TITLE: An Action Relating To Health Education And Human Services, Budget And Finance And NAABIK'ÍYATI' Committees, And The Navajo Nation Council; Approving And Adopting The Navajo Nation CARES Fund Expenditure Plans For Special Duty Pay, Personal Protective Equipment and Facility Safety Assurance

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DATE: February 21, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO HEALTH EDUCATION AND HUMAN SERVICES, BUDGET AND FINANCE AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; APPROVING AND ADOPTING THE NAVAJO NATION CARES FUND EXPENDITURE PLANS FOR SPECIAL DUTY PAY, PERSONAL PROTECTIVE EQUIPMENT AND FACILITY SAFETY ASSURANCE

PURPOSE: This resolution, if approved, will allocate CARES Funds for Special Duty Pay ($20,000,000), Personal Protective Equipment ($10,000,000) and Facility Safety ($10,000,000).

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. 0132-20

AN ACTION

RELATING TO HEALTH EDUCATION AND HUMAN SERVICES, BUDGET
AND FINANCE AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO
NATION COUNCIL; APPROVING AND ADOPTING THE NAVAJO NATION
CARES FUND EXPENDITURE PLANS FOR SPECIAL DUTY PAY, PERSONAL
PROTECTIVE EQUIPMENT AND FACILITY SAFETY ASSURANCE

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 Health Education and Human Services Committee is a standing committee of the Navajo Nation Council empowered to provide legislative oversight on matters involving health, social services, education, general governmental services, and human services. 2 N.N.C. § 401(C).

SECTION TWO. FINDINGS


C. As of June 9, 2020, the Navajo Nation Health Command Operations Center has confirmed 6,150 COVID-19 cases and 285 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. On or about May 6, 2020, the Navajo Nation received six hundred million five hundred fifty-nine thousand five hundred thirty dollars and ten cents ($600,559,530.10) as the Nation’s share of the U.S. Treasury’s initial distribution of 60% of the Coronavirus Relief Fund.

I. Navajo Nation Council Resolution CMY-44-20, attached as Exhibit 1, established the Navajo Nation CARES Fund, codified at 12 N.N.C. §§ 2601 et seq.; the purpose of the Navajo Nation Cares Fund is “to serve as a depository into which the Coronavirus Relief Funds appropriated by the United States for the benefit of the CARES Act are deposited, and from which the Navajo Nation appropriates funds exclusively and only for the uses specified in this Chapter (i.e., 12 N.N.C. §§ 2601 et seq.),” 12 N.N.C. § 2603 [explanation added].

J. The Navajo Nation CARES Fund establishes that the Navajo Nation’s expenditures of the Coronavirus Relief Funds will be “accomplished through the approval of an Expenditure Plan(s) adopted by a two-thirds (2/3) vote of all members of the Navajo Nation Council, subject to final action of the President pursuant to 2 N.N.C. § 1005 (C)(10), (11), and (12).” 12 N.N.C. § 2604 (A).

K. The purpose of the Navajo Nation CARES Fund Special Duty Pay Expenditure Plan, attached as Exhibit 2, is to provide twenty million dollars ($20,000,000) in Special Duty Pay for front line workers and other essential personnel whose duties are substantially dedicated to mitigating or responding to the COVID-19 public health emergency; the expenditures set forth in the Special Duty Pay Expenditure Plan are
necessary to ensure that the Navajo Nation has adequate personnel available to directly respond to the COVID-19 public health emergency.

L. The purpose of the CARES Fund Personal Protective Equipment Expenditure Plan, attached as Exhibit 3, is to provide ten million dollars ($10,000,000) for Personal Protective Equipment for front line workers and other essential personnel whose duties are substantially dedicated to mitigating or responding to the COVID-19 public health emergency; the expenditures set forth in the Personal Protective Equipment Expenditure Plan are necessary to ensure that the Navajo Nation’s personnel who are responding to the COVID-19 public health emergency are adequately protected.

M. The purpose of the CARES Fund Facility Safety Assurance Expenditure Plan, attached as Exhibit 4, is to provide ten million dollars ($10,000,000) to ensure that the facilities operated by the Navajo Nation are disinfected and otherwise safe for returning employees and the public seeking governmental services; the expenditures set forth in the Facility Safety Assurance Expenditure Plan are necessary to ensure that the spread of COVID-19 is mitigated to the greatest extent possible.

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

A. The Navajo Nation hereby approves and adopts the CARES Fund Special Duty Pay Expenditure Plan, as outlined in Exhibit 2; the CARES Fund Personal Protective Equipment Expenditure Plan as outlined in Exhibit 3; and the CARES Fund Facility Safety Assurance Expenditure Plan as outlined in Exhibit 4.

B. The Navajo Nation hereby approves and adopts total funding for the Special Duty Pay Expenditure Plan from the Navajo Nation CARES Fund in the amount of twenty million dollars ($20,000,000) and allocates the funding to the Office of the Controller for the purposes set forth in Exhibit 2.

C. The Navajo Nation hereby approves and adopts total funding for the Personal Protective Equipment Expenditure Plan from the Navajo Nation CARES Fund in the amount of ten million dollars ($10,000,000) and allocates the funding to the Health
Command Operations Center, Department of Health, for the purposes set forth in Exhibit 3.

D. The Navajo Nation hereby approves and adopts total funding for the Facility Safety Assurance Expenditure Plan from the Navajo Nation CARES Fund in the amount of ten million dollars ($10,000,000) and allocates the funding to the Facilities Maintenance Department, Division of General Services for the purposes set forth in Exhibit 4.

E. 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 as directed in CMY-44-20, Section Nine (B).

SECTION FOUR. APPROVAL AND ADOPTION OF THE EXPENDITURE PLANS’ ADMINISTRATION

A. The Office of the Controller, Department of Health and Facilities Maintenance Department shall ensure that all funds allocated under their respective Expenditure Plan are only expended for the purposes set forth in Exhibits 2, 3, and 4.

B. The Office of the Controller, Department of Health, and Facilities Maintenance Department shall ensure that all funds allocated under their respective Expenditure Plans shall be incurred and expended by no later than December 30, 2020.

C. The Office of the Controller, Department of Health and Facilities Maintenance Department 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, as set forth in Exhibit 1-E, shall apply to procurement activities for the Expenditure Plans set forth herein.

F. The funds allocated under the Expenditure Plans 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 Hazard Pay Expenditure Plan, CARES Fund Personal Protective Equipment Expenditure Plan, and the CARES Fund Facility Safety Assurance Expenditure Plan.

2. The Navajo Nation CARES Fund Act, 12 N.N.C. §§ 2501 et seq., and any rules, regulations or procedures adopted thereunder.

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.

G. The Office of the Controller, Department of Health and Facilities Maintenance
Department expressly agree and affirm that by drawing down 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.

H. As set forth in CMY-44-20, Section Four (B), in the event that Office of the Controller,
Department of Health or Facilities Maintenance Department fail to comply with and
complete the expedited budget procedures within fifteen (15) days of the date the
Expenditure Plans becomes law, 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.

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. The Health Education and Human Services Committee and the Budget and Finance Committee of the Navajo Nation Council shall serve as the oversight committees for the Navajo Nation Cares Fund Special Duty Pay, Personal Protective Equipment and Facility Safety Assurance Expenditure Plans.

K. The Expenditure Plans 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 majority vote of the Navajo Nation Council subject to action of the President of the Navajo Nation under 2 N.N.C. §164(A)(17).

SECTION SIX. EFFECTIVE DATE
This Resolution is effective upon its approval pursuant to 2 N.N.C. § 221(B).

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.