

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0314-19\_\_\_\_\_      SPONSOR: Rickie Nez

**TITLE: An Action Relating to Resources and Development; Amending 5 N.N.C. §§ 1972 and 1973, The Navajo Engineering and Construction Authority Plan of Operation**

*Date posted: October 14, 2019 at 5:20pm*

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**LEGISLATIVE SUMMARY SHEET**

Tracking No. 0314-19

**DATE:** October 4, 2019

**TITLE OF RESOLUTION:** PROPOSED STANDING COMMITTEE RESOLUTION, AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; AMENDING 5 N.N.C. §§1972 AND 1973, THE NAVAJO ENGINEERING AND CONSTRUCTION AUTHORITY PLAN OF OPERATION

**PURPOSE:** The purpose of this legislation is to amend 5 N.N.C. §§1972 (A)(1), (A)(4), (B)(15), §§1973 (A), (C), (E), and (G).

**This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.**

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PROPOSED STANDING COMMITTEE RESOLUTION  
24<sup>th</sup> NAVAJO NATION COUNCIL -- First Year, 2019

INTRODUCED BY

  
\_\_\_\_\_  
(Prime Sponsor)

TRACKING NO. 0314-19

AN ACTION  
RELATING TO RESOURCES AND DEVELOPMENT; AMENDING 5 N.N.C.  
§§1972 AND 1973, THE NAVAJO ENGINEERING AND CONSTRUCTION  
AUTHORITY PLAN OF OPERATION

**Section One. Authority**

- A. The Resources and Development Committee is established as a standing committee of the Navajo Nation Council. 2 N.N.C. §500 (A).
- B. The Resources and Development Committee is empowered to grant final approval of amendments to the Navajo Engineering and Construction Authority's Plan of Operation recommended by the Navajo Engineering and Construction Authority Board of Director. 5 N.N.C. §1981.
- C. 5 N.N.C. §1981 states: *Amendments. This Plan of Operation may be amended from time to time by the Board of Directors of NECA with the approval by the appropriate oversight committee of the Navajo Nation Council. Provided however, that §§ 1972(B)(17), 1973(F) and 1980 shall not be amended except by the Navajo Nation Council, and to that extent the authority of the appropriate oversight committee of the Navajo Nation Council to adopt and amend this plan of operation is limited.*

**Section Two. Findings**

- 1 A. The Navajo Engineering and Construction Authority (NECA) is a business  
2 enterprise owned and operated by the Navajo Nation.
- 3 B. NECA's Plan of Operation is codified in the Navajo Nation Code at 5 N.N.C. §1971  
4 *et seq.*
- 5 C. Pursuant to its stated purposes, 5 N.N.C. §1972 (A), NECA since its creation in  
6 1970, has engaged exclusively in horizontal construction, i.e., highway and road  
7 construction, dam construction and water line construction.
- 8 D. NECA has the ability and capacity to engage in vertical construction, i.e.,  
9 commercial and housing construction. The proposed amendments to 5 N.N.C.  
10 §§1972 (A) (1) and (4) would allow NECA to expand beyond its stated purposes  
11 and continue to assist the Navajo Nation in its nation-building efforts.
- 12 E. The proposed amendments of the NECA Plan of Operation sections concerning the  
13 NECA Board of Director's appointment, confirmation and officers at 5 N.N.C.  
14 §§1972 (C), (D), and (G) would provide clarification.
- 15 F. NECA as a business enterprise needs to respond timely and quickly to business  
16 opportunities.
- 17 G. Deletion of the Navajo Nation President's or his designee's ex officio membership  
18 on the Board of Directors, 5 N.N.C. §1973 (A), and the deletion of oversight  
19 committee's approval of NECA's business association, 5 N.N.C. §1972 (B) (15),  
20 would remove or minimize political influence on the business operations and affairs  
21 of NECA and would further, allow NECA to respond quickly to business  
22 opportunities.
- 23 H. Since its creation in 1971, NECA has developed into one of the most successful  
24 Navajo Nation owned business enterprises.
- 25 I. NECA has declared dividends of \$18,250,000 and has returned that amount to the  
26 Navajo Nation as return on the Navajo Nation's initial investment of heavy  
27 equipment.
- 28 J. Pursuant to 12 N.N.C. §1181, *et seq.*, NECA Trust Fund for Scholarship and  
29 Financial Assistance, the NECA dividends are dedicated to scholarships for Navajo  
30 college students.

- 1 K. NECA has an annual average employment of 307 and its employment number will  
2 increase as will its revenue with new business ventures.
- 3 L. NECA is subject all Navajo Nation laws including taxation, employment preference,  
4 business preference.
- 5 M. NECA pays Navajo Nation taxes and has paid over \$334,340 of taxes each year.
- 6 N. NECA subcontracts Navajo-owned small businesses and helps the development of  
7 small Navajo-owned businesses on the Navajo Nation.
- 8 O. NECA has constructed over 750 miles of highway and constructed thousands of  
9 miles of waterlines on the Navajo Nation.
- 10 P. NECA is an example of how to keep Navajo dollars on the Navajo Nation.
- 11 Q. The resolution of the Navajo Engineering and Construction Authority Board of  
12 Directors, dated June 26, 2019, supporting the amendments is attached as **Exhibit**  
13 **A.**

14  
15 **Section Three. Amending 5 N.N.C. §§1972 (A)(1), (A)(4), (B)(15), §§1973 (A), (C),**  
16 **(E), and (G)**

17  
18 The Navajo Nation hereby amends Title 5, Navajo Nation Code as follows:

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20 \_\_\_\_\_  
21 NAVAJO NATION CODE ANNOTATED  
22 TITLE 5. COMMERCE AND TRADE  
23 CHAPTER 9. NAVAJO NATION ENTERPRISES  
24 SUBCHAPTER 13. NAVAJO ENGINEERING AND CONSTRUCTION  
25 AUTHORITY

26 § 1972. Purposes and powers

27 A. The purposes for which the Authority is organized are as follows:

- 28 1. To engage in the general engineering and heavy construction industry;  
29 2. To train Navajo people in the engineering and construction industry, including  
30 training in the management of the Authority;

1 3. To provide employment to the Navajo Nation, its enterprises and individual  
2 members, in engineering and construction and related businesses;

3 4. To be the premier ~~heavy~~ construction contractor emphasizing the values of  
4 excellence, service and employee development; and

5 5. To do everything necessary, proper, advisable, or convenient for the accomplishment  
6 of the purposes set forth herein consistent with all applicable laws or regulations, and  
7 this plan of operation.

8 B. Subject to applicable federal and Navajo laws and regulation, the Board of Directors  
9 of the Authority shall exercise the following powers and duties:

10 \* \* \* \*

11 15. ~~With the approval of the appropriate oversight committee of the Navajo Nation~~  
12 ~~Council, to~~ The Board may enter into management agreements, joint ventures, limited  
13 partnerships and/or general partnership agreements with any corporation, association,  
14 syndicate, partnership, entity, person or governmental, municipal or public authority,  
15 domestic or foreign, in the carrying on of any business which the Authority is  
16 authorized to carry on, or any business or transaction deemed necessary, convenient, or  
17 incidental to carrying out the purposes of the Authority.

18 \* \* \* \*

19 § 1973. Board of directors and officers; number, appointment, composition term and  
20 removal, employment of general manager

21 A. The business and affairs of the Authority shall be conducted by a Board of Directors  
22 of seven directors. ~~The President of the Navajo Nation or his designee shall serve as a~~  
23 ~~non-voting ex-officio member.~~

24 B. The presence of four directors of the Board shall constitute a quorum for the  
25 transaction of any business. The act of the majority of the directors present and voting at  
26 a meeting at which a quorum is present, shall be the act of the Board. All actions, with  
27 the exception of procedural motions, shall be recorded and documented in written  
28 resolutions certified by the presiding officer.  
29  
30

1 C. The ~~Board of Directors~~ directors shall be appointed by the President of the Navajo  
2 Nation ~~with~~ subject to confirmation by the appropriate oversight committee of the  
3 Navajo Nation Council. ~~Any new~~ Except for appointment to fill a vacancy on the  
4 Board, a director shall be appointed to the Board for a four (4) year term, and the ~~terms~~  
5 term of his reappointment thereafter, if any, shall be limited to one four (4) year term.  
6 ~~Present Board directors shall serve out their present terms before this provision applies~~  
7 ~~to them.~~ Board directors shall serve until their reappointment or their successors are  
8 duly qualified and confirmed.

9 D. At least six directors of the Board shall be enrolled members of the Navajo Nation.  
10 Individuals with experience and/or education in the engineering, construction,  
11 architectural, legal, accounting, management, or other construction related field shall be  
12 given preference for appointment to the Board.

13 E. Vacancies on the Board of Directors may be filled by the President of the Navajo  
14 Nation for the remainder of the term of the vacating director.

- 15 1. The remainder of the term shall commence on the date the appointment is  
16 confirmed and shall terminate at the end of the vacating director's term.
- 17 2. For purposes of § 1973 (C) term limit, the remainder of the term served shall be  
18 treated as a full term.

19 F. Any director may be removed at a duly called meeting of the Board of Directors, by a  
20 two-thirds vote of the full membership thereof, for just cause only. Just cause shall  
21 include, but not be limited to, failure to attend three consecutive meetings of the Board.

22 G. A President, Vice-President, ~~Secretary and Treasurer~~ Secretary/Treasurer of the  
23 Board shall be elected at the annual meeting of the Board of Directors. All such officers  
24 must be directors of the Board of Directors, and shall hold office until their successors  
25 are elected and qualified. Any such Officer may be removed from office by the Board  
26 of Directors in the manner provided for in the bylaws of the Authority.

27 H. A General Manager shall be employed under contract approved by the Board of  
28 Directors. The Board of Directors shall have the authority to set salary, benefits,  
29 incentives, bonuses, and other provisions of such a contract. The General Manager shall  
30 be the Chief Executive Officer of the Authority, and shall direct, supervise and manage

1 all of the operations of the Authority pursuant to the contract. He shall be responsible to  
2 the Board of Directors as a Chief Executive Officer of a corporation would be. He shall  
3 render reports to the Board and prepare periodical strategic business plans and perform  
4 all other functions and duties specified herein and as may be assigned by the Board of  
5 Directors.

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