THE NAVAJO NATION
LEGISLATIVE BRANCH
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TITLE: An Action Relating to Resources and Development, Budget and Finance, and Naabik'íyáti' Committees, and Navajo Nation Council: Approving and Adopting the Navajo Nation CARES Fund Chapter Distribution Expenditure Plan

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DATE: August 19, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; APPROVING AND ADOPTING THE NAVAJO NATION CARES FUND CHAPTER DISTRIBUTION EXPENDITURE PLAN

PURPOSE: This resolution, if approved, will establish the CARES Fund Chapter Distribution Expenditure Plan and allocate $90,000,000 to Chapters under the 50-50 formula for COVID-19 relief, response and mitigation efforts.

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.
PROPOSED NAVAJO NATION COUNCIL RESOLUTION

24th NAVAJO NATION COUNCIL – Second Year, 2020

INTRODUCED BY

[Signature]

(Prime Sponsor)

TRACKING NO. 019720

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND
FINANCE, AND NAABIK’ÍYÁTI’ COMMITTEES, AND THE NAVAJO NATION
COUNCIL; APPROVING AND ADOPTING THE NAVAJO NATION CARES
FUND CHAPTER DISTRIBUTION EXPENDITURE PLAN

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. The Naabik’íyáti’ Committee is a standing committee of the Navajo Nation Council
with the responsibility to hear proposed resolution(s) that require final action by the
Navajo Nation Council. 2 N.N.C. § 164(A)(9).

C. The Budget and Finance Committee is a standing committee of the Navajo Nation
Council with the enumerated powers to review and recommend to the Navajo Nation
Council the budgeting, appropriation, investment and management of all funds and to
promulgate rules and regulations related to contracting and financial matters. 2 N.N.C.
§§ 300(B)(1) and (2).
D. The Resources and Development Committee is a standing committee of the Navajo Nation Council empowered to provide legislative oversight on matters involving Chapter activities. 2 N.N.C. § 500(C).

SECTION TWO. FINDINGS


C. As of August 18, 2020, the Navajo Nation Health Command Operations Center has confirmed 9,486 COVID-19 cases and 484 COVID-related deaths on the Navajo Nation.


E. The CARES Act provides the Coronavirus Relief Fund shall be used to cover only those costs that:

a. are necessary expenditures incurred due to the public health emergency with respect to COVID-19;
b. are not accounted for in the Tribal budget most recently approved as of March 27, 2020; and
c. are incurred from March 1, 2020 through December 30, 2020.

F. The U.S. Treasury on April 22, 2020 issued “Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments” (“Treasury Guidance”) related to the permissible uses of the Coronavirus Relief Fund. Exhibit 1-B.

G. On May 28, 2020, the U.S. Treasury issued “Coronavirus Relief Fund Frequently Asked Questions” (“Treasury FAQ”), attached as Exhibit 1-C.

H. As of June 30, 2020, the Navajo Nation has received seven hundred fourteen million one hundred eighty-nine thousand six hundred thirty-one dollars and forty-seven cents ($714,189,631.47) as the Nation’s share of the U.S. Treasury’s initial distributions of the Coronavirus Relief Fund.

I. The Navajo Nation has determined that immediately providing funding to Navajo Nation Chapters to combat the effects of COVID-19 and mitigate the future spread at the community level is vital in sustaining a comprehensive response to the COVID-19 public health emergency and mitigating the effects of the pandemic.

J. The purpose of the Navajo Nation CARES Fund Chapter Distribution Plan, attached as Exhibit 2, is to immediately provide ninety million dollars ($90,000,000) to Navajo Nation Chapters (both LGA Certified and non-certified), through the Division of Community Development, to respond to the COVID-19 pandemic and ensure that Navajo communities have access to the funding necessary to ensure that community members are adequately protected from exposure to COVID-19 and able to comply with the Center for Disease Control (CDC) COVID-19 prevention guidance necessary to mitigate the spread of the virus.

SECTION THREE. APPROVAL AND ADOPTION OF THE CARES FUND CHAPTER DISTRIBUTION EXPENDITURE PLAN

A. The Navajo Nation hereby approves and adopts the CARES Fund Chapter Distribution Expenditure Plan, as outlined in Exhibit 2, and hereby allocates ninety million dollars ($90,000,000) to Navajo Nation Chapters (both LGA Certified and non-certified),
through the Division of Community Development pursuant to 12 N.N.C. § 820 (O)’s 50/50 Chapter Distribution formula. Subject to technical correction by the Office of Management and Budget, the amounts allocated to each Chapter are set forth at Exhibit 3.

B. The Coronavirus Relief Funds are externally restricted funds and the Navajo Nation Appropriations Act, 12 N.N.C. §§ 800 et seq., as applicable to externally restricted funds, shall apply to the Expenditure Plans set forth herein; detailed Expenditure Plan budgets shall not be subject to further legislative approval and shall, instead, be developed and implemented through expedited budget procedures. The Office of Management and Budget shall process the detailed budgets in the most expeditious manner available to ensure that the funds are distributed within fifteen (15) days after enactment of this resolution.

C. As set forth in Navajo Nation Council Resolution No. CJY-67-20, the progress of all Navajo Nation CARES Fund Expenditure Plans, which shall now include the Chapter Distribution Expenditure Plan, shall be reviewed by the Budget and Finance and Naabik’íyáti’ Committees during the month of October 2020. The funding for any project that has not made enough progress to demonstrate that it will be fully completed by December 30, 2020 will be reallocated to the Hardship Assistance Expenditure Plan enacted by CJY-67-20 through Naabik’íyáti’ Committee resolution.

SECTION FOUR. APPROVAL AND ADOPTION OF THE CHAPTER DISTRIBUTION EXPENDITURE PLAN ADMINISTRATION

A. All entities receiving Navajo Nation CARES Fund funding herein shall ensure that all funds allocated under the Chapter Distribution Expenditure Plan are only expended for the purposes set forth in Exhibit 2.

B. All entities receiving Navajo Nation CARES Fund funding herein shall ensure that all funds allocated under their respective Expenditure Plans shall be incurred and expended by no later than December 30, 2020.

C. All entities receiving Navajo Nation CARES Fund funding herein shall ensure that no funds allocated under their respective Expenditure Plans are incurred or expended for
costs accounted for in the approved Fiscal Year 2020 Navajo Nation Comprehensive Budget approved by Navajo Nation Council Resolution No. CS-30-19.

D. The Office of the Controller shall release the funding allocated under the respective Expenditure Plans as soon as the expedited budget procedures are completed.

E. The CARES Fund Expedited Procurement Rules and Procedures, enacted through CJY-67-20, shall apply to procurement activities for the Expenditure Plan set forth herein.

F. The funds allocated under the Navajo Nation CARES Fund Expenditure Plan set forth herein shall be used exclusively and only for the permissible uses set forth in the following:

1. This Resolution approving the Navajo Nation CARES Fund Chapter Distribution is Expenditure Plan.

3. The Coronavirus Relief Fund which allows only those costs that:
   a. are necessary expenditures incurred due to the public health emergency with respect to COVID-19;
   b. are not accounted for in the Navajo Nation Fiscal Year 2020 Comprehensive Budget.
   c. are incurred from March 1, 2020 through December 30, 2020;

4. Consistent with the eligible uses described in the Treasury Guidance which includes the following guidance:
   a. expenditures must be incurred “due to” the public health emergency which means that expenditures must be used for actions taken to respond to the public health emergency; these expenditures may include expenditures incurred to allow the Tribal government to respond directly to the emergency, such as by addressing medical or public health needs, as well as expenditures incurred to respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures;
   b. expenditures must be “necessary”; the Department of the Treasury interprets this term broadly to mean that the expenditure is reasonably necessary for its
intended use in the reasonable judgment of the government officials responsible
for spending Coronavirus Relief Fund payments;

c. expenditures may only be made to cover costs that were not accounted for in
the budget most recently approved as of March 27, 2020. A cost meets this
requirement if either (a) the cost cannot lawfully be funded using a line item,
allotment, or allocation with the budget; or (b) the cost is for a substantially
different use from any expected use of funds in such a line item, allotment, or
allocation; and

d. expenditures must be for costs incurred during the period that begins on March
1, 2020, and ends on December 30, 2020. A cost is “incurred” when the
responsible unit of government has expended funds to cover the cost.

5. Consistent with the eligible uses described in the U.S. Treasury Frequently Asked
Questions (FAQ).

6. Consistent with the eligible uses as may be described in any and all future guidance,
rules, or regulations of the Department of the Treasury or the Department of the
Interior related to the Coronavirus Relief Fund pursuant to Title V of the CARES
Act.

7. Consistent with Navajo Nation laws, rules and regulations.

G. All entities receiving Navajo Nation CARES Act Expenditure Plan funding herein
expressly agree and affirm that by drawing down or receiving any of the funds allocated
under their respective Expenditure Plan:

a. the requested funds shall only be used for the purposes specified in Title V of
the federal CARES Act and the Navajo Nation CARES Fund Act;

b. the administration, management, and implementation of this Expenditure Plan
shall be consistent with the Navajo Nation CARES Fund Act, this legislation,
and other applicable laws and regulations of the Navajo Nation; and

c. the costs to be covered under this Expenditure Plan are not included in the
Navajo Nation Fiscal Year 2020 Comprehensive Budget, approved by Navajo
Nation Council Resolution No. CS-30-19.
I. All recipients of Navajo Nation funds from the Navajo Nation CARES Fund must follow and apply Generally Accepted Accounting Principles (GAAP), as established by the Governmental Accounting Standards Board (GASB) for governmental entities, and by the Financial Accounting Standards Board (FASB) for public and private companies and non-profits.

J. If the Department of Justice, Office of the Controller, and Office of Management and Budget concur that a proposed expenditure in the Expenditure Plans included herein is an ineligible cost under the Navajo Nation CARES Fund, Coronavirus Relief Fund or U.S. Treasury guidance, the amount of such proposed expenditure shall be returned to the Navajo Nation CARES Fund after written notice, including analysis, to the Office of the President and Vice-President and Naabik’íyáti’ Committee.

K. The Budget and Finance Committee and Resources and Development Committee of the Navajo Nation Council shall serve as the oversight committees for the Navajo Nation Cares Fund Chapter Distribution Expenditure Plan.

L. The Chapter Distribution Expenditure Plan and expenditures made there under shall be governed by and construed in accordance with the laws and regulations of the Navajo Nation.

SECTION FIVE. AMENDMENT

This Resolution may be amended by a two-thirds majority vote of the Navajo Nation Council subject to action of the President of the Navajo Nation under 2 N.N.C. § 221 (B) and the budget line-item veto authority delegated to the President by vote of the Navajo People in 2009.

SECTION SIX. EFFECTIVE DATE

This Resolution is effective upon its approval pursuant to 2 N.N.C. § 221(B) and the budget line-item veto authority delegated to the President by vote of the Navajo People in 2009.

SECTION SEVEN. SAVING CLAUSE
Should any provision of this legislation be determined invalid by the Navajo Nation Supreme Court, or a District Court of the Navajo Nation without appeal to the Navajo Nation Supreme Court, those portions of the legislation which are not determined invalid shall remain the law of the Navajo Nation.