

LEGISLATIVE SUMMARY SHEET

Tracking No. 0359-17

DATE: September 10, 2017

TITLE OF RESOLUTION: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT, LAW AND ORDER AND NAABIK'ÍYÁTI' COMMITTEES; AND THE NAVAJO NATION COUNCIL: AUTHORIZING AND APPROVING THE KAYENTA TOWNSHIP COMMISSION TO FORM WHOLLY OWNED INSTRUMENTALITIES UNDER NAVAJO LAW; EXTENDING THE NAVAJO NATION PRIVILEGES AND IMMUNITIES TO THE FORMED INSTRUMENTALITIES; AND AUTHORIZING THE KAYENTA TOWNSHIP COMMISSION TO WAIVE THE INSTRUMENTALITIES PRIVILEGES AND IMMUNITIES, INCLUDING LIMITED SOVEREIGN IMMUNITY AND THE REQUIREMENTS FOR TRIBAL REMEDIES EXHAUSTION

PURPOSE: This resolution if approved will authorize and approve the Kayenta Township Commission to form wholly owned instrumentalities and extend the Navajo Nation Privileges and Immunities to the wholly owned instrumentalities and authorizing the Kayenta Township Commission to waive the privileges and immunities and limited sovereign immunity. **A waiver of sovereign immunity is required in the transaction and a 2/3rds vote of the full membership of the Council is required for the waiver.**

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: None
Website Posting Time/Date: 5:32pm 9/2/17
Posting End Date: 9/17/2017
Eligible for Action: 9/18/2017

Resources & Development Committee
THENCE
Law & Order Committee
THENCE
Naa'bik'íyáti' Committee
THENCE
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
23RD NAVAJO NATION COUNCIL—THIRD YEAR, 2017

INTRODUCED BY



Primary Sponsor

(Kee Allen Begay, Jr.)

TRACKING NO. 0359-17

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, LAW AND ORDER AND
NAABIK'ÍYÁTI' COMMITTEES; AND THE NAVAJO NATION COUNCIL:
AUTHORIZING AND APPROVING THE KAYENTA TOWNSHIP COMMISSION
TO FORM WHOLLY OWNED INSTRUMENTALITIES UNDER NAVAJO LAW;
EXTENDING THE NAVAJO NATION PRIVILEGES AND IMMUNITIES TO THE
FORMED INSTRUMENTALITIES; AND AUTHORIZING THE KAYENTA
TOWNSHIP COMMISSION TO WAIVE THE INSTRUMENTALITIES PRIVILEGES
AND IMMUNITIES, INCLUDING LIMITED SOVEREIGN IMMUNITY AND THE
REQUIREMENTS FOR TRIBAL REMEDIES EXHAUSTION

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Navajo Nation established the Resource and Development Committee (RDC) as a Navajo Nation standing committee and as such empowered the RDC to review and recommend resolutions relating to economic and community development, commerce and trade and chapters. 2 N.N.C. §§ 500(A) and 500(C) (2012); CO-45-12.
- B. The RDC enumerated powers includes resolutions to develop and improve Local Government Units; Administrative and Business Site Leasing Management Plan for Townships, including any proposed amendment in accordance with the Navajo Nation Business Leasing Regulations of 2005; and to review and make recommendations to the Navajo Nation Council for final approval the creation,

1 reorganization, termination or “privatization” of any enterprise, as such the
2 Committee shall periodically receive reports and review the operations of the Navajo
3 Nation enterprises, authorities and industries. 2 N.N.C. §§ 501(B)(2)(c), 501(B)(2)(f)
4 and 501(B)(4)(e) (2012); CO-45-12.

5 C. The Navajo Nation Council established the Naabik’íyáti’ Committee as a Navajo
6 Nation standing committee and as such proposed legislation that requires final action
7 by the Navajo Nation Council shall be assigned to the Naabik’íyáti’ Committee. 2
8 N.N.C. §§ 164(A)(9) and 700(A) (2012); CO-45-12.

9 D. The Navajo Nation Council must review and approve enactments or amendments of
10 positive law. 2 N.N.C. § 164(A) (2012); CO-45-12.

11 12 **SECTION TWO. FINDINGS**

13 A. Resolution CN-86-85 approved the overall concept of the local land use planning
14 authority and local governing capacity in the community of Kayenta, officially
15 designating the plan as the “Kayenta Township Pilot Project”, and approved the Plan
16 of Operation for the Kayenta Township Pilot Project. *See* CN-86-85.

17 B. The Kayenta Township Commission (KTC) has jurisdiction over all that area
18 authorized and designated by the Navajo Nation Council in November 1985 through
19 Resolution CN-86-85 and the official survey plat filed with the Navajo County and
20 submitted to the Bureau of Indian Affairs; said area shall be subject to amendment
21 pursuant to Kayenta Township ordinance and concurrence by the Kayenta Chapter. 2
22 N.N.C. § 4083(B); *See also* CAU-47-03. Resolutions from the KTC and Kayenta
23 Chapter are attached as **Exhibit A** and **Exhibit B**.

24 C. In 2003, the Kayenta Township was created as a home rule municipality under the
25 governance of the KTC. 2 N.N.C. §§ 4081 and 4083(A).

26 D. The Navajo Nation recognized that the Kayenta Township has undergone the first
27 stages of rapid accelerated development; the Kayenta Chapter and Kayenta Township
28 have through joint planning, executing and evaluating developed an improved system
29 of local government; and the establishment of the Kayenta Township as a home rule
30 municipality is for the purpose of authorizing local governance of Kayenta Township

1 by the KTC. 2 N.N.C. § 4082. The authority of the KTC shall prevail over all other
2 authority contingent upon its consistency and compliance with all generally
3 applicable laws and regulations of the federal government and the Navajo Nation. 2
4 N.N.C. § 4084(C).

5 E. The KTC has the duty, authority and responsibility to perform all functions for local
6 self-government, consistent with all generally applicable laws and regulations of the
7 federal government and the Navajo Nation. 2 N.N.C. § 4084.

8 F. The KTC has determined that for economic development reasons, including
9 participation in the U.S. Small Business Administration's 8(a) Business Development
10 Program, it would be in the best interest of the Kayenta Township and in furtherance
11 of the Kayenta Township's purposes for the KTC to be able to form wholly-owned
12 instrumentalities of the Kayenta Township, including for-profit and non-profit
13 corporations and/or limited liability companies under Navajo Nation law, that would
14 be treated as tribal enterprises under Navajo Nation and federal law and clothed with
15 the privileges and immunities of the Navajo Nation, including immunity from federal
16 income tax, and for the KTC to have the ability to waive the sovereign immunity of
17 each such instrumentality, but not the sovereign immunity of the Navajo Nation,
18 KTC, Kayenta Township, or any other division or instrumentality of the Nation, and
19 to waive any requirement to exhaust tribal remedies, upon prior notice to the Navajo
20 Nation Council. The KTC will have the ability to waive sovereign immunity of each
21 wholly-owned instrumentality but not the sovereign immunity of the Navajo Nation,
22 Commission, Township or any other division or instrumentality of the Navajo Nation;
23 and any requirement to exhaust tribal remedies subject to thirty (30) days prior notice
24 to the Navajo Nation President and Speaker of the Navajo Nation Council.

25 G. Under the Navajo Nation Corporation Code ("Corporation Code"), 5 N.N.C. § 3100
26 *et seq.*, and the Navajo Nation Limited Liability Act ("LLC Act"), 5 N.N.C. § 3600 *et*
27 *seq.*, the sovereign immunity of the Navajo Nation cannot be extended to entities
28 organized under the Corporation Code or the LLC Act, nor can entities organized
29 under the Nation's Corporation Code or LLC Act be considered a subdivision, entity
30

1 or enterprise of the Navajo Nation, without authorization by the Navajo Nation
2 Council. *See* 5 N.N.C. §§ 3100(C), 3600(C).

3 H. It would be in the best interest of the Kayenta Township and in furtherance of the
4 KTC's authorities and the principles of home rule and local self-government, as set
5 forth in 2 N.N.C. §§ 4081-4086, to expressly authorize the KTC to form wholly-
6 owned instrumentalities of the Kayenta Township, including for-profit and non-profit
7 corporations and limited liability companies under Navajo Nation law, that would be
8 treated as tribal enterprises under Navajo Nation and federal law and clothed with the
9 privileges and immunities of the Navajo Nation; and for the Commission to have the
10 ability to waive the sovereign immunity of each such instrumentality, but not the
11 sovereign immunity of the Navajo Nation, KTC, Kayenta Township, or any other
12 division or instrumentality of the Nation; and to waive any requirement to exhaust
13 tribal remedies, upon prior notice to the Navajo Nation Council.

14
15 **SECTION THREE. APPROVALS, AUTHORIZATIONS, WAIVER, AND**
16 **DIRECTIVES**

17 A. The Navajo Nation Council hereby authorizes and approves the KTC to organize one or
18 more wholly owned instrumentalities of the Kayenta Township for any lawful purpose
19 under Navajo Nation law (each an "Instrumentality" and collectively the
20 "Instrumentalities"), including for-profit and non-profit corporations under the Navajo
21 Nation Corporation Code, 5 N.N.C. § 3100 *et seq.*, and limited liability companies under
22 the Navajo Nation Limited Liability Act, 5 N.N.C. § 3600 *et seq.*, in accordance with the
23 provisions below.

24 B. Notwithstanding the limitations of 5 N.N.C. §§ 3100(C) and 3600(C), and as an express
25 exception thereto under Navajo law, so long as an Instrumentality of the Kayenta
26 Township remains wholly owned by the Kayenta Township, the Instrumentality,
27 including its directors, officers, employees and agents while acting in their official
28 capacities, shall hereby be entitled to all of the privileges and immunities of the Navajo
29 Nation under Navajo and federal law, including sovereign immunity, and the Nation's tax
30 status, and the Instrumentality shall be deemed a Navajo tribal enterprise for purposes of

1 Navajo and federal law; provided, however, the activities, transactions, obligations,
2 liabilities and property of each such Instrumentality of the Kayenta Township shall be
3 solely those of the Instrumentality and shall not be those of the Navajo Nation, the KTC,
4 the Kayenta Township, or any other instrumentality or division of the Navajo Nation,
5 such limitation which shall be expressly set forth in each such Instrumentality's
6 organizational documents.

7 C. Each Instrumentality of the Kayenta Township shall, as shall also be expressly stated in
8 its organizational documents, pursue its purposes solely for the benefit of the Kayenta
9 Township and all dividends and distributions of profit from each such Instrumentality
10 shall be returned to the Kayenta Township to be devoted to essential governmental
11 functions.

12 D. The directors, officers, managers, employees and agents of each Instrumentality
13 authorized hereunder shall be deemed to be "public employees" and "public officials" of
14 the Navajo Nation for purposes of the Navajo Nation Ethics in Government Law, 2
15 N.N.C. § 3741 *et seq.*

16 E. The KTC is hereby authorized to waive a limited sovereign immunity of an
17 Instrumentality of the Kayenta Township, and any requirement for exhaustion of tribal
18 remedies, upon thirty (30) days' written notice to the Speaker of the Navajo Nation
19 Council of its intent to authorize such a waiver, including for participation in the U.S.
20 Small Business Administration's 8(a) Business Development Program. Any such waiver
21 by the Commission shall be in the form of a resolution duly adopted by the Commission
22 and identifying the party or parties, or class of parties, for whose benefit the waiver is
23 granted; the agreement, transaction, or activity for which the waiver is granted; the claims
24 or classes of claims for which the waiver is granted; the property of the Instrumentality
25 which may be subject to execution to satisfy any judgment which may be entered in the
26 claim; and the court or other tribunal where an action or claim may be brought. Any
27 waiver shall be limited to claims arising from the acts or omissions of the Instrumentality,
28 and its directors, officers, employees or agents, and shall be construed to affect only the
29 property and income of the Instrumentality.
30

1 F. No waiver of an Instrumentality's sovereign immunity as authorized hereunder, and
2 nothing stated herein, shall be construed as a waiver of the sovereign immunity or any
3 other privilege or immunity of the Navajo Nation, the KTC, the Kayenta Township, or
4 any other instrumentality or division of the Navajo Nation. No waiver authorized
5 hereunder shall create any liability on the part of the Navajo Nation or any other
6 instrumentality or division of the Navajo Nation, including the KTC or the Kayenta
7 Township, except for the debts and obligations of the Instrumentality that are expressly
8 the subject of such waiver. No waiver authorized hereunder shall be construed as consent
9 to the attachment or encumbrance of any property of the Navajo Nation, the KTC, the
10 Kayenta Township, or any other instrumentality or division of the Navajo Nation, except
11 the Instrumentality expressly the subject of such waiver. The acts or omissions of an
12 Instrumentality of the Kayenta Township and its directors, officers, employees and agents
13 shall not create any liability, obligation or indebtedness either of the Navajo Nation, the
14 KTC, the Kayenta Township, or any other division or instrumentality of the Navajo
15 Nation, or payable out of assets, revenues, or income of the Navajo Nation, the KTC, the
16 Kayenta Township, or any other division or instrumentality of the Navajo Nation.

17
18 **SECTION FOUR. SAVINGS, SEVERABILITY, AND SURVIVABILITY**

19 Should any provision herein be determined invalid by the Navajo courts or other court of
20 competent jurisdiction, all other provisions of this legislation not determined to be invalid
21 shall remain in full force and effect.



THE KAYENTA TOWNSHIP

P.O. BOX 1490 KAYENTA, AZ 86033 - PHONE: (928) 697-8451 FAX: (928) 697-8461

Continuing the legacy of brilliant leadership through local empowerment since 1986.



Resolution No. KTCF-06-17

RESOLUTION OF THE KAYENTA TOWNSHIP COMMISSION

Approving Proposed Legislation, Attached Hereto As Exhibit "A," That Would Authorize the Organization by the Commission of Wholly-Owned Instrumentalities of the Township under Navajo Law That Would Be Clothed with the Privileges and Immunities of the Navajo Nation; Authorizing Management to Seek Appropriate Sponsors for the Proposed Legislation; and Requesting the Navajo Nation Council to Pass the Proposed Legislation

WHEREAS:

1. In 1985, by Navajo Nation Council ("Council") Resolution No. CN-86-85 (Nov. 5, 1985), the Kayenta Township ("Township") was created as a home rule governance pilot project, and, in 1986, by Resolution No. ACN-181-86 (Nov. 13, 1986), the Advisory Committee of the Navajo Nation Council approved the withdrawal of 3,606.43 acres of trust lands for the Township; and
2. In 1996, by Resolution No. CJA-3-96, the Navajo Nation Council designated the Kayenta Township Commission ("Commission") as the governing authority for the Township under its Plan of Operation; and
3. In 2003, after functioning as a governing authority and effective unit of local government for over 18 years, pursuant to Council Resolution No. CAU-47-03 (Aug. 29, 2003), the Township was permanently made a home rule municipality and the Commission was given broad authority by the Council to govern for the welfare of the Kayenta Township and its residents and to perform all functions necessary for local self-government consistent with generally applicable laws of the Navajo Nation and federal government, such authority of the Commission which is codified at 2 N.N.C. §§ 4081-4086; and
4. The Township's Management has advised the Commission that for economic development reasons, including participation in the U.S. Small Business Administration's 8(a) Business Development Program, and in furtherance of self-government, it would be in the best interest of the Township for the Commission to be able to form wholly-owned instrumentalities of the Township, including for-profit and non-profit corporations and/or limited liability companies under Navajo Nation law, that would be treated as tribal enterprises under Navajo Nation and federal law and clothed with the privileges and immunities of the Navajo Nation, including immunity from federal income tax and other taxes, and for the Commission to have the ability to waive the sovereign immunity of each such instrumentality (but not the sovereign immunity of the Navajo Nation, Commission, Township, or any other division or instrumentality of the Nation), and to waive any requirement to exhaust tribal remedies, upon prior notice to the Navajo Nation Council; and
5. Under the Navajo Nation Corporation Code ("Corporation Code"), 5 N.N.C. § 3100 *et seq.*, and the Navajo Nation Limited Liability Act ("LLC Act"), 5 N.N.C. § 3600 *et seq.*, the sovereign immunity of the Navajo Nation cannot be extended to entities organized under the Corporation Code or the LLC Act, nor can entities organized under the Nation's Corporation Code or

LLC Act be considered a subdivision, entity or enterprise of the Navajo Nation, without authorization by the Navajo Nation Council, *see* 5 N.N.C. §§ 3100(C), 3600(C), and therefore authority for the Commission to form instrumentalities of the Township as contemplated herein would require Council legislation; and

6. Legal counsel for the Commission has drafted legislation for consideration by the Navajo Nation Council that would confer such authority on the Commission subject to certain limitations, and the proposed legislation for such purpose is attached hereto as Exhibit "A"; and

7. Having reviewed the proposed legislation attached hereto as Exhibit "A" and having been fully advised by Management, the Commission has determined that it would be in the best interest of the Township for the Commission to be authorized by the Navajo Nation Council to organize wholly-owned instrumentalities of the Township under Navajo law that are clothed with the privileges and immunities of the Navajo Nation, and to also have the authority to waive such instrumentalities' privileges and immunities, when appropriate and in the best interest of the Township, upon prior notice to the Navajo Nation Council; and

8. The Commission now desires to approve the proposed legislation attached hereto as Exhibit "A," to authorize the proposed legislation's presentation by Management to the Honorable Nathaniel Brown, Kayenta's representative on the Navajo Nation Council, and to other appropriate Council delegates, for their consideration and sponsorship of the legislation, and to request passage of the proposed legislation by the Navajo Nation Council.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Kayenta Township Commission hereby approves the proposed legislation attached hereto as Exhibit "A."

2. The Kayenta Township Commission hereby authorizes and directs Management to present the proposed legislation to the Honorable Nathaniel Brown and other appropriate Navajo Nation Council delegates for their sponsorship of the proposed legislation.

3. The Kayenta Township Commission hereby requests the Navajo Nation Council to approve the proposed legislation in the best interest of the Township, including in furtherance of economic development and local self-government.

CERTIFICATION

I hereby certify that the foregoing resolution was considered by the Kayenta Township Commission at a duly called meeting at Kayenta, Navajo Nation (AZ), at which a quorum was present and that the same was passed by a vote of 3 in favor, 0 opposed, and 1 abstained, this 13th day of February, 2017.

Motion: Commissioner J. Williams
Second: Commissioner G. Sisco, III.



Rodger Grey, Chairperson
Kayenta Township Commission



Navajo Nation Kayenta Chapter
Post Office Box 1088
Kayenta Chapter, Navajo Nation, AZ 86033
Chapter Resolution



Resolution No: KY17-332-05

KAYENTA CHAPTER'S RECOMMENDATION REGARDING PROPOSED LEGISLATION TO AUTHORIZE THE KAYENTA TOWNSHIP COMMISSION TO FORM ENTERPRISES CLOTHED WITH THE PRIVILEGES AND IMMUNITIES OF THE NAVAJO NATION.

WHEREAS

1. Kayenta Chapter is a recognized governmental subdivision of the Navajo Nation located with the boundaries of the Navajo Nation with responsibility to advocate for the best interest of the citizens of the Kayenta Chapter ; and
2. The Kayenta Township is a home rule municipality located within the Kayenta Chapter, governed by the Kayenta Township Commission; and
3. To promote economic development in the Kayenta area, the Kayenta Township Commission has proposed Navajo Nation legislation to permit the Commission to form enterprises of the Kayenta Township clothed with the privileges and immunities of the Navajo Nation, a draft of which is attached hereto as Exhibit "A"; and
4. Legislation counsel for the Navajo Nation Council has advised that pursuant to 2 N.N.C. § 4086, the Kayenta Chapter is required to provide its recommendation whether such legislation should be passed by the Navajo Nation Council; and

NOW, THEREFORE BE IT RESOLVED THAT,

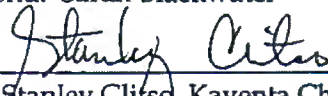
KAYENTA CHAPTER SUPPORTS AND ENDORSES THE PROPOSED LEGISLATION TO AUTHORIZE THE KAYENTA TOWNSHIP COMMISSION TO FORM ENTERPRISES CLOTHED WITH THE PRIVILIEGES AND IMMUNITIES OF THE NAVAJO NATION

CERTIFICATION

I hereby certify that the foregoing resolution was considered by the KAYENTA Chapter at a duly called meeting at, KAYENTA, Navajo Nation, Arizona, at which a quorum was present and that the same was passed by a vote of 15 in favor, 00 Opposed, and 06 abstaining, this 12th day of May, 2017.

Motion: Ben Edwards

Second: Sarah Blackwater



Mr. Stanley Clitso, Kayenta Chapter President

1 RESOLUTION OF THE 23rd NAVAJO NATION COUNCIL – Third Year, 2017

2 INTRODUCED BY:

3
4 _____
5 (primary sponsor)

6
7 RESOLUTION NO. _____

8 AN ACTION
9 RELATING TO RESOURCES AND DEVELOPMENT, NAABIK'ÍYÁTI', AND
10 THE NAVAJO NATION COUNCIL:

11 AUTHORIZING THE KAYENTA TOWNSHIP COMMISSION TO FORM
12 WHOLLY OWNED INSTRUMENTALITIES OF THE KAYENTA TOWNSHIP
13 UNDER NAVAJO LAW; EXTENDING THE NAVAJO NATION'S PRIVILEGES
14 AND IMMUNITIES TO SUCH INSTRUMENTALITIES; AUTHORIZING THE
15 COMMISSION TO WAIVE SUCH INSTRUMENTALITIES' PRIVILEGES AND
16 IMMUNITIES (INCLUDING THEIR SOVEREIGN IMMUNITY AND ANY
17 REQUIREMENT FOR EXHAUSTION OF TRIBAL REMEDIES) UPON A
18 FINDING SUCH WAIVER WOULD BE IN THE BEST INTEREST OF THE
19 TOWNSHIP AND UPON PRIOR NOTICE TO THE NAVAJO NATION
20 COUNCIL

21 BE IT ENACTED:

22 Section A. Findings and Purposes.

23 1. Pursuant to 2 N.N.C. §§ 501(B)(2)(c) and (B)(4)(e), the Resources and Development
24 Committee of the Navajo Nation Council has final approval authority for legislation to develop and
25 improve Local Government Units and makes recommendations to the Navajo Nation Council for the
26 creation of any enterprise.

27 2. Pursuant to 2 N.N.C. § 701(A)(2), the Naabik'iyáti Committee of the Navajo Nation
28 Council recommends resolutions to the Council on matters within the Committee's jurisdiction.

29 3. By Resolution No. CAU-47-03 (Aug. 29, 2003), the Kayenta Township
30 ("Township") was permanently made a home rule municipality of the Navajo Nation, and the

1 Kayenta Township Commission ("Commission"), the Township's governing body, was given
2 broad authority to perform all functions necessary for local self-government consistent with
3 generally applicable laws of the Navajo Nation and federal government. *See* 2 N.N.C. § 4084.

4 4. The Commission has determined that for economic development reasons, including
5 participation in the U.S. Small Business Administration's 8(a) Business Development Program, it
6 would be in the best interest of the Township and in furtherance of the Township's purposes for the
7 Commission to be able to form wholly-owned instrumentalities of the Township, including for-profit
8 and non-profit corporations and/or limited liability companies under Navajo Nation law, that would
9 be treated as tribal enterprises under Navajo Nation and federal law and clothed with the privileges
10 and immunities of the Navajo Nation, including immunity from federal income tax, and for the
11 Commission to have the ability to waive the sovereign immunity of each such instrumentality, but
12 not the sovereign immunity of the Navajo Nation, Commission, Township, or any other division or
13 instrumentality of the Nation, and to waive any requirement to exhaust tribal remedies, upon prior
14 notice to the Navajo Nation Council.

15 5. Under the Navajo Nation Corporation Code ("Corporation Code"), 5 N.N.C. § 3100
16 *et seq.*, and the Navajo Nation Limited Liability Act ("LLC Act"), 5 N.N.C. § 3600 *et seq.*, the
17 sovereign immunity of the Navajo Nation cannot be extended to entities organized under the
18 Corporation Code or the LLC Act, nor can entities organized under the Nation's Corporation
19 Code or LLC Act be considered a subdivision, entity or enterprise of the Navajo Nation, without
20 authorization by the Navajo Nation Council. *See* 5 N.N.C. §§ 3100(C), 3600(C).

21 6. The Navajo Nation Council and its Resources and Development and Naabik'iyáti
22 Committees have determined that it would be in the best interest of the Township and in furtherance
23 of the Commission's authorities and the principles of home rule and local self-government, as set
24 forth in 2 N.N.C. §§ 4081-4086, to expressly authorize the Commission to form wholly-owned
25 instrumentalities of the Township, including for-profit and non-profit corporations and limited
26 liability companies under Navajo Nation law, that would be treated as tribal enterprises under Navajo
27 Nation and federal law and clothed with the privileges and immunities of the Navajo Nation, and for
28 the Commission to have the ability to waive the sovereign immunity of each such instrumentality,
29 but not the sovereign immunity of the Navajo Nation, Commission, Township, or any other division
30

1 or instrumentality of the Nation, and to waive any requirement to exhaust tribal remedies, upon prior
2 notice to the Navajo Nation Council.

3
4 **Section B. Approvals, Authorizations, and Directives.**

5
6 1. In accordance with the Findings and Purposes stated herein, the Navajo Nation
7 Council hereby authorizes the Kayenta Township Commission to organize one or more wholly
8 owned instrumentalities of the Kayenta Township for any lawful purpose under Navajo Nation law
9 (each an "Instrumentality" and collectively the "Instrumentalities"), including for-profit and non-
10 profit corporations under the Navajo Nation Corporation Code, 5 N.N.C. § 3100 *et seq.*, and limited
11 liability companies under the Navajo Nation Limited Liability Act, 5 N.N.C. § 3600 *et seq.*, in
12 accordance with the provisions below.

13 2. Notwithstanding the limitations of 5 N.N.C. §§ 3100(C) and 3600(C), and as an
14 express exception thereto under Navajo law, so long as an Instrumentality of the Kayenta Township
15 remains wholly owned by the Kayenta Township, the Instrumentality, including its directors,
16 officers, employees and agents while acting in their official capacities, shall hereby be entitled to all
17 of the privileges and immunities of the Navajo Nation under Navajo and federal law, including
18 sovereign immunity, and the Nation's tax status, and the Instrumentality shall be deemed a Navajo
19 tribal enterprise for purposes of Navajo and federal law; provided, however, the activities,
20 transactions, obligations, liabilities and property of each such Instrumentality of the Kayenta
21 Township shall be solely those of the Instrumentality and shall not be those of the Navajo Nation, the
22 Kayenta Township Commission, the Kayenta Township, or any other instrumentality or division of
23 the Navajo Nation, such limitation which shall be expressly set forth in each such Instrumentality's
24 organizational documents.

25 3. On a finding that it would be in the best interest of the Kayenta Township, the
26 Kayenta Township Commission is hereby authorized to waive the sovereign immunity of an
27 Instrumentality of the Kayenta Township, and any requirement for exhaustion of tribal remedies,
28 upon thirty (30) days' written notice to the Speaker of the Navajo Nation Council of its intent to
29 authorize such a waiver, including for participation in the U.S. Small Business Administration's 8(a)
30 Business Development Program. Any such waiver by the Commission shall be in the form of a

1 resolution duly adopted by the Commission and identifying the party or parties, or class of parties,
2 for whose benefit the waiver is granted; the agreement, transaction, or activity for which the waiver
3 is granted; the claims or classes of claims for which the waiver is granted; the property of the
4 Instrumentality which may be subject to execution to satisfy any judgment which may be entered in
5 the claim; and the court or other tribunal where an action or claim may be brought. Any waiver shall
6 be limited to claims arising from the acts or omissions of the Instrumentality, and its directors,
7 officers, employees or agents, and shall be construed to affect only the property and income of the
8 Instrumentality.

9 4. No waiver of an Instrumentality's sovereign immunity as authorized hereunder,
10 and nothing stated herein, shall be construed as a waiver of the sovereign immunity or any other
11 privilege or immunity of the Navajo Nation, the Kayenta Township Commission, the Kayenta
12 Township, or any other instrumentality or division of the Navajo Nation. No waiver authorized
13 hereunder shall create any liability on the part of the Navajo Nation or any other instrumentality
14 or division of the Navajo Nation, including the Kayenta Township Commission or the Kayenta
15 Township, except for the debts and obligations of the Instrumentality that are expressly the
16 subject of such waiver. No waiver authorized hereunder shall be construed as consent to the
17 attachment or encumbrance of any property of the Navajo Nation, the Kayenta Township
18 Commission, the Kayenta Township, or any other instrumentality or division of the Navajo
19 Nation, except the Instrumentality expressly the subject of such waiver. The acts or omissions of
20 an Instrumentality of the Kayenta Township and its directors, officers, employees and agents
21 shall not create any liability, obligation or indebtedness either of the Navajo Nation, the Kayenta
22 Township Commission, the Kayenta Township, or any other division or instrumentality of the
23 Navajo Nation, or payable out of assets, revenues, or income of the Navajo Nation, the Kayenta
24 Township Commission, the Kayenta Township, or any other division or instrumentality of the
25 Navajo Nation.

26 5. Each Instrumentality of the Kayenta Township shall, as shall also be expressly
27 stated in its organizational documents, pursue its purposes solely for the benefit of the Kayenta
28 Township and all dividends and distributions of profit from each such Instrumentality shall be
29 returned to the Kayenta Township to be devoted to essential governmental functions.
30

1 6. The directors, officers, managers, employees and agents of each Instrumentality
2 authorized hereunder shall be deemed to be “public employees” and “public officials” of the
3 Navajo Nation for purposes of the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741 *et*
4 *seq.*

5
6 **Section D. Savings, Severability, and Survivability.**

7
8 1. Should any provision of this legislation be determined invalid by the Navajo
9 courts, all other provisions of this legislation not determined to be invalid shall remain in full
10 force and effect.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered and forwarded by the Resources and Development and Naabik'iyáti Committees of the Navajo Nation Council; and that the same was passed by the 23rd Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present, by a vote of ___ in favor and ___ opposed, this ___ day of _____ 2017.

_____, Speaker
The 23rd Navajo Nation Council

Motion:

Second:

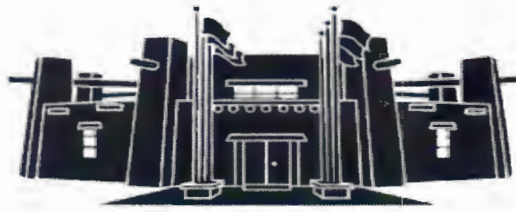
ACTION BY THE NAVAJO NATION PRESIDENT:

I execute into law the foregoing legislation pursuant to my powers, authorities, and responsibilities provided by Title 2 of the Navajo Nation Code, on this ___ day of _____, 2017.

Russell Begaye, President
The Navajo Nation

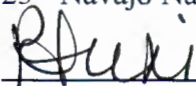
I veto the foregoing legislation pursuant to my powers, authorities, and responsibilities provided by Title 2 of the Navajo Nation Code on this ___ day of _____, 2017, with the following comments:

Russell Begaye, President
The Navajo Nation



MEMORANDUM

TO: Hon. Nathaniel Brown
23rd Navajo Nation Council

FROM: 
Rhonda L. Tuni, Attorney
Office of Legislative Counsel

DATE: September 10, 2017

SUBJECT: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT, LAW AND ORDER AND NAABIK'ÍYÁTI' COMMITTEES; AND THE NAVAJO NATION COUNCIL: AUTHORIZING AND APPROVING THE KAYENTA TOWNSHIP COMMISSION TO FORM WHOLLY OWNED INSTRUMENTALITIES UNDER NAVAJO LAW; EXTENDING THE NAVAJO NATION PRIVILEGES AND IMMUNITIES TO THE FORMED INSTRUMENTALITIES; AND AUTHORIZING THE KAYENTA TOWNSHIP COMMISSION TO WAIVE THE INSTRUMENTALITIES PRIVILEGES AND IMMUNITIES, INCLUDING LIMITED SOVEREIGN IMMUNITY AND THE REQUIREMENTS FOR TRIBAL REMEDIES EXHAUSTION

Pursuant to 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. However, as with all legislation, it is subject to review by the courts in the event of a challenge.

The Office of Legislative Council 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). **NOTE:** This legislation will require a 2/3rds vote of the full membership of the Council. 2 N.N.C. § 223(C).

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: _0359-17_

SPONSOR: Nathaniel Brown

TITLE: An Action Relating To Resources and Development, Law And Order And NAABIK'IYATI' Committees; And The Navajo Nation Council: Authorizing And Approving The Kayenta Township Commission To Form Wholly Owned Instrumentalities Under Navajo Law; Extending The Navajo Nation Privileges And Immunities To The Formed Instrumentalities; And Authorizing The Kayenta Township Commission To Waive The Instrumentalities Privileges And Immunities, Including Limited Sovereign Immunity And The Requirements For Tribal Remedies Exhaustion

Date posted: September 12, 2017 at 5:31 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.: 0359-17

SPONSOR: Honorable Nathaniel Brown

TITLE: An Action Relating To Resources and Development, Law And Order And NAABIK'IYATI' Committees; And The Navajo Nation Council: Authorizing And Approving The Kayenta Township Commission To Form Wholly Owned Instrumentalities Under Navajo Law; Extending The Navajo Nation Privileges And Immunities To The Formed Instrumentalities; And Authorizing The Kayenta Township Commission To Waive The Instrumentalities Privileges And Immunities, Including Limited Sovereign Immunity And The Requirements For Tribal Remedies Exhaustion.

Posted: September 12, 2017 at 5:31 PM

5 DAY Comment Period Ended: September 17, 2017

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	<i>None</i>
Inclusive Comments	<i>None</i>



 Legislative Secretary II
 Office of Legislative Services

9/18/2017 8:27am

 Date/Time

**RESOURCES AND DEVELOPMENT COMMITTEE
23rd NAVAJO NATION COUNCIL**

THIRD YEAR 2017

COMMITTEE REPORT

Mr. Speaker,

The **RESOURCES AND DEVELOPMENT COMMITTEE** to whom has been assigned:

Legislation # 0359-17: An Action Relating to Resources and Development, Law and Order and Naabik'Iyati' Committees; And the Navajo Nation Council: Authorizing and Approving the Kayenta Township Commission to Form Wholly Owned Instrumentalities Under Navajo law; Extending the Navajo nation Privileges and Immunities To The Formed Instrumentalities; and Authorizing The Kayenta Township Commission to Waive The Instrumentalities Privileges and Immunities, Including Limited Sovereign Immunity And the Requirements For Tribal Remedies Exhaustion. *Sponsor: Honorable Nathaniel Brown*

Has had it under consideration and report a DO NOT PASS with the following amendments;

1. Page 1 of 6, Line 17 and 18, removing the following:
~~"AND REQUIREMENTS FOR TRIBAL REMEDIES EXHAUSTION."~~
2. Page 3 of 6, Lines 18, 19 and 20 remove the following:
~~And to waive any requirement to exhaust tribal remedies, upon prior notice~~
3. Page 4 of 6, Lines 12 and 13 remove the following:
~~and to waive any requirement to exhaust tribal remedies, upon prior notice to the~~
4. Page 5 of 6, Lines 17 and 19 remove the following:
~~and any requirement for exhaustion of tribal remedies, upon thirty (30) days' written notice~~

(AMENDMENT MOTION: Walter Phelps Second: Davis Filfred Vote: 3-0-1)

And, any else in the proposed resolution

RE: Legislation # 0359-17:

And referred the matter to Law and Order Committee.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Benjamin Bennett', with a long horizontal stroke extending to the right.

**Benjamin Bennett, Vice-Chairperson
Resources and Development Committee of
the 23rd Navajo Nation Council**

DATE: September 27, 2017

MEETING LOCATION: NDOT Administrative Complex, Tse Bonito, NM

Main Motion: Honorable Walter Phelps

Second: Honorable Jonathan Perry

VOTE: 1-2-1 (CNV) (FAILED)

**LAW AND ORDER COMMITTEE
23RD NAVAJO NATION COUNCIL**

THIRD YEAR 2017

COMMITTEE REPORT

Mr. Speaker,

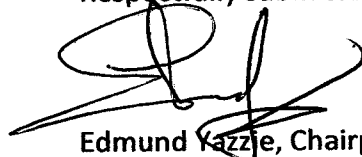
The **LAW AND ORDER COMMITTEE** to whom has been assigned:

Legislation No. 0359-17: An Action Relating to Resources and Development, Law and Order and Naabik'iyati' Committees; and the Navajo Nation Council; Authorizing and Approving the Kayenta Township Commission to Form Wholly Owned Instrumentalities under Navajo Law; Extending the Navajo Nation Privileges and Immunities to the Form Instrumentalities; and Authorizing the Kayenta Township Commission to Waive the Instrumentalities Privileges and Immunities, including Limited Sovereign Immunity and the Requirements for Tribal Remedies Exhaustion – Sponsors: Honorable Nathaniel Brown/Honorable Kee A. Begay, Jr.

Has had it under consideration and reports the same with the recommendation that it **DO PASS** with no amendment

And thereafter referred to Naabik'iyati' Committee

Respectfully submitted,



Edmund Yazzje, Chairperson
Law and Order Committee
23rd Navajo Nation Council

Date: October 9, 2017

Main Motion: Honorable Otto Tso
Second : Honorable Raymond Smith, Jr.
Vote : 3-0 (Chairperson not voting)

**LAW AND ORDER COMMITTEE
23RD NAVAJO NATION COUNCIL**

THIRD YEAR 2017

COMMITTEE REPORT

Mr. Speaker,

The **LAW AND ORDER COMMITTEE** to whom has been assigned:

Legislation No. 0359-17: An Action Relating to Resources and Development, Law and Order and Naabik'iyati' Committees; and the Navajo Nation Council; Authorizing and Approving the Kayenta Township Commission to Form Wholly Owned Instrumentalities under Navajo Law; Extending the Navajo Nation Privileges and Immunities to the Form Instrumentalities; and Authorizing the Kayenta Township Commission to Waive the Instrumentalities Privileges and Immunities, including Limited Sovereign Immunity and the Requirements for Tribal Remedies Exhaustion – Sponsors: Honorable Nathaniel Brown/Honorable Kee A. Begay, Jr.

Has had it under consideration and reports the same with the recommendation that it **DO PASS** with no amendment

And thereafter referred to Naabik'iyati' Committee

Respectfully submitted,



Edmund Yazzie, Chairperson
Law and Order Committee
23rd Navajo Nation Council

Date: October 9, 2017

Main Motion: Honorable Otto Tso
Second : Honorable Raymond Smith, Jr.
Vote : 3-0 (Chairperson not voting)

23rd NAVAJO NATION COUNCIL
Naabik'iyáti' Committee
Third Year 2017

The **NAABIK'ÍYÁTI' COMMITTEE** to whom has been assigned:

NAVAJO LEGISLATIVE BILL # 0359-17

An Action Relating to Resources and Development, Law and Order and Naabik'iyáti' Committees; and the Navajo Nation Council: Authorizing and Approving the Kayenta Township Commission to Form Wholly Owned Instrumentalities under Navajo Law; Extending the Navajo Nation Privileges and Immunities to the Formed Instrumentalities; and Authorizing the Kayenta Township Commission to Waive the Instrumentalities Privileges and Immunities, Including Limited Sovereign Immunity and the Requirements for Tribal Remedies Exhaustion

Sponsored by: Honorable Nathaniel Brown

Has had it under consideration and reports the same **FAILED AND REFERRED TO THE NAVAJO NATION COUNCIL**

Respectfully Submitted,



*Honorable LoRenzo C. Bates, Chairman
Naabik'iyáti' Committee*

16 OCTOBER 2017

MAIN MOTION:

Motioned by: Honorable Davis Filfred

Seconded by: Honorable Kee Allen Begay, Jr.

Vote: 06 in Favor, 07 Opposed (Chairman Bates not voting)

NAVAJO NATION

RCS# 621

Naa'bik'iyati Committee

10/16/2017

08:55:41 AM

Amd# to Amd#

Legislation No. 0359-17

FAILED

MOT Filfred

Authorizing and Approving the

SEC Begay, K

Kayenta Township Commission to
Form Wholly Owned Instrumental.

Yea : 6

Nay : 7

Not Voting : 9

Yea : 6

Begay, K
Brown

Chee
Filfred

Jack

Smith

Nay : 7

Begay, S
BeGaye, N

Bennett
Damon

Pete
Slim

Witherspoon

Not Voting : 9

Bates
Begay, NM
Crotty

Daniels
Hale
Perry

Phelps
Shepherd
Tso

Tsosie
Yazzie