

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL -- Fourth Year, 2018

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, LAW AND ORDER AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; AUTHORIZING THE KAYENTA TOWNSHIP COMMISSION ("KTC") TO FORM WHOLLY OWNED ENTITIES OF THE KAYENTA TOWNSHIP UNDER NAVAJO LAW, INCLUDING FOR PARTICIPATION IN THE U.S. SMALL BUSINESS ADMINISTRATION 8(a) BUSINESS DEVELOPMENT PROGRAM; EXTENDING THE NAVAJO NATION'S PRIVILEGES AND IMMUNITIES TO SUCH ENTITIES; AUTHORIZING KTC TO WAIVE SUCH ENTITIES' PRIVILEGES AND IMMUNITIES (INCLUDING THEIR SOVEREIGN IMMUNITY) UPON A FINDING SUCH WAIVER WOULD BE IN THE BEST INTEREST OF THE TOWNSHIP AND UPON PRIOR NOTICE TO THE PRESIDENT OF THE NAVAJO NATION AND THE SPEAKER OF THE NAVAJO NATION COUNCIL; AMENDING 1 N.N.C. § 552(O) OF THE NAVAJO SOVEREIGN IMMUNITY ACT AND 2 N.N.C. §§ 4084 AND 4085 OF THE KAYENTA TOWNSHIP HOME RULE STATUTE

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). *See also* CO-45-12.
- B. The RDC enumerated powers includes 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, reorganization, termination or "privatization" of any enterprise, as such the Committee shall periodically receive reports and review the operations of the Navajo Nation enterprises, authorities and industries. 2 N.N.C. §§ 501 (B)(2)(f) and 501 (B)(4)(e) (2012); CO-45-12.
- C. The Navajo Nation established the Law and Order Committee ("LOC") as a Navajo Nation standing committee and as such empowered LOC to review and make recommendations to the Navajo Nation Council on proposed Navajo Nation Code

amendments and enactments. 2 N.N.C. §§ 164 (A)(9), 600 (A), 601 (B)(14) (2012); CO-45-12.

- D. The Navajo Nation Council established the Naabik'íyáti' Committee as a Navajo Nation standing committee and as such proposed legislation that requires final action by the Navajo Nation Council shall be assigned to the Naabik'íyáti' Committee. 2 N.N.C. §§ 164 (A)(9), 700 (A) (2012); CO-45-12.
- E. The Navajo Nation Council is the governing body of the Navajo Nation and must review and approve enactments or amendments of positive law. 2 N.N.C. §§ 102(A), 164 (A) (2012); CO-45-12.

## SECTION TWO. FINDINGS

- A. By Resolution No. CAU-47-03 (Aug. 29, 2003), the Kayenta Township ("Township") was permanently made a home rule municipality of the Navajo Nation, and the Kayenta Township Commission ("KTC"), the Township's governing body was given broad authority to perform all functions necessary for local self-government consistent with the generally applicable laws of the Navajo Nation and federal government. See 2 N.N.C. §§ 4081 and 4083 (A).
- B. KTC has determined that for economic development reasons, including participation in the United States Small Business Administration's 8(a) Business Development Program, it is in the best interest of the Township and in furtherance of the Township's purposes for the KTC to be able to form wholly-owned entities of the Township ("KTC Entities"), including for-profit and non-profit corporations and/or limited liability companies under Navajo Nation law. Such KTC Entities will 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 for KTC to have the ability to waive sovereign immunity of each KTC Entity but not the sovereign immunity of the Navajo Nation, KTC, Township, or any other division or entity of the Navajo Nation, upon thirty (30) days prior written notice to the Navajo Nation President and Speaker of the Navajo Nation Council.
- C. 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).

- D. The Navajo Nation Council has determined that it would be in the best interest of the Township and in furtherance of KTC's authorities and the principles of home rule and local self-government, as set forth in 2 N.N.C. §§ 4081-4086, to expressly authorize KTC to form KTC Entities, including for-profit and non-profit corporations and 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, and for KTC to have the ability to waive the sovereign immunity of each such KTC Entity, but not the sovereign immunity of the Navajo Nation, KTC, Township, or any other division or entity of the Navajo Nation, upon thirty (30) days prior written notice to the President of the Navajo Nation and the Speaker of the Navajo Nation Council.
- E. The Council has further determined that such authorization should be accomplished by amending KTC's authorizing legislation at 2 N.N.C. §§ 4081-4086 (the Kayenta Township Home Rule statute), and by amending 1 N.N.C. § 552(O) of the Navajo Sovereign Immunity Act.
- F. The Council has also determined that within two years from the effective date of this Resolution, KTC should be required to report to the Resources and Development and Naabik'íyáti Committees, or their successors regarding the activities undertaken pursuant to the authority provided hereunder, including without limitation any successes, failures, and lessons learned from implementing such authorization, and to provide the Committees the financials of any KTC Entities, and that this legislation should sunset on December 31, 2020, if not extended by the Navajo Nation Council.
- G. Amendments to Subchapter 9, Kayenta Township Home Rule, require a "two-thirds majority of the full Navajo Nation Council with recommendations from the KTC and the Kayenta Chapter." See 2 N.N.C. § 4086. Recommendations from the KTC and the Kayenta Chapter are attached hereto as **Exhibits A and B**.

H. Several Navajo Nation Chapters have expressed their support of this legislation and have supporting chapter resolutions attached hereto as **Exhibit C**.

**SECTION THREE. AMENDMENT TO TITLE 1**

The Navajo Nation Council amends Title 1 as follows:

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NAVAJO NATION CODE  
TITLE 1. GENERAL PROVISIONS  
CHAPTER 5. NAVAJO NATION  
Subchapter 2. Navajo Sovereign Immunity Act

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**§ 552. Definitions**

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O. The Kayenta Township and its wholly owned Entities, and the Kayenta Township Commission;

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**SECTION FOUR. AMENDMENT TO TITLE 2**

The Navajo Nation Council amends Title 2 as follows:

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NAVAJO NATION CODE  
TITLE 2. NAVAJO NATION GOVERNMENT  
CHAPTER 9. NAVAJO NATION CHAPTERS  
Subchapter 9. Kayenta Township Home Rule

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**§ 4084. Duties, authorities and responsibility of Kayenta Township Commission**

A. The KTC shall have the duty, authority, and responsibility to perform all functions necessary for local self-government, consistent with all generally applicable laws and regulations of the federal government and the Navajo Nation.

B. KTC's authority under § 4084(A) shall include, inter alia, authorization to organize one or more wholly owned entities of the Kayenta Township for any lawful purpose under Navajo Nation law (each a "KTC Entity" and collectively the "KTC Entities"), including for-profit and non-profit corporations under the Navajo Nation Corporation Code, 5

N.N.C. § 3100 et seq., and limited liability companies under the Navajo Nation Limited Liability Act, 5 N.N.C. § 3600 et seq., and to carry on business on and off the Navajo Nation, strictly in accordance with the following, and in conjunction with all applicable Navajo Nation laws:

1. Each KTC Entity of the Kayenta Township authorized hereunder shall, as shall also be expressly stated in its organizational documents, pursue its purposes solely for the benefit of the Kayenta Township and all dividends and distributions of profit from each such KTC Entity shall be returned to the Kayenta Township to be devoted to essential governmental functions.
2. Notwithstanding any other law, including without limitation 5 N.N.C. §§ 3100(C) and 3600(C), so long as a KTC Entity of the Kayenta Township remains wholly owned by the Kayenta Township, the KTC Entity, including its directors, officers, employees and agents while acting in their official capacities, shall hereby be entitled to all of the privileges and immunities of the Navajo Nation under Navajo and federal law, including sovereign immunity, and shall enjoy the Nation's tax status, and the KTC Entity shall be deemed a Navajo tribal enterprise for purposes of Navajo and federal law; provided, however, the activities, transactions, obligations, liabilities and property of each such KTC Entity of the Kayenta Township shall be solely those of the KTC Entity and shall not be those of the Navajo Nation, the KTC, the Kayenta Township, or any other entity or division of the Navajo Nation, such limitation which shall be expressly set forth in each such KTC Entity's organizational documents.
3. On a finding set forth in a duly adopted resolution that it would be in the best interest of the Kayenta Township, the KTC is authorized to provide a limited waiver of the sovereign immunity of a KTC Entity upon thirty (30) days prior written notice to the Navajo Nation President and the Speaker of the Navajo Nation Council of its intent to authorize such a waiver, including for participation in the U.S. Small Business Administration's 8(a) Business Development Program. Any such waiver by the KTC shall be in the form of a resolution duly adopted by the KTC and identifying the party, parties, or class of parties, for whose benefit the waiver is granted; the agreement, transaction, or

activity for which the waiver is granted; the claims or classes of claims for which the waiver is granted; the property of the KTC Entity which may be subject to execution to satisfy any judgment which may be entered in the claim; the law applicable to the agreement, transaction, or activity for which the waiver is granted, e.g., Navajo Nation, federal, and/or state law; and the court or other tribunal where an action or claim may be brought. Any waiver shall be limited to claims arising from the acts or omissions of the KTC Entity and its directors, officers, employees or agents acting in their official capacity, and shall be construed to affect only the enumerated property and income of the KTC Entity. Any resolution authorized hereunder shall also expressly state that the limited waiver of sovereign immunity granted thereby shall not constitute a waiver of the sovereign immunity of the Navajo Nation, the KTC, the Kayenta Township, or any other entity or division of the Navajo Nation.

4. The KTC shall have no authority to waive its own sovereign immunity or the sovereign immunity of the Kayenta Township.
5. No waiver of a KTC Entity's sovereign immunity as authorized hereunder, and nothing stated herein, shall be construed as a waiver of the sovereign immunity or any other privilege or immunity of the Navajo Nation, the KTC, the Kayenta Township, or any other entity or division of the Navajo Nation. No waiver authorized hereunder shall create any liability on the part of the Navajo Nation or any other entity or division of the Navajo Nation, including the KTC and the Kayenta Township, and the only liability under any such waiver authorized hereunder shall be solely for the debts and obligations of the KTC Entity that are expressly the subject of such waiver. No waiver authorized hereunder shall be construed as consent to the attachment or encumbrance of any property of the Navajo Nation, the KTC, the Kayenta Township, or any other entity or division of the Navajo Nation, except that of the KTC Entity expressly the subject of such waiver. The acts or omissions of a KTC Entity and its directors, officers, employees and agents shall not create any liability, obligation or indebtedness of the Navajo Nation, the KTC, the Kayenta Township, or any other division or entity of the Navajo Nation, or be payable

out of assets, revenues, or income of the Navajo Nation, the KTC, the Kayenta Township, or any other division or entity of the Navajo Nation.

**§ 4085. Code of Ethics**

Officers and members of the KTC and employees and agents of the Kayenta Township shall maintain a high standard of conduct in all dealings. This standard of conduct shall include but is not limited to conducting all KTC and Kayenta Township business openly without taint of impropriety, serving the KTC, Kayenta Chapter and the Navajo Nation to the very best of their ability in full compliance with the Navajo Nation Ethics in Government Law. The directors, officers, managers, employees and agents of each KTC Entity authorized pursuant to § 4084 above, shall be deemed to be "public employees" and "public officials" of the Navajo Nation for purposes of the Navajo Nation Ethics in Government Law.

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**SECTION FIVE. SUNSET PROVISION**

Within two years from the effective date of this Resolution, KTC shall report to the Resources and Development and Naabik'iyáti Committees, or their successors, regarding the activities undertaken pursuant to the authority to create KTC Entities as provided hereunder, including without limitation any successes, failures, and lessons learned from implementing such authorization, and shall provide the financials of any KTC Entities to such Committees. Unless extended by resolution of the Navajo Nation Council, the authority of KTC to organize KTC Entities as provided hereunder shall terminate on December 31, 2020 (the "Sunset Date"), provided that such termination shall have no legal effect on a KTC Entity organized prior to the Sunset Date, including without limitation any privileges and immunities of such KTC Entity, and dissolution of any such KTC Entity shall be solely in accordance with applicable Navajo law.

**SECTION SIX. CODIFICATION**

The provision of this Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions into the next codification or supplement of the Navajo Nation Code.

**SECTION SEVEN. 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 Supreme Court, the remainder of the Act shall remain in the law of the Navajo Nation.

**SECTION EIGHT. EFFECTIVE DATE**

The provisions of this Act shall become effective in accordance with 2 N.N.C. § 221 (B).

**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 16 in favor and 03 opposed, on this 18<sup>th</sup> day of October 2018.



LoRenzo C. Bates, Speaker  
23rd Navajo Nation Council

10-23-18

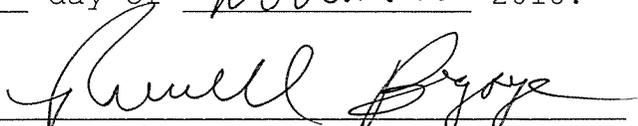
Date

Motion: Honorable Nathaniel Brown  
Second: Honorable Edmund Yazzie

Speaker LoRenzo C. Bates 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 2nd day of November 2018.



Russell Begaye, President  
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (c)(11), on this \_\_\_\_\_ day of \_\_\_\_\_ 2018 for reason(s) expressed in the attached letter to the Speaker

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Russell Begaye, President  
Navajo Nation