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Naabik'iyáti Committee votes down NGS lease extension
Legislation moves on to the Navajo Nation Council for final consideration

WINDOW ROCK – Legislation No. 0042-13, which seeks to extend the Navajo Generating Station's lease for 25 years beginning in 2019, was opposed with a 10-11 vote at the Naabik'iyáti Committee meeting last Thursday.

Speaker Johnny Naize (Low Mountain, Many Farms, Nazlini, Tachee/Blue Gap, Tselani/Cottonwood) is the prime sponsor of Legislation No. 0042-13.

The legislation was first brought before the Naabik'iyáti Committee on Feb. 28, where it was ruled "out of order" by Pro Tem Chair Elmer Begay (Dilkon, Greasewood Springs, Indian Wells, Teesto, Whitecone) on grounds that the negotiating task force appointed by Navajo Nation President Ben Shelly, was not formulated in accordance with Title 18 of the Navajo Nation Code.

On Thursday, Council Delegate LoRenzo Bates (Nenahnezad, Newcomb, San Juan, Tiis Tsoh Sikaad, Tse'Daa'Kaan, Upper Fruitland) immediately issued a challenge to the "out of order" ruling from the initial Feb. 28 meeting.

"I believe in our rules. Once there is a ruling from the chair or the Speaker, and an individual feels that it is not the correct ruling, it allows for a challenge," said Delegate Bates. "At the time Honorable Elmer Begay ruled it out of order, there was a challenge issued by Honorable [Duane] Tsinigine, but it was never recognized, and immediately after, the meeting was adjourned."

Council Delegate Jonathan Hale (Oak Springs, St. Michaels), who served as Pro Tem Chair during Thursday's Naabik'iyáti Committee discussion, then asked Navajo Nation Deputy Attorney General Dana Bobroff to offer her perspective on how the challenge to the "out of order" ruling should be handled.

Bobroff stated that she was not present at the Feb. 28 meeting, and therefore, could not offer firsthand knowledge about what occurred.

"There are no provisions for challenging it in the [standing] committee rules," Bobroff said.

Council Delegate Leonard Tsosie (Baca/Prewitt, Casamero Lake, Counselor, Littlewater, Ojo Encino, Pueblo Pintado, Torreon, Whitehorse Lake) said based on the Deputy Attorney General's statement, the "out of order" ruling should stand, but it would not necessarily stop the legislation.

If the ruling was to stand, Delegate Tsosie suggested two ways to proceed forward – either the legislation could be reintroduced, or the Naabik'iyáti Committee could create a negotiating team in compliance with Title 18 provisions.

Delegate Bates continued to question the validity of the “out of order” ruling.

Referencing two legal opinions provided by the Navajo Nation Department of Justice, Delegate Bates stated, “As indicated, there’s nothing in Title II that addresses how to handle this particular situation so the Naabik’iyátí Committee does have the authority to make a decision based on what’s before us.”

According to Bobroff’s legal opinion, standing committees did not have the authority to rule a Council’s resolution “out of order”.

A resolution would have to be ruled “out of order” at a council session, Bobroff stated, and as such, the legislation moves on to the Council for final consideration.

Delegate Tsosie expressed disappointment with the legal interpretation.

“If legislations are just going to move on, then what’s the point of having [standing] committees?” questioned Delegate Tsosie, who thought the best way of appropriately handling the legislation would be to form a negotiation team pursuant to Title 18, which would then recommend a certain action.

Council Delegate Russell Begaye (Shiprock) also expressed skepticism about moving the legislation forward to Council, stating that in the last couple of years, if legislation was ruled “out of order” it did not move forward.

“If we’re now saying it does move forward, then maybe we need to revisit all the legislations that have previously been ruled “out of order,” and didn’t move forward,” Delegate Begaye reasoned.

In response to Council Delegate Walter Phelps’s (Cameron, Coalmine Canyon, Leupp, Tolani Lake, Tsidi To ii) request for a definitive explanation as to what “out of order” meant, Bobroff said it is the Council’s responsibility to answer that question.

“Council is asking the DOJ to make a decision based on an absence in your rules,” Bobroff said.

A committee cannot kill legislation at the committee level by ruling it “out of order” if the Council holds final approval authority, Bobroff clarified.

Bobroff cited §164 of Title II which states that a legislation that does not receive sufficient vote for passage by a committee which does not have final approval authority over the matter shall move forward to the subsequent assigned committee(s) or Navajo Nation Council for action.

Council Delegate Dwight Witherspoon (Black Mesa, Forest Lake, Hardrock, Pinon, Whippoorwill) opposed the recommendation to move the legislation forward.

“Our laws on the Navajo Nation Code are now being considered not valid,” said Delegate Witherspoon. “We will now have to research all Navajo Nation codes as to their full vetting of the Council to be considered valid law.”

If the legislation was allowed to proceed, Delegate Witherspoon said the Naabik’iyátí Committee would then be supporting the president and DOJ in leaving Council and agency representation out of any future negotiating team which would leave the door open to any individual and any delegate to sue for not having representation in the negotiations.

Delegate Witherspoon argued that because the legislation was ruled “out of order”, it was never considered by the Naabik’íyátí Committee and should not go to a vote during Thursday’s meeting.

Council Delegate Joshua Lavar Butler (Tó Nanees Dizi) said he supports the legislation but does not support the way the Naabik’íyátí Committee is proceeding and deviating from procedure.

“What is the purpose of having standing committees if legislation is going to continue to move forward?” asked Delegate Butler. “We should just do away with committees and save the Nation time and money.”

Legislation sponsor Speaker Naize, explained that ruling the legislation “out of order” was not in the floor rules at the Feb. 28 Naabik’íyátí Committee meeting.

“This particular legislation went through the process. It went through the committees and never diverted from the process,” said Speaker Naize. “Since there’s no ruling of ‘out of order’ in our floor rules, it had to come back to this committee and that’s why it was placed on the agenda.”

Council Delegate Jonathan Nez (Shonto, Navajo Mountain, Oljato, Ts’ah Bii Kin) expressed the importance of handling the legislation carefully.

“We as representatives for various areas did not have input on this agreement, but yet we are voted in by the people and held accountable by the people,” Delegate Nez stated.

Delegate Nez said his constituents are questioning if this is the best deal the Nation can negotiate, adding that the Inscription House Chapter has passed a resolution advocating for him to be a part of the negotiating team.

“We’re not saying ‘no’, we just want to do what is best for our constituents and for the people of the Navajo Nation so that 20 or 50 years down the road, our children, our grandchildren, don’t say to us, ‘the 22nd Navajo Nation Council just sold us out,’” Delegate Nez said.

Delegate Witherspoon summed up the differing arguments by explaining that one body of delegates would like to act on the legislation with supporting legal opinions from DOJ, and another body of delegates believes the “out of order” ruling should be upheld, meaning that new legislation should be introduced after Title 18 is resolved.

Council Delegate Duane Tsinigine (Bodaway/Gap, Coppermine, K’ai’Bii’To, LeChee, Tonalea/Red Lake) urged the committee members to adhere to the challenge of the “out of order” ruling put forth by Delegate Bates, and asked Pro Tem Chair Hale to make the decision.

After two hours of debate, Pro Tem Chair Hale made the decision to call for a vote, explaining that when the NGS lease extension legislation goes before Council, it can be tabled at that time until all concerns are resolved.

Naabik’íyátí members opposed the legislation with a vote of 10-11. Pro Tem Chair Hale cast the tie-breaking dissenting vote. Legislation 0042-13 moves forward, and is now on the agenda for the Navajo Nation Council’s consideration during the Spring Session which begins Apr. 15.

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