

RESOLUTION OF THE
NAVAJO NATION COUNCIL

20th NAVAJO NATION COUNCIL -- Third Year, 2005

AN ACT

RELATING TO ELECTIONS; ENACTING THE NAVAJO NATION SPECIAL ELECTIONS ACT OF 2005; AMENDING THE NAVAJO NATION ELECTION CODE AT 11 N.N.C. §§2, 5, 22, 25, 42, 43, 45, 141, 142, 143, 144, 145, 161, 162, 244 and 326 TO AUTHORIZE SPECIAL ELECTIONS FOR VACANCIES OCCURRING WITHIN THE FIRST HALF OF AN ELECTIVE TERM OF OFFICE

BE IT ENACTED:

Section 1. Enactment of the Navajo Nation Special Elections Act of 2005

The Navajo Nation Council hereby enacts the Navajo Nation Special Elections Act of 2005.

Section 2. Purpose

The purpose of the Navajo Nation Special Elections Act of 2005 is to authorize special elections for vacancies occurring within the first half of an elective term of office.

Section 3. Findings

The right to vote for a candidate of one's choice is a fundamental right within the Navajo Nation. However, due to lack of funding, candidates for certain positions, and other factors which make necessary the appointment of persons to fill vacancies, all vacancies in Navajo Nation elective offices are now filled by appointment, not by vote of the people. The Navajo Nation Council finds that some vacancies in these elective positions occur early in a term of office, resulting in representation by an appointee for nearly the entire term of an elected official. As the will of the voting public is exercised through elections, the use of appointments in filling vacancies should be limited. Appointments to elective positions should be made only when such vacancies occur within the second half of an elective term of office. Otherwise, vacancies should be filled by special elections.

Section 4. Amendments to Title 11, Navajo Nation Code

The Navajo Nation Council hereby amends the Navajo Nation Election Code, Title 11, as follows:

§2. Definitions

~~HH~~ JJ. "Special Elections" - Elections called by the Board in the event of a sufficient recall or referendum petition or to fill a vacancy in accord with this Title.

[Subsequent subsections to be redesignated]

§5. Ballots; official; sample

A. Ballots shall be printed for all ~~primary, general,~~ and ~~chapter~~ elections after all candidates have been certified by the Election Administration to the Board. Ballots shall reflect the names and pictures of certified candidates running for office. Ballots shall be numbered consecutively and provided in blocks to each precinct. A space shall be provided below or on the side of each picture which each voter must fill in or "blacken" to indicate his or her choice.

§22. Time of filing

A. There shall be a 90-day filing period beginning 180 days prior to a primary election and ending 90 days thereafter. ~~Candidate applications shall be filed~~

~~no later than ninety (90) days preceding the primary election date except that~~ However, for those elective positions which lack a candidate after the a primary election has been conducted, candidate applications shall be filed within the filing period set by the Navajo Board of Election Supervisors.

B. For special elections, candidate applications shall be filed pursuant to the special election provisions of this Title.

§25. Unopposed candidates; candidate withdrawal

A. In the event only one candidate files for a Navajo Nation elective office, ~~the election for that office shall be canceled and he or she shall be appointed as the official for that office~~ he or she shall be placed on the ballot as an unopposed candidate.

§42. ~~{Reserved}~~ No primary in special election; write-in candidacies not allowed

- A. There shall be no primary election in a special election.
- B. All candidates determined eligible by the Navajo Election Administration following review of candidate applications shall be placed on the special election ballot.
- C. Notwithstanding authorization in other elections, write-in candidacies shall not be allowed in special elections.

D. The candidate receiving the highest number of votes shall be certified pursuant to provisions herein.

§43. Selection of candidates for Office of Vice-President

- A. Candidates for the Office of President chosen in the primary election shall within five days after the primary election each name a running mate for the Office of Vice-President. The names of the candidates for President together with each candidate's selection of a candidate for Vice-President shall be placed on the general election ballot and be voted upon as a single ticket.
- B. In the event of the death, resignation, removal or disqualification of the newly-elected President occurring after the General Election and before inauguration, the newly-elected Vice-President shall be deemed the President and be given the oath as such on the day set forth in 11 N.N.C. §6. The new President shall then appoint a Vice-President pursuant to 11 N.N.C. ~~§161(A)-(1)~~ §142(A).

§45. Death, resignation, removal/disqualification after general election

In the event of death, resignation, removal or disqualification after the general election, of any elected person, the a vacancy shall be declared. ~~filled by appointment pursuant to applicable provisions of the particular position.~~

Subchapter 8. Vacancies

§141. Vacancies

A. Subject to provisions of this section, the Navajo Election Administration is authorized to declare vacancies for elective positions.

B. In the event of the removal or disqualification of an elected official pursuant to Navajo Nation law or the automatic forfeiture of office by an elected official, pursuant to the Ethics in Government Law, the Navajo Election Administration is authorized to declare a vacancy upon receipt of a duly adopted resolution legislation by the Navajo Nation Council or the Ethics and Rules Committee.

C. In the event of the recall of an elected official, the Navajo Election Administration is authorized to declare a vacancy upon the final certification of the recall petition.

F. In the event of a ~~vacancy resulting from~~ removal, death, disqualification or resignation of an ~~elected official~~ individual prior to his or her ~~after the election, but before the oath of office for that a position he or she was elected to, a vacancy shall be declared for such position. ~~and the candidate who received the next highest votes shall be sworn in as the elected official for that position.~~~~

§142. Vacancy in the Office of the Navajo Nation
President/Vice President; Succession

- A. Should the office of the Navajo Nation President be declared vacant, the Vice President shall assume the position of President regardless of his or her status as an elected or appointed Vice President. The new successor President shall appoint a new Vice President within 30 days.
- B. Should the office of the Navajo Nation Vice President be declared vacant, the President shall, no later than 30 days after the date of vacancy appoint a new Vice President. Within 10 days of appointment, the Navajo Election Administration shall review the qualifications and certify the new Vice President provided he or she is qualified.
- C. If both Navajo Nation President and Vice President positions become vacant simultaneously, resulting in the absence of a Vice President to succeed the position of President, a special election shall be conducted to fill the vacancies whether such vacancies occur within the first or second half of the terms of office. However, if a Navajo Nation General Election is scheduled within 90 days of vacancies being declared, the Speaker of the Navajo Nation Council shall serve as Navajo Nation President and shall complete such term of office. Service by the Speaker as President as provided herein shall not create a vacancy in the Office of the Speaker.

Subchapter 9. Special Elections

§143. Special Elections for vacancies during first half of term

Whenever a vacancy is declared for an elected office during the first half of a term of office, with the exception of a vacancy involving the Office of the Navajo Nation President or the Navajo Nation Vice President, the remaining term of the vacant office shall be filled pursuant to special election provisions of this Code.

§144. Temporary appointments pending Special Election

A. Whenever there is a vacancy in a Council Delegate position during the first half of the term of Office, at the request of the affected Chapter or Chapters within a precinct, the Speaker of the Navajo Nation Council may select and appoint an interim Delegate from the precinct until the vacancy is filled by special election and the new Delegate takes office. Prior to appointment by the Speaker, the qualifications of the individual recommended shall be reviewed by the Navajo Election Administration and the individual shall be certified only if he or she is qualified.

B. In the event of vacancies and a special election called for the Navajo Nation President and Vice President, the Speaker of the Navajo Nation Council shall serve as Interim President of the Navajo Nation until the vacancies are filled by

such election and the new President and Vice President take office. Service by the Speaker as the Interim President shall not create a vacancy in the Office of the Speaker.

§145. Conduct of Special Elections

Special elections shall be conducted in the same manner as other elections except as follows:

- A. There shall be a 14-day filing period upon a declaration of vacancy.
- B. Candidate applications for the Offices of the Navajo Nation President and Vice President shall be filed at the same time.
- C. Upon the expiration of a filing period, the Navajo Election Administration shall, within five days, review applications filed and determine whether applicants should be certified as eligible for candidacy. An applicant disqualified or otherwise deemed ineligible for office may file a grievance pursuant to 11 N.N.C. §341.
- D. Challenge provisions of 11 N.N.C. §24 shall apply, except that such challenges, if any, shall be filed within five days of certification of a candidate.
- E. In the event of a challenge or a grievance, a special election date shall not be set until after the challenge or grievance is addressed and resolved in accordance with applicable provisions of the Election Code. Once applicable administrative and judicial remedies of the

Election Code have been exhausted, the special election, upon public notice, shall be conducted within 60 days thereafter.

F. If there is no challenge or grievance, a special election, upon public notice, shall be conducted within 60 days of the conclusion of the challenge or grievance period.

G. The Navajo Board of Election Supervisors shall adopt rules and regulations on the selection of poll clerks and poll judges for the conduct of special elections.

Subchapter 9 10. Appointments

§161. Appointments

~~A. Whenever a vacancy occurs in an elected office, with the exception of a vacancy resulting from recall or involving the office of the elected President or the elected Vice President, a remaining term shall be filled by appointment, subject to certification by the Navajo Election Administration.~~

~~1. Should the office of the elected President become vacant as a result of recall, death or resignation, the elected Vice President shall assume the position of President and may appoint a new Vice President within thirty (30) days.~~

~~2. Should the Office of the elected Vice President become vacant as the result of the recall, death or resignation, the elected~~

~~President shall, no later than thirty (30) days after the date of vacancy, appoint a new Vice President.~~

~~3. Should the offices of the elected President and the elected Vice President both become vacant, the Speaker of the Navajo Nation Council shall be appointed as President of the Navajo Nation and may appoint a new Vice President within thirty (30) days. Service by the Speaker as the President shall create a vacancy in the Office of the Speaker and shall be filled in accordance with rules and regulations duly adopted by the Navajo Nation Council.~~

~~4. The appointed President and Vice President shall meet the qualifications for the positions as set forth in this Code, and he or she shall complete the unexpired terms.~~

A. With the exception of a vacancy resulting from recall or involving the President or the Vice President, and subject to certification by the Navajo Election Administration, when a vacancy occurs during the second half of an elective term of office, the remaining term shall be filled by appointment as follows:

B 1. Whenever there is a vacancy in a Council Delegate position, the Speaker of the Navajo Nation Council shall select and appoint a Delegate from the community to complete the remaining term of office. The selection

shall be made from recommendations by the chapter(s) affected, in the form of a duly adopted chapter resolution. Provided; that if no duly adopted chapter resolution is received from any affected chapter within forty-five days of the declaration of the vacancy, only those recommendations made by a duly adopted chapter resolution need be considered. Those affected chapters that have not made a recommendation by a duly adopted chapter resolution shall be deemed to have waived their opportunity to make a recommendation. If the position is one in which only one chapter is represented, the chapter shall recommend three (3) candidates for appointment. If the position is one in which more than one chapter is represented, each Each affected chapter shall have the opportunity to recommend one (1) candidate for appointment. Upon passage of the chapter resolution, the chapter shall immediately transmit a copy of the resolution to the Navajo Election Administration, along with documents which show that the recommended person meets the qualifications for Council Delegate, as set forth in the Navajo Election Code. The Navajo Election Administration shall within five calendar days review the qualifications of the recommended person and advise both the

chapter and the Speaker in writing of whether the recommended person meets the qualifications for Council Delegate. The Speaker shall review the candidates for appointment and shall make his or her determination out of those qualified persons recommended. The appointed Council Delegate shall complete the unexpired term.

- C 2. Those vacancies in Chapter Officer positions which have been declared vacant by the Navajo Election Administration, as distinguished from those one time vacancies contemplated by 26 N.N.C. §1003, shall be filled by appointment by the affected chapter, in the form of a duly adopted chapter resolution. The chapter resolution shall include reference to all those individuals nominated for appointment, in addition to the individual formally recommended. Officials appointed by the Chapter shall complete the unexpired term.
- D 3. Those vacancies in Grazing Committee positions which have been declared vacant by the Navajo Election Administration shall be filled by appointment by the affected chapter, in the form of a duly adopted chapter resolution. The chapter resolution shall include reference to all those individuals nominated for appointment, in addition to the individual formally

recommended. Officials appointed by the Chapter shall complete the unexpired term.

F 5. Those vacancies in Land Board positions which have been declared vacant by the Navajo Election Administration shall be filled by appointment in one of the following ways:

a. by By majority vote of the Land Board. The selection shall be made by the existing quorum of the Land Board from recommendations by the chapter(s) affected, in the form of a duly adopted chapter resolution. Provided; that if no duly adopted chapter resolution is received from any affected chapter within forty-five days of the declaration of the vacancy, only those recommendations made by a duly adopted chapter resolution need be considered. Those affected chapters that have not made a recommendation by a duly adopted chapter resolution shall be deemed to have waived their opportunity to make a recommendation. ~~If the position is one in which only one chapter is represented, the chapter shall recommend three (3) candidates for appointment. If the position is one in which more than one chapter is represented, each~~ Each affected

chapter shall have the opportunity to recommend one (1) candidate for appointment. Upon passage of the chapter resolution, the chapter shall immediately transmit a copy of the resolution to the Navajo Election Administration, along with documents which show that the recommended person meets the qualifications for Land Board membership, as set forth in the Navajo Election Code. The Navajo Election Administration shall within five calendar days review the qualifications of the recommended person and advise both the chapter and the Land Board in writing of whether the recommended person meets the qualifications for Land Board membership. The Land Board shall review the candidates for appointment and shall make its determination out of those qualified persons recommended. The appointed Land Board member shall complete the unexpired term.

- b. By the Navajo Board of Election Supervisors. In the event that no quorum of the Land Board is elected in the chapter election, or if the number of vacancies occurring for any reason results in no quorum of the Land Board,

then the Navajo Board of Election Supervisors shall make the selection from recommendations by the chapter(s) affected, in the form of a duly adopted chapter resolution. Provided; that if no duly adopted chapter resolution is received from any affected chapter within forty-five days of the declaration of the vacancy, only those recommendations made by a duly adopted chapter resolution need be considered. Those affected chapters that have not made a recommendation by a duly adopted chapter resolution shall be deemed to have waived their opportunity to make a recommendation. Each affected chapter shall have the opportunity to recommend one (1) candidate for appointment. Upon passage of the chapter resolution, the chapter shall immediately transmit a copy of the resolution to the Navajo Election Administration, along with documents which show that the recommended person meets the qualifications for Land Board membership, as set forth in the Navajo Election Code. The Navajo Election Administration shall within five calendar days review the qualifications of the recommended person and advise

both the chapter and the Navajo Board of Election Supervisors in writing of whether the recommended person meets the qualifications for Land Board membership. The Navajo Board of Election Supervisors shall review the candidates for appointment and shall make its determination out of those qualified persons recommended. The appointed Land Board member shall complete the unexpired term.

G 6. Those vacancies in Kayenta Township Commission positions which have been declared vacant by the Navajo Election Administration shall be filled by appointment in one of the following ways:

a. by By majority vote of the Commission. The selection shall be made by the existing quorum of the Kayenta Commission from recommendations by the Kayenta chapter which shall recommend three candidates for appointment, in the form of a duly adopted chapter resolution. Upon passage of the chapter resolution, the chapter shall immediately transmit a copy of the resolution to the Navajo Election Administration, along with documents which show that the recommended person

meets the qualifications for Commission membership. The Navajo Election Administration shall within five calendar days review the qualifications of the recommended person and advise both the chapter and the Commission in writing of whether the recommended person meets the qualifications for Commission membership. The Commission shall review the candidates for appointment and shall make its determination out of those qualified persons recommended. The appointed official shall meet all the qualifications of the position vacated, including residential requirements, and he or she shall complete the unexpired term.

- b. By the Navajo Board of Election Supervisors. In the event that no quorum of the Commission is elected in an election, or if the number of vacancies occurring for any reason results in no quorum of the Commission, then the Navajo Board of Election Supervisors shall make the selection from recommendations of the Kayenta chapter, in the form of a duly adopted chapter resolution. Upon passage of the chapter resolution, the chapter

shall immediately transmit a copy of the resolution to the Navajo Election Administration, along with documents which show that the recommended person meets the qualifications for Commission membership. The Navajo Election Administration shall within five calendar days review the qualifications of the recommended person and advise both the chapter and the Navajo Board of Election Supervisors in writing of whether the recommended person meets the qualifications for Commission membership. The Navajo Board of Election Supervisors shall review the candidates for appointment and shall make its determination out of those qualified persons recommended. The appointed Commission member shall complete the unexpired term.

[Subsequent subsection to be redesignated]

- ± B. All officials appointed pursuant to this section shall be required to meet the qualifications for that position as set forth at ~~11 N.N.C. §8~~ herein by Navajo Nation law.
- C. In the event no chapter resolution recommending an appointment is submitted to the Navajo

Election Administration within time periods established for the submission of such resolutions as provided herein, the Navajo Board of Election Supervisors is authorized to extend, as necessary, such time periods until a vacant position is filled.

D. The Navajo Board of Election Supervisors is authorized to establish, by rules and regulations, reasonable time frames, other than those specified herein, for purposes of implementing the intent of this section.

§162. Certification of Appointments

- A. Those appointed or recommended for appointment shall complete and within 10 days of appointment submit as appropriate all necessary documents required by the Navajo Board of Election Supervisors for determining qualifications for office.
- B. Within 10 days of filing, the Navajo Election Administration shall review, verify and determine an individual's qualifications for office. In addition to documents submitted by the appointed individual, the Election Administration may use public records in determining qualifications. For an appointment made by a chapter, the chapter shall immediately transmit a copy of its

resolution to the Navajo Election Administration,
along with documents which show that the
appointed individual meets the qualifications for
the office he or she is appointed to. The Navajo
Election Administration shall within five
calendar days review the qualifications of the
appointed individual and advise both the chapter
and the individual in writing of whether the
appropriate qualifications for office are met.
 If the appointed individual is deemed ineligible
 for office, he or she shall be notified by the
 Election Administration. The notice shall
 include the right to file a Statement of
 Grievance pursuant to 11 N.N.C. §341(A).

- C. Upon certification, The an Oath of Office shall
be administered pursuant to 11 N.N.C. §6(E). ~~after the appointed official has been certified~~
~~and deemed eligible for office.~~

§244. Special recall elections; resignation; ballot

- B. Except in a recall involving the President or
 the Vice-President of the Navajo Nation, if the
 official whose recall is sought offers his or
 her resignation prior to the recall election,
 the election shall be canceled, and a vacancy
 shall be announced, and ~~the vacancy shall be~~

~~filled by appointment pursuant to applicable provisions for the particular position.~~

Subchapter 17. Election Officials

§326. Vacancies within second half of term of office

- A. A ~~Vacancies~~ vacancy occurring on the Board of Election Supervisors within the second half of a term of office shall be filled by appointment by majority vote of the Agency Council for the agency within which ~~there is a~~ the vacancy exists. The selection shall be made from recommendations by the chapters within the agency affected, in the form of duly adopted chapter resolutions. Each chapter may recommend one (1) candidate for appointment. The Agency Council shall review the candidates for appointment and shall make its determination out of those recommended. The person appointed to fill any such vacancy must be a registered voter of a chapter from within the same agency of his or her predecessor, and shall serve until the normal expiration date of the term he or she has filled.

Section 5. Budget Directive

The Navajo Nation Council directs the Navajo Election Administration, in preparing its annual budget for Fiscal Year 2006, to incorporate projected costs for anticipated special elections conducted in accordance with this Act.

Section 6. Codification

The provisions of this Act which amend the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall include this Act in the next recodification or supplement of the Navajo Nation Code, to the extent practicable.

Section 7. Savings Clause

Should any provision of this Act 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, or any other court of competent jurisdiction, those portions of this Act which are not determined invalid shall remain the law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 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 56 in favor and 13 opposed, this 2nd day of September 2005.

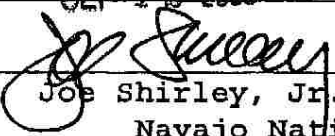

Lawrence T. Morgan, Speaker
Navajo Nation Council

06 Sep 05
Date

Motion: Harry Clark
Second: Nelson Gorman

ACTION BY THE NAVAJO NATION PRESIDENT:

- I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), on this _____ day of SEP 12 2005 2005.


Joe Shirley, Jr., President
Navajo Nation