LEGISLATION NO: _0121-20__  SPONSOR: Jamie Henio

TITLE: An Action Relating to an Emergency for the Navajo Nation; Approving a Limited Waiver of Sovereign Immunity for Diné College to enter into a Payroll Protection Program Promissory Note and Agreement with Wells Fargo Bank

\textit{Date posted:} May 15, 2020 at 3:58PM

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DATE: May 14, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO AN EMERGENCY FOR THE NAVAJO NATION; APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY FOR DINE COLLEGE TO ENTER INTO A PAYROLL PROTECTION PROGRAM PROMISSORY NOTE AND AGREEMENT WITH WELLS FARGO BANK

PURPOSE: The purpose of this resolution is to approve a waiver of sovereign immunity for Dine College to enter into a loan agreement and promissory note with Wells Fargo Bank.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.
PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL—Second Year, 2020

INTRODUCED BY

[Signature]
Primary Sponsor

TRACKING NO. 0121-20

AN ACTION
RELATING TO AN EMERGENCY FOR THE NAVAJO NATION; APPROVING A
LIMITED WAIVER OF SOVEREIGN IMMUNITY FOR DINÉ COLLEGE TO ENTER
INTO A PAYROLL PROTECTION PROGRAM PROMISSORY NOTE AND
AGREEMENT WITH WELLS FARGO BANK

BE IT ENACTED:

SECTION ONE. AUTHORITY
A. The Navajo Nation Council is the governing body of the of the Navajo Nation. 2
   N.N.C. § 102(A).
B. The Navajo Nation Code provides, “[m]atters constituting an emergency shall be
   limited to the cessation of law enforcement services, and disaster relief services,
   fire protection services or other direct services required as an entitlement under
   Navajo Nation or Federal law, or which directly threaten the sovereignty of the
   Navajo Nation. Such an emergency matter must arise due to the pressing public
   need for such resolution(s) and must be a matter requiring final action by the
   Council. 2 N.N.C.§ 164(16).
C. This resolution is offered as an emergency since the Diné College is required to enter into
   the agreement with Wells Fargo Bank in order to receive funds under the federal
Coronavirus Aid, Relief, and Economic Security ("CARES") Act Paycheck Protection Program. Without the loan proceeds, Dinè College may be forced to close. The closure of Dinè College directly threatens the sovereignty of the Navajo Nation.

D. The Navajo Nation Code provides, "[c]ontracts shall not waive the sovereign immunity of the Navajo Nation or its entities unless approved by two-thirds (2/3) vote of the full membership of the Navajo Nation Council." 2 NNC § 223(C).

SECTION TWO. FINDINGS

A. The Navajo Nation declared a state of emergency on Wednesday, March 11, 2020, due the global pandemic caused by the novel coronavirus ("COVID-19"). Navajo Nation Commission on Emergency Management Resolution No. CEM 20-03-11.

B. The Navajo Nation remains under a state of emergency due COVID-19’s severe impact on the Navajo Nation.

C. Congress approved the CARES Act to provide assistance for businesses and individuals impacted by COVID-19.

D. The Paycheck Protection Program ("PPP") was enacted under the CARES Act to help small businesses cover their near-term operating expenses during the COVID-19 crisis and provide a strong incentive for employers to retain their employees.

E. Wells Fargo Bank approved a loan to Dinè College under the PPP for $3,380,851.

F. Dinè College provided a PPP Promissory Note and Agreement (the "Note and Agreement") from Wells Fargo Bank, attached as Exhibit A.

G. The Dinè College Board of Regents approved the PPP loan to Dinè College in the amount of $3,380,851. The Dinè College Board of Regents Resolution, DC-MAY-8-2020, is attached as Exhibit B.

H. The Note and Agreement requires that Dinè College consent to: a Confession of Judgment, indemnification as set forth in paragraph 13, arbitration as set forth under the provisions in paragraph 21, and to the laws of South Dakota governing the agreement as set forth in paragraph 18.
I. According to the PPP provisions of the CARES Act, this loan to Dinè College will be forgiven provided that Dinè College satisfies the requirements as set forth in paragraph 7 of Exhibit A.

SECTION THREE. APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY

A. The Navajo Nation Council hereby approves a limited waiver of sovereign immunity for Dinè College to enter into the Note and Agreement attached as Exhibit A.

B. The Navajo Nation Council authorizes the President of Dinè College to sign the Borrower Acknowledgment and Acceptance and the Disclosure for Confession of Judgment on page 10 of the Note and Agreement attached as Exhibit A.