

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0115-20__

SPONSOR: Seth Damon

TITLE: An Action Relating to Law And Order, Budget And Finance, And Nabik'iyáti' Committees, And the Navajo Nation Council; Waiving 12 N.N.C. §§ 301 et seq.; Enacting the "Navajo Nation CARES Fund Act" by amending Title 12 of the Navajo Nation Code and establishing "The Navajo Nation CARES Fund" to be comprised of the Nation's share of the Coronavirus Relief Fund received from the United States pursuant to Title V of the Coronavirus Aid, Relief, And Economic Security Act ("CARES ACT")

Date posted: May 7, 2020 at 5:34PM

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0115-20

DATE: May 7, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO LAW AND ORDER, BUDGET AND FINANCE, AND NABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; WAIVING 12 N.N.C. §§ 301 ET SEQ.; ENACTING THE "NAVAJO NATION CARES FUND ACT" BY AMENDING TITLE 12 OF THE NAVAJO NATION CODE AND ESTABLISHING "THE NAVAJO NATION CARES FUND" TO BE COMPRISED OF THE NATION'S SHARE OF THE CORONAVIRUS RELIEF FUND RECEIVED FROM THE UNITED STATES PURSUANT TO TITLE V OF THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT ("CARES ACT")

PURPOSE: This resolution, if approved, will enact the Navajo Nation CARES Fund Act which establishes the framework for the appropriation and expenditure of Coronavirus Relief Fund dollars received from the U.S. pursuant to the CARES Act.

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.

5-DAY BILL HOLD PERIOD: High
Website Posting Time/Date: _____
Posting End Date: 05-12-20
Eligible for Action: 05-13-20

Law & Order Committee
Thence
Budget & Finance Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

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PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL -- Second Year, 2020

INTRODUCED BY


(Prime Sponsor)

TRACKING NO. 0115-20

AN ACTION
RELATING TO LAW AND ORDER, BUDGET AND FINANCE, AND
NABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL;
WAIVING 12 N.N.C. §§ 301 *ET SEQ.*; ENACTING THE "NAVAJO NATION
CARES FUND ACT" BY AMENDING TITLE 12 OF THE NAVAJO NATION
CODE AND ESTABLISHING "THE NAVAJO NATION CARES FUND" TO BE
COMPRISED OF THE NATION'S SHARE OF THE CORONAVIRUS RELIEF
FUND RECEIVED FROM THE UNITED STATES PURSUANT TO TITLE V OF
THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT
("CARES ACT")

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 Navajo Nation Appropriations Act states that "[f]unds received in excess of the initial or current revenue projection shall be deposited into the General Fund unless otherwise designated by the Navajo Nation Council." 12 N.N.C. § 820(K).

- 1 C. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council
2 with the responsibility to hear proposed resolution(s) that require final action by the
3 Navajo Nation Council. 2 N.N.C. § 164 (A)(9).
- 4 D. The Budget and Finance Committee is a standing committee of the Navajo Nation
5 Council with the enumerated powers to review and recommend to the Navajo Nation
6 Council the budgeting, appropriation, investment and management of all funds and to
7 promulgate rules and regulations relative to contracting and financial matters. 2 N.N.C.
8 §§ 300 (B)(1) and (2).
- 9 E. The Law and Order Committee is a standing committee of the Navajo Nation Council
10 with the enumerated power to review and make recommendations to the Navajo Nation
11 Council on proposed amendments to enactments to the Navajo Nation Code. 2 N.N.C.
12 § 601 (B)(14).
- 13

14 **Section Two. Findings**

- 15 A. The World Health Organization (WHO) declared a Public Health Emergency of
16 International Concern related to the outbreak of coronavirus (COVID-19), a highly
17 contagious and sometimes fatal respiratory virus, on January 30, 2020; the U.S.
18 Department of Health and Human Services declared a Public Health Emergency related
19 to the COVID-19 outbreak on January 31, 2020; and the WHO declared a global
20 pandemic due to COVID-19 on March 11, 2020.
- 21 B. On March 11, 2020, the Navajo Nation Commission on Emergency Management, with
22 the concurrence of the Navajo Nation President and Vice President, declared a Public
23 Health State of Emergency on the Navajo Nation due to the presence of COVID-19 in
24 areas surrounding the Navajo Nation. Resolution No. CEM 20-03-11.
- 25 C. The Navajo Nation Department of Health has issued Public Health Emergency Orders
26 including: Order No. 2020-001 dated March 18, 2020 (declaring the outbreak of
27 COVID-19 and limiting mass gatherings); Order No. 2020-002 dated March 19, 2020
28 (quarantining the Chilchinbeto Community); Order No. 2020-003 dated March 20,
29 2020 (ordering individuals living on the Navajo Nation to stay home and shelter in
30 place except for essential activities, prohibiting visitors to the Navajo Nation, and

1 closing all businesses on the Navajo Nation except essential businesses); Order No.
2 2020-004 dated March 29, 2020 (implementing a daily curfew from 8:00 p.m. to 5:00
3 a.m. for all Navajo Nation residents, extending the shelter in place order, and further
4 limiting public gatherings); Order No. 2020-005 dated April 5, 2020 (implementing a
5 57-hour weekend curfew on April 10-13); Order No. 2020-006 dated April 16, 2020
6 (extending the weekend curfew for April 17-20 and April 24-27, and closing Navajo
7 Nation essential businesses during curfew hours); Order No. 2020-007 (requiring face
8 masks in public); and Order No. 2020-008 dated April 29, 2020 (extending the weekend
9 curfew to May 11). The Navajo Nation Office of the President and Vice President
10 issued Executive Order 002-20 on March 31, 2020 (closing all Navajo Nation offices
11 except essential personnel through April 21); and Executive Order 003-20 on April 21,
12 2020 (extending the closure order to May 17, 2020).

13 D. As of May 5, 2020, the Navajo Nation Health Command Operations Center has
14 confirmed a total of 2474 COVID-19 cases on the Navajo Nation and 73 related deaths.

15 E. The U.S. Congress on March 27, 2020, enacted the Coronavirus Aid, Relief, and
16 Economic Security Act (“CARES Act”), Pub. L. No. 116-136, 134 Stat. 281 (2020).
17 The CARES Act, at Title V, §5001, entitled “Coronavirus Relief Funds,” attached as
18 **Exhibit A**, setting aside \$8 billion in emergency aid for Tribal governments for the
19 COVID-19 pandemic.

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

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

27 G. On April 22, 2020, the U.S. Treasury issued “Coronavirus Relief Fund Guidance for
28 State, Territorial, Local, and Tribal Governments” (hereinafter “Treasury’s
29 Guidance”) related to the permissible uses of the Coronavirus Relief Fund. **Exhibit B**.

1 Examples of eligible expenditures and ineligible expenditures are included in
2 Treasury's Guidance.

- 3 H. Under the CARES Act, the Department of the Treasury Inspector General has authority
4 for monitoring and oversight of the receipt, disbursement, and use of the Coronavirus
5 Relief Fund. A Tribal government's use of the funds for ineligible purposes will
6 become a debt owed to the federal government and the federal government is
7 authorized to recoup the ineligible funds from the Tribal government. In addition, the
8 Tribal government must return unexpended funds to the U.S. Treasury.
- 9 I. The Secretary of the Treasury, in consultation with the Secretary of the Interior and
10 Indian Tribes, was tasked with establishing the methodology to determine the exact
11 amount any one Tribal government would receive based on the Tribal government's
12 increased expenditures relative to aggregate expenditures in Fiscal Year 2019 and on
13 May 5, 2020, the U.S. Treasury issued the document entitled "Coronavirus Relief
14 Fund Allocations to Tribal Governments," which described the methodology used for
15 distributing the \$8 billion to Tribal governments, attached as **Exhibit C**.
- 16 J. On May 5, 2020, the U.S. Departments of Treasury and Interior issued the press release
17 entitled, "Joint Statement by Treasury Secretary Steven T. Mnuchin and Secretary of
18 the Interior David L. Bernhardt on Distribution of Coronavirus Relief Fund Dollars to
19 Native American Tribes," which announced that on or about May 5, 2020, the U.S.
20 Treasury would distribute 60% of the \$8 billion, or \$4.8 billion, to Tribal governments,
21 attached as **Exhibit D**.
- 22 K. The Navajo Nation's share of the \$4.8 billion from the Coronavirus Relief Fund
23 initially distributed from the U.S. Treasury on or about May 5, 2020 is six hundred
24 million five hundred fifty-nine thousand five hundred thirty dollars and ten cents
25 (\$600,559,530.10). The Navajo Nation CARES Fund Act applies to this initial
26 distribution and to any subsequent distributions by the U.S. Treasury from the
27 Coronavirus Relief Fund.
- 28 L. The CARES Act expressly provides that Coronavirus Relief Fund shall be used to cover
29 only those costs that are necessary expenditures incurred due to the public health
30 emergency with respect to COVID-19 and related purposes. The Navajo Nation

1 Council therefore acknowledges and designates, if necessary, pursuant to its authorities
2 in 12 N.N.C. §820(K), that the Coronavirus Relief Funds that the Navajo Nation
3 receives from the United States under Title V of the CARES Act are not projected
4 revenues within the meaning of the Navajo Nation Appropriations Act, 12 N.N.C.
5 §§800 *et seq.*, and other provisions of the Navajo Nation Code; and shall not be
6 deposited into the Nation’s General Fund, but instead shall be deposited into the Navajo
7 Nation CARES Fund. Because the funds are not projected revenue, they shall not be
8 subject to any provisions of the Navajo Nation Code that require a portion of funds to
9 be set-aside and deposited into any other fund of the Navajo Nation.

10 M. The Navajo Nation Council finds it in the best interests of the Navajo Nation to enact
11 the “Navajo Nation CARES Fund Act” by amending Title 12 of the Navajo Nation
12 Code and establishing the “Navajo Nation CARES Fund” to be comprised of the
13 Navajo Nation’s share of the Coronavirus Relief Fund received from the United States
14 pursuant to Title V of the CARES Act.

15 N. The Navajo Nation Council further finds that because the Coronavirus Relief Fund can
16 and shall only be used for expenditures through December 30, 2020, procurements
17 expending these funds must be expedited, and that CARES Fund expenditures should
18 not be subject to the Navajo Nation Procurement Act, 12 N.N.C. §§301 *et seq.*, and its
19 attendant regulations, and instead shall be governed by the “CARES Fund Expedited
20 Procurement Rules and Procedures” attached as **Exhibit E**.

21
22 **Section Three. Enacting the “Navajo Nation CARES Fund Act” and Establishing the**
23 **“Navajo Nation CARES Fund”**

24 The Navajo Nation hereby amends Title 12 of the Navajo Nation Code, 12 N.N.C. §§ 2501,
25 *et seq.*, as follows:

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27 ****

28 **TITLE 12. FISCAL MATTERS**
29 **CHAPTER 26. NAVAJO NATION CARES FUND ACT**

1 **§2601. Short Title**

2 This Act shall be titled the “Navajo Nation CARES Fund Act.”

3

4 **§2602. Establishment**

5 There is established the “Navajo Nation CARES Fund” (hereinafter “Fund”).

6 A. The Navajo Nation hereby designates that the monies that the Navajo Nation has
7 received and will receive from the United States from the Coronavirus Relief Fund
8 pursuant to the Coronavirus Aid, Relief, and Economic Security Act (the “CARES
9 Act”), P.L. No. 116-136, at Title V, §5001 (the “Coronavirus Relief Fund”) shall be
10 deposited into the Fund.

11 B. Any monies deposited into the Fund shall be used exclusively and only as provided in
12 this Chapter and in compliance with the permissible uses of the funds as set forth in the
13 Coronavirus Relief Fund and CARES Act, the Coronavirus Relief Fund Guidance for
14 State, Territorial, Local, and Tribal Governments issued by the U.S. Treasury on April
15 22, 2020, and any and all future rulemaking and regulations of the Department of the
16 Treasury or the Department of the Interior.

17 C. The Fund shall be a continuing account and shall not lapse on an annual basis pursuant
18 to 12 N.N.C. § 820(N).

19

20 **§2603. Purpose**

21 The purpose of the Fund is to serve as a depository into which the Coronavirus Relief
22 Funds appropriated by the United States for the benefit of the Navajo Nation under Title V
23 of the CARES Act are deposited, and from which the Navajo Nation appropriates funds
24 exclusively and only for the uses specified in this Chapter.

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26 **§2604. Expenditures of the Fund**

27 A. Any expenditure of the Fund shall be by an appropriation within the meaning of the
28 Appropriations Act, 12 N.N.C. §§ 800 et seq., and accomplished through the approval
29 of an Expenditure Plan(s) adopted by a two-thirds (2/3) vote of all members of the
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1 Navajo Nation Council, subject to final action of the President of the Navajo Nation
2 pursuant to 2 N.N.C. § 1005(C) (10), (11), and (12).

3 B. Expenditures of the Fund shall only be for eligible uses of the Coronavirus Relief Fund
4 as defined in Title V of the CARES Act, which includes only those costs that:

5 1. are necessary expenditures incurred due to the public health emergency with respect
6 to COVID-19;

7 2. were not accounted for in the Tribal budget most recently approved as of March 27,
8 2020;

9 3. are incurred from March 1, 2020 through December 30, 2020;

10 4. are eligible uses as defined in the Coronavirus Relief Fund Guidance for State,
11 Territorial, Local, and Tribal Governments issued by the U.S. Treasury on April
12 22, 2020, which includes the following requirements:

13 a. expenditures must be incurred “due to” the public health emergency which
14 means that expenditures must be used for actions taken to respond to the public
15 health emergency; these expenditures may include expenditures incurred to
16 allow the Tribal government to respond directly to the emergency, such as by
17 addressing medical or public health needs, as well as expenditures incurred to
18 respond to second-order effects of the emergency, such as by providing
19 economic support to those suffering from employment or business interruptions
20 due to COVID-19-related business closures;

21 b. expenditures must be “necessary”; the Department of the Treasury interprets
22 this term broadly to mean that the expenditure is reasonably necessary for its
23 intended use in the reasonable judgment of the government officials responsible
24 for spending Coronavirus Relief Fund payments; and

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

1 d. expenditures must be for costs incurred during the period that begins on March
2 1, 2020, and ends on December 30, 2020; a cost is “incurred” when the
3 responsible unit of government has expended funds to cover the cost.

4 5. The eligible uses as defined in any and all future rulemaking, rules, and regulations
5 of the Department of the Treasury or the Department of the Interior related to the
6 Coronavirus Relief Fund as appropriated by the U.S. Congress in Title V of the
7 CARES Act.

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9 **§2605. Audit**

10 The Controller shall keep records sufficient to demonstrate that the Coronavirus Relief
11 Funds appropriated by the U.S. Congress to the Navajo Nation have been used in
12 accordance with the CARES Act and §601(d) of the Social Security Act. The Fund shall
13 be subject to an annual audited report by the Navajo Nation’s independent auditor. The
14 Navajo Nation Council and/or the Navajo Nation President may require an audit at any
15 time. The Controller is responsible for providing any and all records required by the
16 Department of the Treasury Inspector General. Pursuant to the CARES Act, Title V, the
17 Department of the Treasury Inspector General has authority for monitoring and oversight
18 of the receipt, disbursement, and use of the Coronavirus Relief Fund; and a Tribal
19 government’s use of the funds for ineligible purposes will become a debt owed to the
20 federal government, the federal government is authorized to recoup the ineligible funds
21 from the Tribal government, and the Tribal government must return unexpended funds to
22 the U.S. Treasury.

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24 **§2606. Amendments**

25 This Act may be amended by a two-thirds (2/3) vote of the full membership of the Navajo
26 Nation Council subject to action of the President of the Navajo Nation under 2 N.N.C. §221
27 (B).

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1 **Section Four. Expenditure Plan Requirements and Administration**

- 2 A. To be eligible to receive an appropriation of Coronavirus Relief Funds as defined in
3 Title V of the CARES Act, Expenditure Plan(s) required by the Navajo Nation CARES
4 Fund Act ("Act") shall, at a minimum, include provisions specifying the following:
- 5 1. The specific purposes for which the requested funds will be used and detailed
6 explanation of how such uses satisfy the criteria for eligible costs specified in the
7 Act;
 - 8 2. Affirmation that the requested funds shall only be used for the purposes specified
9 in the Act;
 - 10 3. The Navajo Nation division, department, program, chapter, or entity to which the
11 appropriations are assigned and allocated;
 - 12 4. The Navajo Nation division, department, program, chapter, or entity that is
13 responsible for managing and implementing or monitoring the Expenditure Plan;
 - 14 5. The job title of the person or persons that will administer the Expenditure Plan and
15 appropriated funds;
 - 16 6. The mechanism for allocating the funding to Navajo Nation and external entities,
17 programs, and projects through: direct funding; a memorandum of agreement
18 ("MOA") executed by the President of the Navajo Nation; a grant agreement
19 through a specific Navajo Nation department or program; or other mechanism;
 - 20 7. The accounting and reporting requirements applicable to the funding;
 - 21 8. The Standing Committee of the Navajo Nation Council with legislative oversight
22 over the activity;
 - 23 9. Affirmation that the administration, management, and implementation of the
24 Expenditure Plan shall be consistent with the Act, this legislation, and other
25 applicable laws and regulations of the Navajo Nation; and
 - 26 10. If the recipient of the funding is a non-Navajo Nation government entity, an
27 affirmation that the entity will indemnify the Nation for any expenditures deemed
28 ineligible by the Department of Treasury Inspector General or other federal entity.
- 29 B. An Expenditure Plan may be approved by the Navajo Nation Council without detailed
30 budget forms, provided the Navajo Nation division, department, program, chapter, or

1 entity to which the appropriations are allocated complies with the expedited budget
2 procedures developed by the Office of Management and Budget and approved by the
3 Budget and Finance Committee; in the event the entity to which appropriation(s) are
4 allocated fails to comply with and complete the expedited budget procedures within
5 fifteen (15) days of the date the Expenditure Plan becomes law, the funds allocated to
6 that entity will revert back to the Navajo Nation CARES Fund.

7
8 **Section Five. Waiving 12 N.N.C. §§ 301 *et seq.* and Adopting CARES Fund Expedited**
9 **Procurement Rules and Procedures**

10 To ensure Navajo Nation expenditures using Coronavirus Relief Funds are expended by
11 December 30, 2020 as required by the U.S. Treasury and to prevent the Navajo Nation
12 from being required to repay the U.S. Treasury for any ineligible uses of the funds, the
13 Navajo Nation hereby waives the applicability of the Navajo Nation Procurement Act, 12
14 N.N.C. §§301 *et seq.*, and its attendant regulations, to the expenditure of CARES Act
15 funding; the expenditure of CARES Act funding shall instead be governed by the Navajo
16 Nation CARES Fund Act, this legislation and the “CARES Fund Expedited Procurement
17 Rules and Procedures” attached as **Exhibit E**.

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19 **Section Six. Prevailing Law**

20 Notwithstanding any provision of Navajo Nation law to the contrary, the provisions of this
21 legislation shall prevail and govern the appropriation and expenditure of funding from the
22 CARES Fund.

23
24 **Section Seven. Effective Date**

25 This Act is effective upon its approval pursuant to 2 N.N.C. § 221(B).

26
27 **Section Eight. Savings Clause**

28 Should any provision of this legislation or the Navajo Nation CARES Fund Act (“Act”) be
29 determined invalid by the Navajo Nation Supreme Court, or a District Court of the Navajo
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1 Nation without appeal to the Navajo Nation Supreme Court, those portions of the Action
2 or Act which are not determined invalid shall remain the law of the Navajo Nation.
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4 **Section Ten. Directives**

- 5 A. The Controller, with the support of the Attorney General, is directed to enter into a
6 contract with a firm to provide consulting services in a capacity akin to an independent
7 inspector general or auditor general to determine whether expenditures of the CARES
8 Act funding are in compliance with the permissible uses of the appropriated funding as
9 set forth in the Coronavirus Relief Fund and CARES Act, the Coronavirus Relief Fund
10 Guidance for State, Territorial, Local, and Tribal Governments issued by the U.S.
11 Treasury, the Navajo Nation CARES Fund Act and the applicable Expenditure Plan;
12 to notify the Navajo Nation division, department, program, chapter, or entity to which
13 the appropriations are allocated if any expenditures are ineligible under the CARES
14 Act, etc.; and to provide written reports to the Naabik'iyáti' Committee and the
15 President of the Navajo Nation of all ineligible expenditures.
- 16 B. The Office of Management and Budget is directed to develop expedited budget
17 procedures, including forms, if necessary, for the expeditious expenditure of CARES
18 Act funding for approval by the Budget and Finance Committee within ten (10) days
19 of the enactment of this legislation.
- 20 C. The Office of the Controller, Department of Justice, Office of Management and Budget
21 and Office of Legislative Counsel are directed to develop an Expenditure Plan template
22 within ten (10) days of the enactment of this legislation.
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