LEGISLATION NO: _0082-20_____ SPONSOR: Amber Crotty

TITLE: An Action Relating to an Emergency; Temporarily suspending Title 26 sections to allow Chapter meetings to be held telephonically or through video conferencing; Temporarily suspending Title 26 sections and clarifying Title 26 sections to authorize Chapters to function to meet the needs of their communities during the COVID-19 health crisis under the three person quorum and the Executive Branch closure of Navajo Nation Government offices and related entities, Executive Order No. 002-20

Date posted: April 10, 2020 at 11:30am

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DATE: April 9, 2020

TITLE OF RESOLUTION: PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTION RELATING TO AN EMERGENCY; TEMPORARILY SUSPENDING TITLE 26 SECTIONS TO ALLOW CHAPTER MEETINGS TO BE HELD TELEPHONICALLY OR THROUGH VIDEO CONFERENCING; TEMPORARILY SUSPENDING TITLE 26 SECTIONS AND CLARIFYING TITLE 26 SECTIONS TO AUTHORIZE CHAPTERS TO FUNCTION TO MEET THE NEEDS OF THEIR COMMUNITIES DURING THE COVID-19 HEALTH CRISIS UNDER THE THREE PERSON QUORUM AND THE EXECUTIVE BRANCH CLOSURE OF NAVAJO NATION GOVERNMENT OFFICES AND RELATED ENTITIES EXECUTIVE ORDER NO. 002-20

PURPOSE: The purpose of this legislation is to approve temporary suspension of various sections of Title 26 to allow Chapter meetings and other Chapter functions to operate during the COVID-19 health crisis. One of the temporary suspensions is to allow Chapter meetings to be held telephonically. This will help prevent the further spread of the COVID-19 virus. Other temporary suspensions of Title 26 will facilitate the holding of Chapter meetings with a three person quorum. These temporary suspensions are to expire in 60 days.

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.
PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL – Second Year, 2020

INTRODUCED BY

(Prime Sponsor)

TRACKING NO. CO 82-20

AN ACTION
RELATING TO AN EMERGENCY; TEMPORARILY SUSPENDING TITLE 26
SECTIONS TO ALLOW CHAPTER MEETINGS TO BE HELD TELEPHONICALLY OR
THROUGH VIDEO CONFERENCING; TEMPORARILY SUSPENDING TITLE 26
SECTIONS AND CLARIFYING TITLE 26 SECTIONS TO AUTHORIZE CHAPTERS
TO FUNCTION TO MEET THE NEEDS OF THEIR COMMUNITIES DURING THE
COVID-19 HEALTH CRISIS UNDER THE THREE PERSON QUORUM AND THE
EXECUTIVE BRANCH CLOSURE OF NAVAJO NATION GOVERNMENT OFFICES
AND RELATED ENTITIES, EXECUTIVE ORDER NO. 002-20

BE IT ENACTED:

Section One. Authority

A. The Navajo Nation Council is the governing body of the Navajo Nation. 2
N.N.C. § 102(A).

B. All authorities exercised by a Chapter pursuant to 26 N.N.C. § 101 et al, may
be preempted by Navajo Nation Council resolutions. 26 N.N.C. § 103 (C).

C. Pursuant to 2 N.N.C. §164 (A)(16) “[m]atters constituting an emergency shall be
limited to the cessation of law enforcement services, and disaster relief services,
fire protection services or other direct services required as an entitlement under
Navajo Nation or Federal law, or which directly threaten the sovereignty of the Navajo Nation. Such an emergency matter must arise due to the pressing public need for such resolution(s) and must be a matter requiring final action by the Council.”

Section Two. Findings

A. The Navajo Nation President issued Executive Order 001-20 declaring a state of emergency due to COVID-19 on March 13, 2020.


C. The Navajo Nation President issued Executive Order 002-20 on March 31, 2020 extending the Declaration of a State of Emergency due to the COVID-19 virus on the Navajo Nation and extending the closure of Navajo Nation government offices and related entities.

D. The Navajo Nation Council passed CMA-09-20 which authorized the Chapters to reduce quorum requirements to three individuals. Authorizing a reduced quorum is a safety measure to prevent the spread of COVID-19; however, it is necessary to allow Chapters to meet telephonically or through video conferencing to further reduce the spread of the COVID-19 virus.

E. Chapters also need clarification on how to address the statutory meeting requirements, how to handle financial requirements and many other issues that are impacted by the reduced quorum requirement and the closure of Navajo Nation government offices and related entities Order.

F. The Navajo Nation Council acknowledges that all Chapter actions are subject to audit and any misuse of funds is subject to appropriate actions.

G. The Navajo Nation Council finds that Chapters must perform particular Chapter functions during the declared State of Emergency to provide disaster relief services to their communities. In addition, Chapter officials must function through Chapter meetings to act upon matters affecting the Chapter residents during the COVID-19 crisis. This resolution is necessary to address a pressing public need and is a matter requiring final action by the Navajo Nation Council.
Section Three. Temporarily Suspending Title 26 Sections by Authorizing the Navajo Nation Chapter Meetings to be held telephonically or by video conferencing and other Chapter Meeting issues

A. The Navajo Nation Council temporarily suspends Title 26 1002 (C) (1) and other sections expressing or implying a need to hold an in-person Chapter meeting thereby authorizing Chapter meetings to be held telephonically or by video conferencing.

B. The Navajo Nation Council recognizes that Chapter meetings may have been held telephonically by a three member quorum prior to the effective date of this resolution. In such instances, the Navajo Nation Council authorizes that the business items approved at these telephonic, three member quorum Chapter meetings to be ratified by a subsequent telephonic Chapter meeting operating after the effective date of this resolution.

C. The Navajo Nation Council hereby acknowledges that the Chapters are to abide by the 48 hour meeting notice pursuant to 26 N.N.C. §1002 (B). The Chapters are to make every effort to notify their community members of the telephonic or video conferencing call in numbers to allow Chapter membership to call in to the Chapter meetings. Such notice may be posted on the Chapter website and/or in other locations.

D. The Navajo Nation Council hereby authorizes the Chapter meetings to include budget matters, emergency matters, and additional topics. Additional topics shall be approved on a case-by-case basis by the Division Director of the Division of Community Development in consultation with the Navajo Department of Justice.

E. The Navajo Nation Council temporarily authorizes the Chapter President to appoint and confirm any Chapter member as pro tem vice-president and pro tem secretary/treasurer. This authorization temporarily suspends 26 N.N.C. § 1001(B)(1)(d), which states that the Chapter President appoints and the membership approves/confirms. The pro tem vice-president and pro tem
secretary-treasurer will be compensated by stipend subject to the Chapter approved budget.

F. The Navajo Nation Council temporarily authorizes the vice-president and secretary/treasurer to make the main motion and/or the second to the main motion at a Chapter meeting. This authorization temporarily suspends 26 N.N.C. § 1003(D)(2), which prohibits Chapter officials from making main motions or seconding motions on substantive and administrative matters during a regular Chapter meeting.

G. The Navajo Nation Council hereby acknowledges that the secretary/treasurer is to record the telephonic Chapter meetings pursuant to 26 N.N.C. § 1001(B)(3)(d). However, if electronic recording of the telephonic Chapter meeting is not possible, then the secretary/treasurer is to write detailed meeting minutes, as is also required by 26 N.N.C. § 1001(B)(3)(d).

H. The Navajo Nation Council hereby acknowledges that Chapter officials are to be compensated for the number of meetings attended by teleconference or video conferencing pursuant to the approved budget. 26 N.N.C. § 1002(C)(1).

I. The Navajo Nation Council hereby clarifies that Resolution No. CMA-09-20 which authorized a three member quorum was meant to reduce the statutory quorum requirement of 25 registered members and also for Chapters that have reduced their quorum pursuant to the Resources and Development Committee Resolution No. RDCD-127-12. There are governance certified Chapters that operate under an Alternative Form of Government (AFOG) as authorized under the former Transportation and Community Development Committee Resolution No. TCDCAP-36-01. Notwithstanding the three quorum law, the AFOGs may define their quorum requirements in accordance with their local ordinance.

J. The Navajo Nation Council hereby clarifies that Resolution No. CMA-09-20 which authorized the three member quorum was instituted as a temporary measure to address the prohibition against gatherings of more than ten people (Navajo Department of Health Public Health Emergency Order dated March 18, 2020). There is now a Navajo Department of Health Public Health Emergency
Order dated March 29, 2020 lowering the gathering limit to no more than five people.

Section Four. Temporarily Enable the Division of Community Development and Navajo Department of Justice to Guide All 110 Chapters by using the 2010 Model Five Management System (FMS) and to Develop Temporary Modifications to the Model FMS to Help Chapters Address this Emergency

A. The Navajo Nation Council acknowledges that 26 N.N.C. § 101(A) requires “all [110] chapters...to adopt and operate under a Five Management System [FMS].” The FMS must be “consistent with applicable Navajo Nation law.”

B. In 2010, the Navajo Nation Attorney General issued AG Opinion 01-10 announcing the creation of a “Model Five Management System” to be used by Chapters that have not adopted their own FMS.

C. The Navajo Nation Council hereby authorizes the Division of Community Development and the Department of Justice to guide all 110 Chapters using the 2010 Model FMS and to suspend or modify any portion of the Model Five Management System so long as the suspension or modification is reasonably necessary for the Chapter to address this emergency.

Section Five. Temporarily Suspend 26 N.N.C. § 103 to authorize all non-governance certified Chapters to exercise certain authorities under Section 103

A. The Navajo Nation Council recognizes that under 26 N.N.C. § 102(B) only governance certified Chapters may exercise the authorities listed in 26 N.N.C. § 103.

B. The Navajo Nation Council hereby temporarily suspends 26 N.N.C. § 102(B) and authorizes all Chapter Presidents to:

1. Sign temporarily leases of Chapter property in order to accommodate health personnel;

2. Sign contracts for goods or services at or below $50,000.00. For goods, use the recommended purchase order templates. For services, all Chapters
should use the template contracts that can be found on DOJ’s website: www.ndoj.org.

Section Six. Temporarily suspend 26 N.C.C. §§ 103(E) and 1004 to Allow Chapter Officials to Perform Limited Administrative Duties While the Chapter Staff are on Paid Administrative Leave

A. The Navajo Nation Council acknowledges that 26 N.C.C. § 103(E) states that “[e]lected officials are prohibited from direct involvement in the management and operations of the Chapter administration.”

B. The Navajo Nation Council acknowledges that 26 N.C.C. § 1004 briefly outlines the executive functions of the Chapter employees such as implementing the Five Management System. Under subsection B, the Chapter Manager (and Community Service Coordinator) “shall co-sign all chapter checks.”

C. The Navajo Nation Council acknowledges that Chapter employees of non-governance certified Chapters are Navajo Nation Executive Branch employees under the Division of Community Development. Under Executive Orders 001-20 and 002-20, such employees are non-essential and are under mandatory stay-at-home orders.

D. The Navajo Nation Council acknowledges that certain executive functions exercised by Chapter Officials are necessary to address this Declared State of Emergency.

E. The Navajo Nation Council hereby temporarily suspends 26 N.C.C. §§ 103(E) and 1004 and Chapter Officials of non-governance certified Chapters to:

1. Allow two Chapter officials to co-sign all Chapter checks;
2. Allow Chapter officials to procure for emergency goods and services in strict compliance of the priorities provided in section VI(E)(2) of the Model FMS;
3. Implement a Temporary Emergency Procurement Procedure which shall include: 1) Chapter resolution to use the emergency funds for the proposed contract; 2) Review of the priority businesses listed on the source list to see if products/services are available, if not, then use any available resources; 3)
the first vendor available with the products/services may be chosen; 4) The Secretary/Treasurer will verify fund availability and sign off on a memorandum describing the procurement measures taken for each procurement; 5) Chapter President signs the Purchase Order or Contract using the recommended Purchase Order or Contract form.

F. Notwithstanding the above, if Chapter Staff are willing to perform limited services thereby relieving Chapter Officials from having to perform certain executive functions, the Chapter Staff may perform such duties.

Section Seven. Budget Policies for the Chapter Emergency Fund

A. The Navajo Nation Council acknowledges that the Navajo Nation Council Resolution CMA-11-20, signed by President Nez, replenished the Chapter emergency account.

B. The Navajo Nation Council acknowledges that on March 11, 2020, the Navajo Nation Commission on Emergency Management, with concurrence by the Navajo Nation President and Vice-President, declared a Public Health State of Emergency.

C. The Navajo Nation Council acknowledges that as such, all Chapters are now able to access and use the Chapter emergency account.

D. The Navajo Nation Council supports the mandate to require all 110 Chapters to coordinate all emergency relief efforts through the Navajo Nation Health Command Operations Center (HCOC) in order to avoid duplication of services.

Section Eight. Public Employment Program (PEP)

A. The Navajo Nation Council acknowledges that all Chapters were authorized to develop their own policies for PEP under the former Transportation and Community Development Committee Resolution TCDCD-111-00. For Chapters that have not developed their own policies, the former TCDC resolution provides for a template.
B. The Navajo Nation Council acknowledges that Chapters shall comply with these policies with temporary allowance for use of the PEP funds to compensate volunteers pursuant to approved projects under the Navajo Nation Chapter Emergency Plan.

C. The Navajo Nation Council temporarily allows, subject to a properly approved budget, Chapters to use PEP funds for Special Duty Pay in accordance with the Navajo Nation’s policy on Special Duty Pay.

D. The Navajo Nation Council acknowledges that Chapters cannot exceed their PEP budgets and volunteers are not entitled to receive compensation beyond the Chapter budget.

Section Nine. Relief efforts coming from donations
A. The Navajo Nation Council acknowledges that the recently approved Navajo Nation Council Resolution No. CMA-08-20 streamlined the process for the Navajo Nation to accept gifts.

B. The Navajo Nation Council acknowledges that Chapters are entities of delegated authorities. Chapters have not been delegated to accept gifts and, therefore, must follow CMA-08-20.

C. The Navajo Department of Justice has recently been designated to lead the “Donations Branch” within the Navajo Nation Health Command Operations Center.

D. The Navajo Nation Council directs the Navajo Department of Justice to promptly develop the processes for Chapters to obtain Chapter-specific donations by third parties.

Section Ten. Compensation of Chapter Officials attending Agency Council Meetings
A. The Navajo Nation Council hereby authorizes Chapter Officials to attend Agency Council meetings via teleconference. Attendance via teleconference shall be compensated provided that the Agency Council can verify attendance.
Section Eleven. Effective Date

A. The provisions of this Action shall become effective pursuant to 2 N.N.C. § 221 (B).
B. The provisions of this Action shall expire sixty (60) days after its effective date, unless otherwise determined by resolution of the Navajo Nation Council.

Section Twelve. Savings Clause

Should any provision of the amendments enacted herein be determined invalid by the Navajo Nation Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, the remainder of the amendments shall remain the law of the Navajo Nation.