LEGISLATION NO: _0144-20__ SPONSOR: Amber Kanazbah Crotty

**TITLE:** An Action Relating to Health Education and Human Resources, Budget and Finance and Resources and Development, and Naabik'íyáti’ Committee, and the Navajo Nation Council: Approving and Adopting the Navajo Nation CARES Fund Expenditure Plans for Water Projects, Powerline Projects and Broadband-Telecommunication Projects

*Date posted: June 30, 2020 at 11:58PM*

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DATE: June 30, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO HEALTH EDUCATION AND HUMAN RESOURCES, BUDGET AND FINANCE AND RESOURCES AND DEVELOPMENT, AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; APPROVING AND ADOPTING THE NAVAJO NATION CARES FUND EXPENDITURE PLANS FOR WATER PROJECTS, POWERLINE PROJECTS AND BROADBAND-TELECOMMUNICATION PROJECTS

PURPOSE: This resolution, if approved, will adopt the Navajo Nation CARES Fund Expenditure Plans for water projects, powerline projects and broadband-telecommunication projects.

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)

AN ACTION
RELATING TO HEALTH EDUCATION AND HUMAN RESOURCES, BUDGET AND FINANCE AND RESOURCES AND DEVELOPMENT, AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; APPROVING AND ADOPTING THE NAVAJO NATION CARES FUND EXPENDITURE PLANS FOR WATER PROJECTS, POWERLINE PROJECTS AND BROADBAND-TELECOMMUNICATION PROJECTS

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 Naabikíyáti’ 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 Health Education and Human Services Committee is a standing committee of the Navajo Nation Council charged with over the Department of Information Technology within the Division of General Services. 2 N.N.C. § 401 (C)(1).

D. 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...
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).

E. The Resources and Development Committee is a standing committee of the Navajo Nation Council empowered to provide legislative oversight on matters involving, but not limited to, water, communications and utilities, information technology, rights-of-way, public utilities, and telecommunications. 2 N.N.C. § 500(C).

SECTION TWO. FINDINGS


C. As of June 30, 2020, the Navajo Nation Health Command Operations Center has confirmed 7,532 COVID-19 cases and 363 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. 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 Navajo Nation has determined that immediately funding water projects, powerline projects and broadband-telecommunication projects is vital in sustaining its response
to the COVID-19 public health emergency and mitigating the effects of the pandemic; a summary of the Navajo Nation CARES Fund Expenditure Plans addressing water projects, powerline projects and broadband-telecommunication projects is attached as Exhibit 2.

L. The purpose of the Navajo Nation CARES Fund Water Projects Expenditure Plan, attached as Exhibit 3, is to immediately provide sixty-four million two hundred twenty-six thousand three hundred seventeen dollars ($64,226,317) to the Navajo Department of Water Resources for water projects on the Navajo Nation, including but not limited to, waterline and cistern projects, water hauling, windmill repairs, water well infrastructure, and earthen dam and irrigation project rehabilitation; the expenditures set forth in the Water Projects Expenditure Plan are necessary to ensure that the Navajo Nation populace has adequate access to safe potable water necessary to stem the spread of COVID-19 and comply with Center for Disease Control (CDC) COVID-19 prevention guidance.

M. The purpose of the CARES Fund Powerline Projects Expenditure Plan, attached as Exhibit 4, is to immediately provide thirty six million four hundred fifty-six thousand three hundred ninety-five dollars ($36,456,395) for power line projects, including power line capital projects and electrical line extensions; the expenditures set forth in the Power Line Projects Expenditure Plan are necessary to ensure that homes and facilities on the Navajo Nation have access to electricity sufficient to comply with CDC COVID-19 prevention guidance and ensure that infection recovery is viable.

N. The purpose of the CARES Fund Broadband-Telecommunication Projects Expenditure Plan, attached as Exhibit 5, is to immediately provide thirty million nine hundred twenty thousand six hundred thirty-six dollars ($30,920,636) to ensure that the Navajo Nation populace and public facilities, including schools and institutions of higher learning, throughout the Navajo Nation have adequate broadband access and telecommunication capacity to comply with stay-at-home orders issued to stem the spread of the COVID-19 pandemic and access to public safety, healthcare and education.
SECTION THREE. APPROVAL AND ADOPTION OF THE NAVAJO NATION CARES FUND EXPENDITURE PLANS

A. The Navajo Nation hereby approves and adopts the CARES Fund Water Projects Expenditure Plan, as outlined in Exhibit 3; the CARES Fund Powerline Projects Expenditure Plan as outlined in Exhibit 4; and the CARES Fund Broadband- Telecommunication Projects Expenditure Plan as outlined in Exhibit 5.

B. The Navajo Nation hereby approves and adopts total funding for the Water Projects Expenditure Plan from the Navajo Nation CARES Fund in the amount of sixty-four million two hundred twenty-six thousand three hundred seventeen dollars ($64,226,317) and allocates the funding to the Department of Water Resources for funding the 2020 projects set forth in Exhibit 3. The projects for years 2021 through 2024 totaling $291,907,869 that are not capable of completion before the federal CARES Act deadline of December 30, 2020, will be considered for future funding from other sources or from CARES Act funding if Congress extends the federal deadline.

C. The Navajo Nation hereby approves and adopts total funding for the Powerline Projects Expenditure Plan from the Navajo Nation CARES Fund in the amount of thirty six million four hundred fifty-six thousand three hundred ninety-five dollars ($36,456,395) and allocates the funding through the Division of Community Development to the Navajo Tribal Utility Authority, Jemez Mountains Electrical Cooperative, and Continental Divide Cooperative for the respective purposes and amounts set forth for 2020 projects in Exhibit 4.

D. The Navajo Nation hereby approves and adopts total funding for the Broadband and Telecommunications Expenditure Plan from the Navajo Nation CARES Fund in the amount of thirty million nine hundred twenty thousand six hundred thirty-six dollars ($30,920,636) and allocates the funding to the Department of Information Technology and through the Department of Information Technology to the Native Broadcast Enterprise, Navajo Technical University and Diné College for the respective purposes and amounts set forth in Exhibit 5.

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); if the CMY-44-20 expedited budget procedures are not in
place at the time the Expenditure Plans herein are adopted by the Navajo Nation
Council, 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.

SECTION FOUR. APPROVAL AND ADOPTION OF THE EXPENDITURE
PLANS' ADMINISTRATION
A. All entities receiving Navajo Nation CARES Fund funding herein shall ensure that all
funds allocated under their respective Expenditure Plan are only expended for the
purposes set forth in Exhibits 3, 4, and 5.
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, 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 Navajo Nation CARES Fund 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 Water Projects
Expenditure Plan, CARES Fund Powerline Projects Expenditure Plan, and the
CARES Fund Broadband and Telecommunication Projects 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. 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.

H. As set forth in CMY-44-20, Section Four (B), in the event that the entities receiving Expenditure Plan herein 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. 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’íyáá’í 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 Water Projects, Powerline Projects and Broadband-  
Telecommunication Expenditure Plans, except that the Health Education and Human  
Services Committee shall serve as the oversight committee for Department of  
Information Technology portion of the Broadband-Telecommunication Projects  
Expenditure Plan.

L. 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 two-thirds 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) and 2 N.N.C. §  
164(A)(17).

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

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Nation Supreme Court, those portions of the legislation which are not determined invalid shall remain the law of the Navajo Nation.