LEGISLATION NO: _0036-20_____ SPONSOR: Jamie Henio

TITLE: An Action Relating to the Law and Order, Budget and Finance, and Naabik'íyáti’ Committee, and the Navajo Nation Council; Approving the Navajo Nation Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025; waiving 12 N.N.C. §§ 820 (E), (F), and (N) and 1162 (B) for specific purposes and a limited time period; establishing the strategic planning fund in Title 12 of the Navajo Nation Code

Date posted: February 18, 2020 at 4:18pm

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Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7590

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DATE: February 12, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO THE LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; APPROVING THE NAVAJO NATION PERMANENT FUND INCOME FIVE-YEAR EXPENDITURE PLAN FOR FISCAL YEARS 2021-2025; WAIVING 12 N.N.C. §§ 820 (E), (F) AND (N) AND 1162 (B) FOR SPECIFIC PURPOSES AND A LIMITED TIME PERIOD; ESTABLISHING THE STRATEGIC PLANNING FUND IN TITLE 12 OF THE NAVAJO NATION CODE

PURPOSE: This resolution, if approved, will establish the five-year plan to expend Permanent Fund Income from 2021-2025.

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

(Prime Sponsor)

TRACKING NO. 0036-20

AN ACTION
RELATING TO THE LAW AND ORDER, BUDGET AND FINANCE, AND
NAABIK’IYTI’ COMMITTEES, AND THE NAVAJO NATION COUNCIL;
APPROVING THE NAVAJO NATION PERMANENT FUND INCOME FIVE-YEAR
EXPENDITURE PLAN FOR FISCAL YEARS 2021-2025; WAIVING 12 N.N.C. §§
820 (E), (F) AND (N) AND 1162 (B) FOR SPECIFIC PURPOSES AND A LIMITED
TIME PERIOD; ESTABLISHING THE STRATEGIC PLANNING FUND IN TITLE 12
OF THE NAVAJO NATION CODE

BE IT ENACTED

Section One. Authority
A. The Navajo Nation Council is the governing body of the Navajo Nation, pursuant to 2
N.N.C. § 102 (A).
B. The Naabik’íyáti’ Committee of the Navajo Nation Council, pursuant to 2 N.N.C. §164
(A) (9), reviews proposed legislation which requires final action by the Navajo Nation
Council.
C. The Law and Order Committee has the authority to review and make recommendations
to the Navajo Nation Council on proposed amendments to and enactments to the
Navajo Nation Code. 2 N.N.C. §601 (B) (14).
D. The Budget and Finance Committee is empowered to review and recommend to the Navajo Nation Council the
budgeting, appropriation, investment, and management of all funds, pursuant to 2 N.N.C. §300(B)(2).

E. The Budget and Finance Committee of the Navajo Nation Council shall exercise oversight authority, including but not limited to, budget, finance, investment, bonds, contracting, insurance, audits, accounting, taxes, loans, chapter budget and finance for the purpose of recommending to the Navajo Nation Council the adoption of resolutions designed to strengthen the fiscal and financial position of the Navajo Nation and to promote the efficient use of the fiscal and financial resources of the Navajo Nation, pursuant to 2 N.N.C. §300(C)(3),

Section Two. Findings

A. The Navajo Nation Permanent Fund was established in 1985 for the purpose of creating reserves for future generations after finding that the Navajo Nation’s General Reserve Fund (aka General Fund) had been declining. CJY-53-85, Whereas Clauses Two and Six.

B. The Navajo Nation Permanent Fund made certain Fund earnings available, starting in 2005, as a source of funding to replace the declining revenues from the Nation’s oil and gas and other depletal natural resources. CJY-53-85, codified at 12 N.N.C. §§ 901 et seq.

C. In 2000, the Navajo Nation Local Governance Trust Fund was established with an initial appropriation of $2,400,000 from the Undesignated Unreserved Fund Balance (UUFBB) and then “[b]eginning in Fiscal Year 2007, the Fund [Local Governance Trust Fund] shall annually receive fifty percent (50%) of the income available from the Navajo Nation Permanent Fund pursuant to 12 N.N.C. § 905.” 12 N.N.C. § 1162 (B).

D. In 2016, the Navajo Nation approved a plan for the use of the Permanent Fund Income covering a 5-year period, Fiscal Years 2016 to 2020, for major waterline projects throughout the Navajo Nation and economic development projects in regional centers across the Navajo Nation. CAP-19-16, amended by CD-85-18 and CD-88-18.

E. The Navajo Nation relies on revenue from a variety of sources to provide services through the Navajo Nation government and to associated entities; with the declining
revenues from the closure of the nearby power plant and coal mine, along with a decline in other revenue sources, the Navajo Nation faces a significant revenue shortfall for the future which may lead to a reduction in services to the Navajo people and their communities.

F. A Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025 is necessary and warranted to address the declining revenues of the Navajo Nation and to augment the projected revenue of the Navajo Nation in future fiscal years to sustain the financial stability of the Navajo Nation government.

G. A Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025, as established below in Section Three and illustrated in Exhibit A, will mitigate the Navajo Nation’s projected revenue deficit for the upcoming fiscal years.

H. The Permanent Fund statute defines Fund Income as consisting of all earnings generated by the principal of the Fund, 12 N.N.C. §903(B); and at §905 further provides that ninety-five percent (95%) of the Fund income may be expended in accordance with a plan for its use covering at least a five-year period adopted by resolution of the Navajo Nation Council provided that the expenditure of income during any fiscal year shall not exceed the income earned during that year [and] [t]he remaining five percent (5%) of the Fund income shall be reinvested in the Permanent Fund.

12 N.N.C. §905.

I. While the Permanent Fund specifies that the Navajo Nation cannot spend more Income than is earned in the fiscal year, it does not require that the Permanent Fund Income be subjected to a completed audit prior to projection or expenditure.


K. The first priority of the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025 is to mitigate or make-up the anticipated annual budget shortfalls due
to declining Navajo Nation revenues; unmet needs and projects can be funded after the deficiencies of the Navajo Nation's annual comprehensive budget have been met.

L. The average annual Permanent Fund Income (audited) available for expenditure over Fiscal Years 2016-2018 was approximately $50,500,000 (fifty million five hundred thousand dollars), as set forth in Exhibit B; guided by that average, the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025, will conservatively allocate Permanent Fund Income of up to $30,000,000 (thirty million dollars) per year to be added to the General Fund Revenue Projection for the current fiscal year.

M. If, after audit, there is Permanent Fund Income realized over the amount included in the current year Revenue Projections, the excess Income shall be deposited in and expended pursuant to the Strategic Planning Fund, established below.

Section Three. Approval of Expenditure Plan and Implementation

A. The Navajo Nation hereby approves the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025 ("Five-Year Plan") set forth as follows and illustrated in Exhibit A:

   a. For each Fiscal Year from 2021 to 2025, up to $30,000,000 (thirty million dollars) of pre-audit 12 N.N.C. § 905 Permanent Fund Income (hereinafter "Permanent Fund Income" or "Income") shall be added to the General Fund Revenue Projection prepared by the Office of the Controller for the current budget cycle and be appropriated as part of the Comprehensive Budget.

   b. If, after audit, the actual Permanent Fund Income from the preceding year is more than the projected amount used in the current year’s Comprehensive Budget, the excess amount shall be deposited in and expended consistent with the Strategic Planning Fund established below.

   c. If, after audit, the actual Permanent Fund Income from the preceding year is less than the projected amount used in the current year’s Comprehensive Budget, the deficiency amount shall be transferred from the Strategic Planning Fund established below to the Navajo Nation General Fund to replenish any
amounts funded through the Unreserved Undesignated Fund Balance ("UUFB") as part of the budget implementation process.

d. If the balance of the Strategic Planning Fund is not sufficient to fund the deficiency, a Supplemental Appropriation from the UUFB, obtained through Navajo Nation Council resolution, shall be used to fund the deficiency.

e. If the deficiency is not covered through Supplemental Appropriation from the UUFB, the current year Comprehensive Budget will be proportionately reduced through Navajo Nation Council resolution, unless the Budget and Finance Committee has identified an alternative source of funding the deficiency.

f. Under no circumstances shall any amount of Permanent Fund Principal be used to fund the deficiency unless 12 N.N.C. § 904 is strictly complied with.

g. The Five-Year Plan amounts added to the Revenue Projection(s) shall be treated as recurring revenue, notwithstanding 12 N.N.C. §§ 820 (E) and (F) and shall not lapse pursuant to 12 N.N.C. § 820 (N), but shall otherwise be governed by the Navajo Nation Appropriations Act, 12 N.N.C. § 800 et seq., the Budget Instruction Manual for the appropriate fiscal year, and related budgetary process policies, rules, and regulations as required to prepare and approve the Navajo Nation’s comprehensive budget legislation.

h. For Fiscal Years 2021-2025, the Comprehensive Budget legislation shall include each Branch’s prioritized list of unfunded (unmet) needs.

i. The Budget and Finance Committee shall be responsible for adopting rules and regulations necessary to implement the Five-Year Plan.

B. The Navajo Nation hereby approves the Five-Year Plan as meeting the requirements for an expenditure plan as set forth in the Permanent Fund, 12 N.N.C. § 905.

Section Four. Waiving 12 N.N.C. §§ 820 (E), (F) and (N) and 1162(B)

A. The Navajo Nation hereby waives 12 N.N.C. § 1162(B) for the period of the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025 and approves suspension of the annual Permanent Trust Fund Income appropriation to the Navajo
Nation Local Governance Trust Fund to conform with the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025.

B. The Navajo Nation hereby waives 12 NNC §§ 820 (E), (F) and (N) for the purposes set forth in Section Three (A) (d) of this Chapter and § 2703 (H) of the proposed Strategic Planning Fund.

Section Five. Enactment of the Navajo Nation Strategic Planning Fund
The Navajo Nation hereby enacts the Navajo Nation Strategic Planning Fund, at 12 N.N.C. §§ 2701 et seq., as follows:

TITLE 12. FISCAL MATTERS
***
CHAPTER 27 NAVAJO NATION STRATEGIC PLANNING FUND

§ 2701. Establishment
There is established the “Navajo Nation Strategic Planning Fund (“Fund”).

A. The Navajo Nation Council hereby designates that any annual Permanent Fund Income from the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025 not included with the General Fund Revenue Projections shall be deposited in the Fund. The annual amount deposited in the Fund will vary depending on the Permanent Fund Income realized each year.

B. In addition to the deposits from Permanent Fund Income, other deposits, allocations, or appropriations may be made into the Fund upon a duly-authorized resolution of the Navajo Nation Council.

C. Permanent Fund Principal shall not be deposited into the Fund unless 12 N.N.C. § 904 is strictly complied with.

D. Any monies deposited in, and otherwise allocated or appropriated to the Fund, shall be used only as provided in this Chapter.

§ 2702. Purpose
The purpose of the Fund is to house and hold annual Permanent Fund Income from the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025 that is not included with the General Fund Revenue Projection until such funds are appropriated by the Navajo Nation Council for unmet needs and projects not funded through the annual Comprehensive Budget.

§ 2703. Fund Management and Administration

A. The Fund shall maintain all monies deposited, appropriated, or otherwise allocated into the Fund, as well as any investment income earned.

B. As soon as practical, the Office of the Controller shall report the audited Income earned by the Permanent Fund for the preceding year.

C. If the audited Permanent Fund Income for the preceding year is greater than the projected amount of Permanent Fund Income included in the current year Comprehensive Budget, the excess amount shall be deposited in the Fund.

D. If the audited Permanent Fund Income for the preceding year is less than the amount of Permanent Fund Income included in the current year Comprehensive Budget, the deficiency amount shall be transferred from the Fund to the Navajo Nation General Fund to replenish any amounts funded through the Undesignated Unreserved Fund Balance as part of the budget implementation process.

E. After the Office of the Controller has reported the audited Income, the Budget and Finance Committee shall determine the amount that can be expended from the Fund in the current fiscal year for unmet needs.

F. Fund expenditures shall be recommended by the Budget and Finance Committee and approved by Navajo Nation Council as Supplemental Appropriations, 12 N.N.C. § 820 L., and otherwise be governed by the Navajo Nation Appropriations Act, 12 N.N.C. § 800 et seq., and the Budget Instruction Manual for the respective fiscal year.

G. All deposits made into the Fund shall be treated as recurring revenue, notwithstanding 12 N.N.C. §§ 820 (E) and (F) and shall not lapse pursuant to 12 N.N.C. § 820 (N).

H. The Budget and Finance Committee shall be responsible for adopting rules and regulations necessary to implement the Fund and expenditures from the Fund.
§ 2704. Fund Accounting
The day-to-day accounting for the Fund shall be performed by the Office of the Controller in accordance with generally accepted accounting principles.

§ 2705. Investment of Fund
All monies deposited into the Fund shall be invested as soon as practicable in accordance with:

A. The degree of care exercised by reasonable and prudent managers of investments intended to produce maximum growth of the investments with a high degree of security; and

B. The Investment Objectives and Investment Policies of the Navajo Nation as adopted by the Budget and Finance Committee of the Navajo Nation Council and the Navajo Nation Master Investment Policy.

§ 2706. Audit requirements
The Fund shall be audited annually by independent external auditors as part of the overall audit of the Navajo Nation government.

§ 2707. Amendments
Any section herein may be amended by a two-thirds (2/3) vote of the full membership of the Navajo Nation Council.

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Section Six. Directives
A. The Navajo Nation Controller shall exercise ordinary standards of professional care, consistent with this legislation, in performing the necessary computations as to the Permanent Fund Income available for inclusion in the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025. In the event revisions need to be made to the annual Permanent Fund Income due to market fluctuations or economic downturns, the Controller shall immediately notify the Navajo Nation Council.
through written memorandum addressed to the Speaker of the Navajo Nation,
Chairperson of the Budget and Finance Committee, and Office of the President and
Vice-President, so that appropriate action may be taken.

B. The Office of Management and Budget shall include provisions in the respective
Fiscal Year Budget Instruction Manual to support the expeditious implementation of
the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025,
as well as the expeditious implementation of the Strategic Planning Fund and
expenditures thereunder.

Section Seven. Codification

The provisions of these amendments of the Navajo Nation Code shall be codified by
the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate
such amendments in the next codification of the Navajo Nation Code.

Section Eight. Savings Clause

Should any provision of these amendments 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, those amendments that are not determined invalid shall remain the
law of the Nation.