governance Act at 26 N.N.C. §
18 1001(B)(3)(1). All chapter assets are Navajo Nation assets regardless of the Local
19 Governance Act-certified status of the chapter. Chapters shall take all necessary
20 actions to facilitate adding the Auditor General as a signatory on chapter accounts. The
21 Office of the Controller shall not distribute funds to a chapter from the annual
22 Comprehensive Budget, supplemental funding, tax revenue, or any other funding
23 source, until the Auditor General is made a signatory on a chapter's accounts. As a
24 signatory on such accounts, the Auditor General shall have the authority and
25 responsibility to monitor the accounts for suspected fraud, embezzlement, forgery,
26 misuse and misappropriation of Navajo Nation assets, and other violations of the Ethics
27 in Government Law and the Navajo Nation Criminal Code. The Auditor General shall
28 place a fraud alert on all chapter accounts so that the financial institutions have a duty
29 to inform the Auditor General and other signatories on the account of irregular and
30 suspicious account activity. Within 10 days of becoming aware of the irregular and

1 suspicious account activity, the Auditor General or designee shall initiate an
2 investigation or audit. When the Auditor General has good cause to believe that the
3 Navajo Nation assets in a chapter account have been misused or misappropriated,
4 acting only based on the advice and concurrence of two or more of the following: the
5 Attorney General, the Chief Prosecutor, or the Director of the Ethics and Rules Office,
6 the Auditor General shall withdraw the assets from chapter accounts and deposit the
7 assets with the Office of the Controller. Within five days of such transfer of assets, the
8 Auditor General shall meet with chapter officials and employees to allow the chapter an
9 opportunity to explain the account activity. Upon meeting with the chapter officials and
10 employees, the Auditor General may decide to return the assets to the chapter's
11 possession and control or require the chapter to transfer control of the chapter's Fund
12 Management System to the Division of Community Development Administrative
13 Service Center, which shall manage the chapter's assets and the Fund Management
14 System. The Office of the Controller shall maintain custody of such assets, and the
15 Administrative Service Center shall manage such assets, until, acting upon the
16 recommendation and concurrence of the Department of Justice, the Budget and Finance
17 Committee passes a resolution approving the return of the assets to the chapter's
18 possession and control.

19
20 § 10 Subpoena authority during the course of an audit or investigation

21 The Auditor General is empowered to issue subpoenas, and to request that subpoenas
22 be issued by Navajo Nation courts and the Office of Hearings and Appeals, during the
23 course of an audit, in furtherance of the Auditor General's statutory duties and the
24 investigation of suspected corruption, fraud, embezzlement, misuse, and
25 misappropriation of public assets, and other violations of the Ethics in Government
26 Law and the Navajo Criminal Code. The Auditor General shall request assistance from
27 the Office of Legislative Counsel or the Department of Justice and shall obtain the
28 concurrence of the Chief Legislative Counsel or the Attorney General prior to issuing
29 any subpoena.

1 § 11 Authority to seize and freeze Navajo Nation assets

2 The Auditor General is empowered to seize or freeze Navajo Nation assets in any form,
3 whether located within or outside of the Navajo Nation, based on good cause that such
4 assets have been misused or misappropriated. All chapter assets are Navajo Nation
5 assets regardless of the Local Governance Act-certified status of the chapter. The
6 Auditor General shall issue written documentation to financial institutions and other
7 parties in possession and control of Navajo Nation assets only based on the advice and
8 concurrence of two or more of the following: the Navajo Nation Attorney General, the
9 Chief Prosecutor, and the Director of the Ethics and Rules Office. As soon as
10 practicable following the seizure of Navajo Nation assets, the Auditor General shall (1)
11 transfer possession and control of monetary assets to the Office of the Controller, and
12 (2) coordinate with the Chief Prosecutor and the Director of the Ethics and Rules Office
13 to protect physical and digital evidence and maintain the chain of custody of assets that
14 may be used as evidence in a criminal prosecution and/or an administrative ethics
15 hearing. If the Auditor General transfers custody of monetary assets to the Office of the
16 Controller, the Administrative Service Center of the Division of Community
17 Development shall immediately take possession and control the Fund Management
18 System of the chapter. The Office of the Controller shall maintain custody of such
19 assets, and the Administrative Service Center shall manage such assets, until, acting
20 upon the recommendation and concurrence of the Department of Justice the Budget and
21 Finance Committee passes a resolution approving the return of the assets to the
22 chapter's possession and control.

23
24 § 9. 12. Sanctions for failure to implement plan

25 A. ~~Whenever the~~ The Auditor General ~~determines~~ may recommend sanctions after
26 ~~determining~~ through the periodic review established in § 6 or § 7 that program,
27 department, division, chapter, enterprise or entity has failed to implement the corrective
28 action plan approved by the Budget and Finance Committee ~~within the time table set by~~
29 ~~the corrective action plan or the Auditor General, the Auditor General shall~~
30 ~~immediately report that failure to the Controller of the Navajo Nation and to the Budget~~

1 ~~and Finance Committee. The Auditor General is empowered to recommend sanctions~~
2 ~~or alternatives to sanctions based on the individual circumstances of the audit.~~

3 B. As a sanction for failure to implement the corrective action plan, the Controller shall
4 withhold funds of 5 percent from any governmental funds from the affected program,
5 until such time as the program, demonstrates to the Auditor General that the corrective
6 action plan has been implemented. These withheld funds will lapse at the end of the
7 fiscal year, with the exception of chapter funds. However, withheld funds may be
8 expended to: conduct internal trainings, purchase goods or services necessary to
9 impellent the corrective action plan, hire a consultant to provide additional training
10 and/or assist with the implementation of the corrective action plan. If this option is
11 elected, the Office of the Auditor General is required to assist in the procurement
12 process and selection of all consultants, trainers, and vendors. Additionally, travel fund
13 restrictions will be imposed on sanctioned programs. A sanctioned program is not
14 authorized to use travel funds while under sanction. If the sanctioned program is a
15 chapter, limited travel will be permitted, however in order to receive reimbursement for
16 travel funds, all travel by chapter officials and chapter employees shall be approved in
17 advance by the Administrative Service Center regardless of the Local Governance Act-
18 certified status of the chapter.

19 ~~cause ten percent (10%) of monies payable from any governmental fund of the Navajo~~
20 ~~Nation as defined at 12 N.N.C. § 810(S) to be withheld after the recommended sanction~~
21 ~~is approved by the Budget and Finance Committee and issued to the program,~~
22 ~~department, division, chapter, enterprise or entity until such time as the program,~~
23 ~~division, chapter, enterprise or entity demonstrates to the Auditor General that the~~
24 ~~corrective action plan has been implemented. Once proof of implementation of the~~
25 ~~corrective action plan has been demonstrated, the Auditor General shall immediately~~
26 ~~report this compliance to the Controller who shall then release all withheld funds to the~~
27 ~~program, division, chapter, enterprise or entity.~~

28 C. In addition, the director or manager of any program, department, division, or entity
29 of the Navajo Nation, including chapter employees of both certified and non-certified
30 chapters, which who fails to implement a corrective action plan to the satisfaction of the

1 Auditor General, ~~as reported by the Auditor General,~~ shall, be removed from his or her
2 position four (4) months after the Budget and Finance Committee approves the
3 resolution imposing sanctions. This provision meets the just cause provision of the
4 Navajo Preference in Employment Act at 15 N.N.C. §§ 601 et seq. This provision shall
5 not apply to elected officials at Navajo Nation Chapters whose continued service is
6 governed by the provisions of the Navajo Nation Election Code. Any chapter official
7 subject to sanction under this section shall have his or her stipend reduced by fifty
8 percent (50%) until the chapter demonstrates to the satisfaction of the Auditor General
9 that the corrective action plan has been implemented.

10 ~~have twenty percent (20%) of their salary withheld by the Controller after the~~
11 ~~recommended sanction is approved by the Budget and Finance Committee until such~~
12 ~~time as the program, division, enterprise or entity which is subject to his or her~~
13 ~~direction demonstrates to the Auditor General that the corrective action plan has been~~
14 ~~implemented. Whenever the audited program is a chapter of the Navajo Nation, twenty~~
15 ~~percent (20%) of any payment prospectively due the chapter officials shall be withheld~~
16 ~~by the Controller and the chapter government. Once proof of implementation of the~~
17 ~~corrective action plan has been demonstrated, the Auditor General shall immediately~~
18 ~~report this compliance to the Controller and, where applicable, the chapter government,~~
19 ~~who shall then release the withheld salary to the director of the program, division,~~
20 ~~enterprise, or entity or to the chapter official.~~

21 D. Any director, manager, or chapter official, or chapter employee subject to the
22 provisions noted above in § 12(C) whose salary or other payments are withheld
23 pursuant to § 9(C) shall have the right to have the withholding termination of
24 employment or reduction in stipend reviewed by the Navajo Nation Office of Hearings
25 and Appeals. Review shall be limited to a determination of whether the audit
26 recommendation or corrective action plan bears a rational relationship to the audit
27 report, was approved by the Budget and Finance Committee, whether the corrective
28 action plan was implemented within established time tables and whether the time tables
29 for implementation were reasonable. The withholding of salary termination of
30 employment or reduction in stipend shall be upheld if there is a preponderance of

1 evidence in support of these factors. The decision of the Office of Hearings and
2 Appeals shall be final and no appeal shall lie to the courts of the Navajo Nation.

3
4 ~~§ 10.~~ 13. Amendment of the Plan of Operation

5 This Plan of Operation may be amended from time to time by the Budget and Finance
6 Committee Navajo Nation Council ~~upon the recommendation of the Intergovernmental~~
7 ~~Relations Committee~~ of the Navajo Nation Council. The request for amendment shall
8 be originated by the Auditor General.

9
10
11 **Section Four. Effective Date**

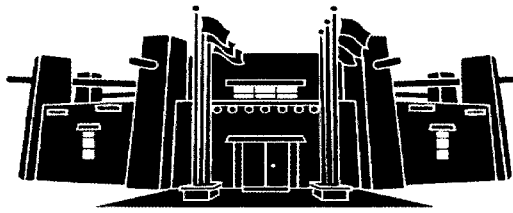
12 The Navajo Nation Code amendment enacted herein shall be effective pursuant to 2 N.N.C.
13 § 221(B).

14
15 **Section Five. Codification**

16 The provisions of this Act which amend or adopt new sections of the Navajo Nation Code
17 shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel
18 shall incorporate such amended provisions in the next codification of the Navajo Nation
19 Code.

20
21 **Section Six. Saving Clause**

22 Should any provisions of this ordinance be determined invalid by the Navajo Nation
23 Supreme Court, or the District Courts of the Navajo Nation, without appeal to the Navajo
24 Nation Supreme Court, those portions of this ordinance which are not determined invalid
25 shall remain the law of the Navajo Nation.



MEMORANDUM

TO: Honorable Seth Damon
23rd Navajo Nation Council

FROM: Kristen Lowell
Kristen Lowell, Principal Attorney
Office of Legislative Counsel

DATE: December 3, 2018

SUBJECT: **AN ACTION RELATING TO LAW AND ORDER, HEALTH, EDUCATION AND HUMAN SERVICES, RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; AMENDING THE OFFICE OF THE AUDITOR GENERAL'S PLAN OF OPERATION AT 12 N.N.C. §1 ET SEQ.**

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. As previously discussed, these amendments significantly expand the authority and responsibility of the Auditor General. As with any legislative action, it can be subject to review by the courts in the event of proper challenge.

Please ensure that this particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

The Office of Legislative Counsel confirms the appropriate standing committee(s) 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).

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0437-18__

SPONSOR: Seth Damon

TITLE: An Action Relating To Law and Order, Health, Education and Human Services, Resources and Development, Budget and Finance, and Naabik'iyati' Committees, and the Navajo Nation Council; Amending the Office of the Auditor General's Plan of Operation at 12 N.N.C. §1 Et. Seq.

Date posted: December 20, 2018 at 8:30 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.: 0437-18

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Posted: December 20, 2018 at 8:30 PM

5 DAY Comment Period Ended: December 25, 2018

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	<i>None</i>
Inconclusive Comment	<i>None</i>



 Legislative Secretary II
 Office of Legislative Services

12/24/2018 8:12am

 Date/Time