TITLE: An Action Relating To Law And Order, Resources And Development, Health Education And Human Services, Budget And Finance, And Naabik'íyáti' Committees, And The Navajo Nation Council; Approving And Adopting Navajo Nation Cares Fund Expenditure Plans Encompassing College Student Relief, Grammar School Student Relief, Education, Elders Assistance, Headstart, Solar Projects, Solid Waste, Hardship Assistance, Housing Projects, Office Of The Controller, Office Of Management And Budget, Telecommunications And Information Technology, Economic Development, Winter Propane Services, And Public Health

Date posted: August 21, 2020 at 5:46 PM

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 et. seq.
DATE: August 21, 2020

TITLE OF RESOLUTION: RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT, HEALTH EDUCATION AND HUMAN SERVICES, BUDGET AND FINANCE, AND NAABIK’IYATI’ COMMITTEES, AND THE NAVAJO NATION COUNCIL; APPROVING AND ADOPTING NAVAJO NATION CARES FUND EXPENDITURE PLANS ENCOMPASSING COLLEGE STUDENT RELIEF, GRAMMAR SCHOOL STUDENT RELIEF, EDUCATION, ELDERS ASSISTANCE, HEADSTART, SOLAR PROJECTS, SOLID WASTE, HARDSHIP ASSISTANCE, HOUSING PROJECTS, OFFICE OF THE CONTROLLER, OFFICE OF MANAGEMENT AND BUDGET, TELECOMMUNICATIONS AND INFORMATION TECHNOLOGY, ECONOMIC DEVELOPMENT, WINTER PROPANE SERVICES, AND PUBLIC HEALTH

PURPOSE: This resolution, if approved, will allocate $176,463,909.37 of Navajo Nation CARES Funds.

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.
AN ACTION

RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT, HEALTH EDUCATION AND HUMAN SERVICES, BUDGET AND FINANCE, AND NAABIK'iyáti' COMMITTEES, AND THE NAVAJO NATION COUNCIL; APPROVING AND ADOPTING NAVAJO NATION CARES FUND EXPENDITURE PLANS ENCOMPASSING COLLEGE STUDENT RELIEF, GRAMMAR SCHOOL STUDENT RELIEF, EDUCATION, ELDERS ASSISTANCE, HEADSTART, SOLAR PROJECTS, SOLID WASTE, HARDSHIP ASSISTANCE, HOUSING PROJECTS, OFFICE OF THE CONTROLLER, OFFICE OF MANAGEMENT AND BUDGET, TELECOMMUNICATIONS AND INFORMATION TECHNOLOGY, ECONOMIC DEVELOPMENT, WINTER PROPANE SERVICES, AND PUBLIC HEALTH

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'iyáti' 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 Health, Education, and Human Services Committee is a standing committee of the Navajo Nation Council with oversight of education and general government services. 2 N.N.C. § 400 (C).

E. The Resources and Development Committee is a standing committee of the Navajo Nation Council with oversight of communications and utilities, information technology, chapter activities, and housing. 2 N.N.C. § 500 (C).

F. The Law and Order Committee is a standing committee of the Navajo Nation Council with oversight over public safety matters. 2 N.N.C. § 600 (C).

SECTION TWO. FINDINGS


C. As of August 17, 2020, the Navajo Nation Health Command Operations Center has confirmed 9,469 COVID-19 cases and 480 COVID-related deaths on the Navajo Nation.

which, at Title V, § 5001, entitled "Coronavirus Relief Funds," attached as Exhibit I-A, which sets aside $8 billion in emergency aid for Tribal governments for the COVID-19 pandemic.

E. The CARES Act provides the Coronavirus Relief Fund shall be used to cover 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 May 28, 2020, issued updated "Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments" ("Treasury Guidance") related to the permissible uses of the Coronavirus Relief Fund, attached as 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. As reported by the Controller, this combined fund has been set up in a separate segregated account, i.e., the Navajo Nation CARES Fund, to prevent co-mingling with other funds.

I. Navajo Nation Council Resolution No. CJN-47-20 allowed the President, Speaker, and Chief Justice of the Navajo Nation, as the "Three Branch Chiefs", to jointly develop a final expenditure plan(s) in accordance with the federal CARES Act and attendant tribal and federal regulations, guidance, and agreements; and authorized the Three Branch Chiefs to present a final expenditure plan(s) to the Budget and Finance Committee, Naabik'íyáti' Committee, and the Navajo Nation Council for approval.

J. While the Three Branch Chiefs have reviewed proposed expenditure plans detailing certain services and projects which are crucial in responding to the COVID-19 public health emergency on the Navajo Nation and to mitigating the effects of the pandemic,
the Three Branch Chiefs have not, as of yet, formally developed or concurred on a final expenditure plan pursuant to Resolution No. CJN-47-20.

K. Navajo Nation leadership has concluded that the Expenditure Plans and expenditures set forth herein are urgent and necessary to respond to and mitigate the COVID-19 public health emergency until the Three Branch Chiefs have the opportunity to jointly develop and concur on a final expenditure plan pursuant to Resolution No. CJN-47-20.

SECTION THREE. ADOPTION AND APPROVAL OF NAVAJO NATION CARES FUND EXPENDITURE PLANS

A. The Navajo Nation hereby approves funding from the Navajo Nation CARES Fund in the total amount of one hundred seventy-six million four hundred sixty-three thousand nine hundred nine dollars and thirty-seven cents ($176,463,909.37) and adopts the Navajo Nation CARES Fund Expenditure Plans and additions to previously adopted Expenditure Plans as follows:

1. The Navajo Nation Shopping Centers, Inc. Expenditure Plan, as set forth in Exhibit 2, in the amount of four million dollars ($4,000,000) as financial assistance to Navajo Nation Shopping Centers, Inc. (NNSCI) to provide tenant safety improvements to mitigate COVID-19 spread among staff and customers; and for property safety improvements at all ten (10) shopping center properties managed by NNSCI.

2. An addition of fifteen million four hundred fifty thousand three hundred twenty-three dollars ($15,450,323) to the Broadband-Telecommunications Project Expenditure Plan adopted by CJY-67-20, incorporated herein, to provide residents of the Navajo Nation with immediate connectivity and information sharing resources via satellite internet services in proximity to all Navajo Nation Chapter Houses as set forth in Exhibit 3; the rapid deployment of internet connectivity is necessary to respond to the COVID-19 crisis. The funding shall be allocated to the Division of Community Development which shall release the funding to the Dineh Investment – Verizon partnership for the purposes set forth in Exhibit 3 pursuant to a funding agreement recommended by the Office of the Controller.
3. The Emergency Relief Education Expenditure Plan, as set forth in Exhibit 4, in the amount of thirty-five million dollars ($35,000,000) to the Department of Diné Education to provide emergency relief and assistance to Navajo college graduate and undergraduate students.

4. The Head Start COVID-19 Expenditure Plan, as set forth in Exhibit 5, in the amount of four million three hundred thousand dollars ($4,300,000) to the Department of Diné Education to provide for COVID-19 response and mitigation necessities, including, but not limited to, plexiglass/vinyl installations, shower curtains, software, Information Technology, laptops and tablets, air ventilation purifiers and partition installations for Head Start centers throughout the Navajo Nation.

5. The Education Hardship Assistance Expenditure Plan, as set forth in Exhibit 6, in the amount of five million dollars ($5,000,000) to the Division of Social Services to provide and implement hardship assistance to eligible school age Navajo children, for purchasing school supplies, such as iPad, laptop tablets, and/or school clothing, and other financial burdens caused by the COVID-19 pandemic.

6. The Diné Education Technology Expenditure Plan, as set forth in Exhibit 7, in the amount of three million dollars ($3,000,000) to the Department of Diné Education to enhance technological services and Information Technology Security for the coordination of preparedness and response efforts of local education agencies with state, local, tribal and territorial public health departments; and to improve coordinated responses among entities to prevent, prepare for, and respond to coronavirus.

7. An addition of one million dollars ($1,000,000) to the Broadband-Telecommunications Project Expenditure Plan adopted by CJY-67-20, incorporated herein, to the Department of Information Technology as administrative support to procure professional services to oversee Broadband and telecommunication developments to address technology use during the COVID-19 pandemic, as set forth in Exhibit 8.

8. The Elderly and Developmental Disability Hardship Assistance Expenditure Plan, as set forth in Exhibit 9, in the sum of ten million dollars ($10,000,000) to the Division of Social Services to provide emergency financial assistance to Navajo tribal
members who are vulnerable elders and individuals with developmental delays and
disabilities for purchasing Personal Protective Equipment, paying past due utility
bills, rent, mortgages, isolation expenses, and other financial burdens caused by the
COVID-19 pandemic and incurred since March 1, 2020.

9. An addition of fifteen million dollars ($15,000,000) to the Solar Projects Expenditure
Plan adopted by C/JY-67-20, incorporated herein, to Native Renewables, through the
Division of Community Development, for the development and installation of solar
projects within the exterior boundaries of the Navajo Nation as a means to
immediately provide electricity to underserved communities and households and
ensure there is access to electricity sufficient to comply with Center for Disease
Control COVID-19 prevention guidance and ensure the mitigation of the spread of the
pandemic as set forth in Exhibit 10; provided that no less than five million dollars
($5,000,000) shall be used for projects in the former Bennett Freeze Area. The
Division of Community Development shall release the funding to Native Renewables
for the purposes set forth in Exhibit 10 pursuant to a funding agreement recommended
by the Office of the Controller.

10. The Propane and Natural Gas Expenditure Plan, as set forth in Exhibit 11, in the
amount of seven million four hundred sixty-seven thousand five hundred dollars
($7,467,500) to Nations Gas Technologies, Inc., through the Division of Community
Development, to provide for propane and natural gas services to homes within Navajo
Indian Country as a COVID-19 relief and mitigation service for the upcoming winter
season. The Division of Community Development shall release the funding to Nations
Gas Technologies, Inc. for the purposes set forth in Exhibit 11 pursuant to a funding
agreement recommended by the Office of the Controller.

11. The First Responder In-Vehicle Internet Connectivity Expenditure Plan, as set forth
in Exhibit 12, in the amount of six hundred two thousand two hundred six dollars and
ten cents ($602,206.10) to the Division of Public Safety to provide for in-vehicle
internet connectivity for Navajo Nation police, Fire, EMS and emergency
management with equipment from Sierra Wireless and service from FirstNet pursuant
to funding agreements recommended by the Office of the Controller.
12. The Housing Improvement Expenditure Plan, as set forth in Exhibit 13, in the amount of twenty-five million dollars ($25,000,000) to the Community Housing and Infrastructure Department to implement a housing initiative by providing mobile or modular homes to Navajo families in need of housing improvement, provided that no less than $5,000,000 shall be used by the Navajo-Hopi Land Commission Office for housing improvement in the former Bennett Freeze Area.

13. The Solid Waste Expenditure Plan, as set forth in Exhibit 14, in the amount of five million dollars ($5,000,000) to the Division of Community Development to assist the 110 Navajo Nation Chapters in purchasing equipment, supplies/materials and addressing minor improvements to transfer solid waste disposal. The implementation of solid waste projects will enhance sanitation in Navajo communities and mitigate the spread of COVID-19.

14. The Office of Controller Expenditure Plan, as set forth in Exhibit 15, in the amount of Ten Million Dollars ($10,000,000) to address the increase of resources and costs imposed on the Office of the Controller by the COVID-19 pandemic and the receipt of the federal CARES Funds.

15. The Office of Management and Budget Expenditure Plan, as set forth in Exhibit 16, in the amount of six hundred fifty-three thousand million dollars ($653,000) to address the increase of resources and costs imposed on the Office of Management and Budget.

16. The Electronic Case Management Telework Expenditure Plan, as set forth in Exhibit 17, in the amount of five million dollars ($5,000,000) to allow Navajo Division of Social Services employees to transition to remotely serving over 15,000 clients monthly without putting themselves, clients or others at risk to the spread and transmission of COVID-19.

17. An addition of twenty-nine million nine hundred nine thousand eight hundred eighty dollars and twenty-seven cents ($29,990,880.27) to the Hardship Assistance Expenditure Plan adopted by CJY-67-80, incorporated herein, to provide emergency financial assistance to Navajo tribal members for purchasing Personal Protective Equipment, paying past due utility bills, rent, mortgages, isolation expenses, livestock-
related expenses, education-related expenses and other financial burdens created by the COVID-19 pandemic and the public health emergency orders.

B. The Coronavirus Relief Funds are externally restricted funds and the detailed Expenditure Plan(s) budgets shall not be subject to further legislative approval and shall, instead, be developed and implemented through expedited budget procedures. The entity receiving funding shall present a detailed budget to the Office of Management and Budget within five (5) days of enactment of this legislation. The Office of Management and Budget shall process the detailed budgets in the most expeditious manner available to ensure that the funds can be distributed to the receiving entity within ten (10) days of receipt of the entity's detailed budget. The receiving entity shall regularly advise the Office of Management and Budget on the use of the respective CARES Fund in a format and at intervals determined by the Office of Management and Budget.

C. The progress of all Navajo Nation CARES Fund Expenditure Plans 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 completed by December 30, 2020, will be reallocated to the Hardship Assistance Expenditure Plan through Naabik'íyáti' Committee resolution.

SECTION FOUR. APPROVAL AND ADOPTION OF EXPENDITURE PLAN ADMINISTRATION

A. All entities receiving Navajo Nation CARES Funds shall ensure that all funds allocated appropriated under their respective Expenditure Plan are only expended for the purposes set forth therein, including the federal CARES Act 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.

B. The Office of the Controller shall release the funding allocated under the respective Expenditure Plans within fifteen (10) days after the enactment of this legislation and the division/department/program receiving the funding shall begin distributing or using the funds within five (5) days of receipt.
C. All expenditures of Navajo Nation CARES Funds shall qualify as Emergency Procurements eligible for expedited procurement procedures.

D. The expenditure of the CARES Act Fund shall be 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. In its guidance issued on June 30, 2020, Treasury clarified that "for a cost to be considered to have been incurred, performance or delivery must occur during the covered period, but payment of funds need not be made during that time (though it is generally expected that this will take place within 90 days of a cost being incurred)".

E. All entities receiving Expenditure Plan funding herein expressly agree and affirm that by drawing down or receiving any of the funds allocated under their respective Expenditure Plan shall only be used for the purposes described herein and the administration, management, and implementation of this Expenditure Plan shall be consistent with the
federal CARES Fund Act, U.S. Treasury Department regulations or guidelines, this
legislation, and other applicable laws and regulations of the Navajo Nation.

F. In the event that the entities or departments receiving the CARES Fund fail to comply
with expenditure provisions set forth in this legislation, the funds allocated to them will
revert back to the Navajo Nation CARES Fund, upon the Budget and Finance
Committee's acceptance of a report from the Office of Management and Budget.

G. All recipients of Navajo Nation CARES Fund must save all expenditure documents,
catalogue the documents in an organized manner and provide for duplicate copies for a
Navajo Nation or federal audit. If the recipient of the CARES Fund has sufficient means
or is equipped to do so, it shall 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.

H. The Office of Management and Budget, in consultation with other relevant departments
and programs, shall prepare a report, similar to an audit report for a federal fund use,

I. If a Branch Chief, in consultation with the Department of Justice, Office of the
Controller, and Office of Management and Budget, finds that a proposed expenditure by
their respective Branch is an ineligible or disallowable cost, the allocated funds shall be
returned to the Navajo Nation CARES Fund after written notice, including analysis of
such a determination, to the recipient of the Fund, the Branch Chief and the Budget and
Finance Committee.

J. The President, Speaker and Chief Justice of the Navajo Nation, as “Three Branch
Chiefs”, shall receive reports on the status of expenditures of Navajo Nation CARES
Fund no later than October 31, 2020; thereafter, the Three Branch Chiefs may
recommend the deletion of certain expenditures for reasons that they have not been
timely spent. Upon report to the Budget and Finance Committee, any such expenditure
shall be deleted, and the unexpended fund shall revert to the Navajo Nation CARES
Fund. The Three Branch Chiefs may then recommend further expenditures of any
reverted funds.
SECTION FIVE. AMENDMENT

This Resolution may be amended by a two-thirds majority vote of the Navajo Nation Council subject to final 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

The provisions of this action shall become effective pursuant to 2 N.N.C. § 221(B) the budget line-item veto authority delegated to the President by vote of the Navajo People in 2009.

SECTION SEVEN. SAVINGS 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.