



FOR IMMEDIATE RELEASE
April 14, 2013

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Legislation allowing the formation of Navajo Transitional Energy Company, LLC excluded from Naabik'íyátí Committee's agenda

WINDOW ROCK – Legislation No. 0102-13, sponsored by Speaker Johnny Naize (Low Mountain, Many Farms, Nazlini, Tachee/Blue Gap, Tselani/Cottonwood), which seeks approval for the formation of the Navajo Transitional Energy Company, LLC, was excluded from the Naabik'íyátí Committee's agenda last Thursday due to non-compliance with Title II of the Navajo Nation Code concerning the implementation of special committee meetings.

At a special session on Mar. 29, the Navajo Nation Council passed Legislation No. 0078-13, approving \$2.3 million in supplemental funding for Phase II of the due diligence investigation to possibly acquire BHP Navajo Coal Company.

The establishment of NTEC would allow for the limited liability company to negotiate and execute agreements for the possible purchase of the BHP Navajo Coal Company.

The Resources and Development Committee was the first assigned standing committee to consider Legislation No. 0102-13 during a special meeting held early Thursday morning, where members voted 3-2 in support of the legislation.

Immediately following the RDC special meeting, the Budget and Finance Committee convened at a special meeting to consider the legislation where members immediately tabled it, moving it forward to the Naabik'íyátí Committee for consideration.

When the Naabik'íyátí Committee convened on Thursday afternoon and began discussion on the approval of the committee's proposed agenda, Council Delegate Leonard Tsosie (Baca/Prewitt, Casamero Lake, Counselor, Littlewater, Ojo Encino, Pueblo Pintado, Torreon, Whitehorse Lake) asserted that Naabik'íyátí members would need to first approve the addition of Legislation No. 0102-13 onto the agenda because an earlier draft agenda had not listed the legislation.

Council Delegate LoRenzo Bates (Nenahnezad, Newcomb, San Juan, Tiis Tsoh Sikaad, Tse'Daa'Kaan, Upper Fruitland) motioned to add Legislation No. 0102-13 to the agenda, seconded by Council Delegate David Tom (Beclabito, Cove, Gadi'i'áhi/To'Koi, Red Valley, Sheepsprings, Toadlena/Two Grey Hills, Tsé ałnáoz't'í).

Council Delegate Katherine Benally (Chilchinbeto, Dennehotso, Kayenta) immediately objected to the motion, arguing that the RDC did not comply with the one-day public notice requirement, as mandated in Title II of the Navajo Nation Code, for the RDC special meeting held that morning.

According to 2 N.N.C §184, special committee meetings may be held if funds are available within the approved annual budget for additional meetings, the Speaker of the Navajo Nation Council approves such meetings, and notice of the meeting is posted on the Navajo Nation Council website at least one calendar day before the proposed meeting.

Delegate Benally said on Tuesday afternoon RDC Vice-Chair Roscoe Smith (Crystal, Fort Defiance, Red Lake, Sawmill) had requested for the RDC special meeting, and that the public notice was posted to the Council's website after 2:00 p.m. on Wednesday.

In accordance with that timeline, the RDC special meeting took place less than twenty-four hours after, said Delegate Benally, and thus, did not meet the 24-hour public notice requirement.

Navajo Nation Deputy Attorney General Dana Bobroff said she was informed that the Office of Legislative Counsel had previously interpreted one calendar day to mean twenty-four hours.

"This morning's [RDC] meeting did not meet the notice requirement," said Bobroff, who then referred to Acting Chief Legislative Council Mariana Kahn for her input.

Kahn referred back to RDC's Apr. 9 regular meeting, when Legislation No. 0102-13 was placed on the approved agenda for committee consideration. At that meeting, the legislation was not considered for action as it had failed to garner a motioning and secondary vote.

During previous Title II amendment discussions, Kahn said the Navajo Nation Council decided that a committee that does not have final approval authority on a resolution does not have the authority to stop the resolution.

According to Kahn, legislative counsel attorneys agreed that the RDC took action when RDC members had the opportunity to consider the legislation and decided against it.

Kahn concluded that since the RDC was not the final authority on the legislation, it should have moved forward to the Budget and Finance Committee for consideration.

"You advised otherwise when I had a legislation taking the same steps and you said I was out of order," said Delegate Benally. "Members of the committee, this not only affects the RDC, but any other legislation that you choose not to address at some point."

Council Delegate Duane Tsinigine (Bodaway/Gap, Coppermine, K'ai'Bii'To, LeChee, Tonalea/Red Lake) also expressed disappointment with legislative counsel's statements, and urged Delegate Bates to withdraw his motion.

Delegate Bates stood by his motion, arguing that the issue concerning one-day public notice should have been brought forth and dealt with at the RDC special meeting.

"It is contingent on you, Mr. Speaker, as to whether you want to go by what legislative counsel has indicated, or based on the actions of the [RDC and BFC] committees, you allow it," Delegate Bates said.

In response to the request of Delegate Bates, legislation sponsor Speaker Naize excused himself to allow for Council Delegate Jonathan Hale (Oak Springs, St. Michaels) to serve as Pro Tem Chair.

“This particular legislation in question is my legislation,” said Speaker Naize. “If I rule on it, it’s going to put me in conflict.”

Delegate Tsosie urged his committee colleagues to abide by the Navajo Nation Code to avoid potential lawsuits by proceeding with the legislation.

“I think it’s quite simple, you go with what’s written in the law,” said Delegate Tsosie. “The fact is the RDC convened before the twenty-four hours had passed.”

“Legislative counsel is saying, when there is no motion to hear legislation that it’s considered ‘taking action’, and it shouldn’t be,” added Delegate Tsosie. “It sets a dangerous precedence.”

Council Delegate Mel Begay (Coyote Canyon, Mexican Springs, Naschitti, Tohatchi, Bahastl’a’a’) encouraged his colleagues to allow the legislation to be considered since it had already gone through the RDC and BFC.

“At the BFC [special] meeting, we had a document come before us containing RDC’s report,” said Delegate Begay. “The meeting was called to order, we had all the formalities, and I believe that legitimizes the action.”

After nearly an hour of debate, Pro Tem Chair Jonathan Hale (Oak Springs, St. Michaels) called for the legislation to be withheld from the Naabik’íyátí Committee’s agenda.

“For this situation – abiding by the laws that are written other than the interpretation given verbally – I’m going by what’s written,” Pro Tem Chair Hale declared.

Legislation No. 0102-13 remains on the Resources and Development Committee’s agenda for consideration.

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