

# THE NAVAJO NATION

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JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



November 11, 2019

Hon. Seth Damon  
Office of the Speaker  
Post Office Box 3390  
Window Rock, AZ 86515

RE: CO-40-19, *Amending 11 N.N.C. § 240(D)(2), Removal Provisions of Navajo Election Code, and 11 N.N.C. § 341(A)(1), Office of Hearings and Appeals Procedures*

Dear Speaker Damon,

Pursuant to the authority vested in the Navajo Nation President, I am vetoing CO-40-19.

Navajo Nation law is based on resolutions passed by the Legislative Branch and acted on by the Executive Branch. Those resolutions are what make up our Navajo Nation Code and we rely on the Code for guidance in the work we do as government officials and employees, as attorneys, as interested citizens. A review of our published Navajo Nation Code does not mirror the amending language of CO-40-19. Recognizing that many of the resolutions passed and enacted may not be in the public domain I believe an effort should be made to note unpublished resolutions when contemplating change so we are fully aware of what changes are being made to our laws.

Based on the question of the current language in the Election Code, and with the abundance of caution, I am vetoing CO-40-19. We must ensure that our published laws are as current as possible and available to the Nation and our citizens, as well as those outside our Nation. With an election coming soon I am positive the Navajo Nation Council believe as I do that our election laws must be clear, must be current, and must be available to ensure a true democratic process.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Nez".

Jonathan Nez, President  
THE NAVAJO NATION

RESOLUTION OF THE  
NAVAJO NATION COUNCIL  
24<sup>th</sup> NAVAJO NATION COUNCIL -- First Year, 2019

AN ACTION

RELATING TO LAW AND ORDER, NAABIK'ÍYÁTI' AND NAVAJO NATION COUNCIL;  
AMENDING 11 N.N.C. § 240(D)(2), REMOVAL PROVISIONS OF NAVAJO  
ELECTION CODE, AND 11 N.N.C. § 341(A)(1), OFFICE OF HEARINGS AND  
APPEALS PROCEDURES

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Law and Order Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 600(A). A general purpose of the Law and Order Committee is "to improve the administration of justice on the Navajo Nation." 2 N.N.C. § 600(C)(1). It "serve[s] as the oversight committee for the Judicial Branch of the Navajo Nation, all administrative legal tribunals including but not limited to the Navajo Nation Labor Commission and the Office of Hearings and Appeals, Office of the Public Defender, Office of the Prosecutor, Division of Public Safety, and the Office of Ethics and Rules. 2 N.N.C. § 601(C)(1). The Committee, among other delegated duties, "review[s] and make[s] recommendations to the Navajo Nation Council on proposed amendments to ... the Navajo Nation Code." 2 N.N.C. § 601(B)(14).
- B. Pursuant to 2 N.N.C. § 164(A)(9), "[a] proposed resolution that requires final action by the Navajo Nation Council shall be assigned to standing committee(s) having authority over the subject matter at issue and the Naabik'íyáti' Committee."
- C. The Navajo Nation Council enacts and amends laws of the Navajo Nation. The Council also sets policy for the Navajo Nation. See generally, 2 N.N.C. § 102.

**SECTION TWO. FINDINGS**

- A. Under the Navajo Nation Election Code, elected officials must maintain qualifications of office throughout their terms of office. 11 N.N.C. § 8(F).
- B. Under the Election Code, elected officials can be removed from office for not maintaining qualifications provisions of the code. 11 N.N.C. §§ 8(F) and 240(D). The law however must be clarified as to the time period allowed for requesting a hearing before the Navajo Nation Office of Hearings and Appeals.
- C. Under the Election Code, section 341 provides for procedures for election disputes before the Office of Hearings and Appeals. A technical amendment is necessary for purposes of clarifying requirements on procedure.

**SECTION THREE. AMENDING ELECTION CODE**

The Navajo Nation Council hereby amends the Navajo Nation Election Code as follows:

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

**§ 240. Removal and placement on administrative leave**

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- D. Any official holding an elective position with the Navajo Nation, failing to maintain qualifications for office, as specified by Navajo Nation law, or is 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 Hearings and Appeals, ~~as follows:~~ Such grievance, in the event the official decides to submit one, shall be filed within 10 days of the Election Administration's notice. The procedures for a grievance under this section shall be as follows:
- a. The Office of Hearings and Appeals shall review all grievances within 10 days of filing. The Office of Hearings and Appeals may dismiss grievances that are insufficiently stated as to law or facts. For grievances deemed sufficient, hearings shall be scheduled.
    - i) Hearings shall be conducted within 10 days of the determination of sufficiency.
    - ii) Notices of hearing shall be provided to the parties and others deemed necessary for determination of the appeal.

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**Subchapter 18. Administrative Election Code Complaints and Hearings**

**§ 341. Office of Hearings and Appeals; election disputes; grievances**

- A. Except as otherwise provided for by law, the Office of Hearings and Appeals shall have the authority to implement procedures in resolving disputes pertaining to the conduct of an election. This section shall be limited to disputes arising from events occurring on an election day, including the implementation of 11 N.N.C. §§ 81 through 87 and 145.
- 1) Within ten days of an election, the complaining person must file with the Office of Hearings and Appeals a written complaint setting forth the reasons why the election was not conducted in accordance with the requirements of the Election Code. If, on its face, the complaint is

insufficient under the Election Code, the complaint shall be dismissed by the Office of Hearings and Appeals.

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**SECTION FOUR. EFFECTIVE DATE**

The amendments enacted herein shall be effective pursuant to 2 N.N.C. §221(B).

**SECTION FIVE. CODIFICATION**

The provisions of these amendments of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amendments in the next codification of the Navajo Nation Code.

**SECTION SIX. SAVINGS CLAUSE**

Should any provision of these amendments 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, those amendments that are not determined invalid shall remain the law of the Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 24<sup>th</sup> 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 19 in Favor, and 00 Opposed, on this 23<sup>rd</sup> day of October 2019.

  
Honorable Seth Damon, Speaker  
24<sup>th</sup> Navajo Nation Council

11-01-19  
DATE

Motion: Honorable Daniel E. Tso  
Second: Honorable Paul Begay


Speaker Seth Damon not voting

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 \_\_\_\_\_, 2019.

\_\_\_\_\_  
Jonathan Nez, President  
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(11), on this 11<sup>th</sup> day of November, 2019 for the reason(s) expressed in the attached letter to the Speaker.

  
Jonathan Nez, President  
Navajo Nation

NAVAJO NATION

190

10/23/2019

NNC 2019 FALL SESSION

03:46:39 PM

	<b>Amd# to Amd#</b>	Legislation 0233-19: Amending	PASSED
MOT Tso, D		11 NNC S240(D)(2), Removal	
SEC Begay, P		Provisions of Navajo Election	
		Code	

**Yea : 19**

**Nay : 0**

**Excused : 3**

**Not Voting : 1**

**Yea : 19**

Begay, E	Crotty	Nez, R	Tso, D
Begay, K	Freeland, M	Slater, C	Walker, T
Begay, P	Halona, P	Stewart, W	Wauneka, E
Brown	Henio, J	Tso	Yellowhair
Charles-Newton	James, V	Tso, C	

**Nay : 0**

**Excused : 3**

Tso, E	Smith	Daniels
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**Not Voting : 1**

Yazzie

**Presiding Speaker: Damon**