

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0082-20\_\_\_\_\_

SPONSOR: Amber Crotty

**TITLE: An Action Relating to an Emergency; Temporarily suspending Title 26 sections to allow Chapter meetings to be held telephonically or through video conferencing; Temporarily suspending Title 26 sections and clarifying Title 26 sections to authorize Chapters to function to meet the needs of their communities during the COVID-19 health crisis under the three person quorum and the Executive Branch closure of Navajo Nation Government offices and related entities, Executive Order No. 002-20**

*Date posted: April 10, 2020 at 11:30am*

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## LEGISLATIVE SUMMARY SHEET

Tracking No. 0082-20

**DATE:** April 9, 2020

**TITLE OF RESOLUTION:** PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTION RELATING TO AN EMERGENCY; TEMPORARILY SUSPENDING TITLE 26 SECTIONS TO ALLOW CHAPTER MEETINGS TO BE HELD TELEPHONICALLY OR THROUGH VIDEO CONFERENCING; TEMPORARILY SUSPENDING TITLE 26 SECTIONS AND CLARIFYING TITLE 26 SECTIONS TO AUTHORIZE CHAPTERS TO FUNCTION TO MEET THE NEEDS OF THEIR COMMUNITIES DURING THE COVID-19 HEALTH CRISIS UNDER THE THREE PERSON QUORUM AND THE EXECUTIVE BRANCH CLOSURE OF NAVAJO NATION GOVERNMENT OFFICES AND RELATED ENTITIES EXECUTIVE ORDER NO. 002-20

**PURPOSE:** The purpose of this legislation is to approve temporary suspension of various sections of Title 26 to allow Chapter meetings and other Chapter functions to operate during the COVID-19 health crisis. One of the temporary suspensions is to allow Chapter meetings to be held telephonically. This will help prevent the further spread of the COVID-19 virus. Other temporary suspensions of Title 26 will facilitate the holding of Chapter meetings with a three person quorum. These temporary suspensions are to expire in 60 days.

**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  
24<sup>th</sup> NAVAJO NATION COUNCIL – Second Year, 2020

INTRODUCED BY



(Prime Sponsor)

TRACKING NO. 0082-20

AN ACTION

RELATING TO AN EMERGENCY; TEMPORARILY SUSPENDING TITLE 26 SECTIONS TO ALLOW CHAPTER MEETINGS TO BE HELD TELEPHONICALLY OR THROUGH VIDEO CONFERENCING; TEMPORARILY SUSPENDING TITLE 26 SECTIONS AND CLARIFYING TITLE 26 SECTIONS TO AUTHORIZE CHAPTERS TO FUNCTION TO MEET THE NEEDS OF THEIR COMMUNITIES DURING THE COVID-19 HEALTH CRISIS UNDER THE THREE PERSON QUORUM AND THE EXECUTIVE BRANCH CLOSURE OF NAVAJO NATION GOVERNMENT OFFICES AND RELATED ENTITIES, EXECUTIVE ORDER NO. 002-20

BE IT ENACTED:

**Section One. Authority**

- A. The Navajo Nation Council is the governing of body of the Navajo Nation. 2 N.N.C. § 102(A).
- B. All authorities exercised by a Chapter pursuant to 26 N.N.C. § 101 *et al*, may be preempted by Navajo Nation Council resolutions. 26 N.N.C. § 103 (C).
- C. Pursuant to 2 N.N.C. §164 (A)(16) “[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

1 Navajo Nation or Federal law, or which directly threaten the sovereignty of the  
2 Navajo Nation. Such an emergency matter must arise due to the pressing public  
3 need for such resolution(s) and must be a matter requiring final action by the  
4 Council.”

5 **Section Two. Findings**

- 6 A. The Navajo Nation President issued Executive Order 001-20 declaring a state of  
7 emergency due to COVID-19 on March 13, 2020.
- 8 B. On March 11, 2020, the Emergency Management Commission declared a state of  
9 emergency due to an COVID-19. CEM-20-03-11.
- 10 C. The Navajo Nation President issued Executive Order 002-20 on March 31, 2020  
11 extending the Declaration of a State of Emergency due to the COVID-19 virus on  
12 the Navajo Nation and extending the closure of Navajo Nation government  
13 offices and related entities.
- 14 D. The Navajo Nation Council passed CMA-09-20 which authorized the Chapters to  
15 reduce quorum requirements to three individuals. Authorizing a reduced quorum  
16 is a safety measure to prevent the spread of COVID-19; however, it is necessary  
17 to allow Chapters to meet telephonically or through video conferencing to further  
18 reduce the spread of the COVID-19 virus.
- 19 E. Chapters also need clarification on how to address the statutory meeting  
20 requirements, how to handle financial requirements and many other issues that  
21 are impacted by the reduced quorum requirement and the closure of Navajo  
22 Nation government offices and related entities Order.
- 23 F. The Navajo Nation Council acknowledges that all Chapter actions are subject to  
24 audit and any misuse of funds is subject to appropriate actions.
- 25 G. The Navajo Nation Council finds that Chapters must perform particular Chapter  
26 functions during the declared State of Emergency to provide disaster relief  
27 services to their communities. In addition, Chapter officials must function  
28 through Chapter meetings to act upon matters affecting the Chapter residents  
29 during the COVID-19 crisis. This resolution is necessary to address a pressing  
30 public need and is a matter requiring final action by the Navajo Nation Council.

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2 **Section Three. Temporarily Suspending Title 26 Sections by Authorizing the**  
3 **Navajo Nation Chapter Meetings to be held telephonically or by video conferencing**  
4 **and other Chapter Meeting issues**

- 5 A. The Navajo Nation Council temporarily suspends Title 26 1002 (C) (1) and other  
6 sections expressing or implying a need to hold an in-person Chapter meeting  
7 thereby authorizing Chapter meetings to be held telephonically or by video  
8 conferencing.
- 9 B. The Navajo Nation Council recognizes that Chapter meetings may have been  
10 held telephonically by a three member quorum prior to the effective date of this  
11 resolution. In such instances, the Navajo Nation Council authorizes that the  
12 business items approved at these telephonic, three member quorum Chapter  
13 meetings to be ratified by a subsequent telephonic Chapter meeting operating  
14 after the effective date of this resolution.
- 15 C. The Navajo Nation Council hereby acknowledges that the Chapters are to abide  
16 by the 48 hour meeting notice pursuant to 26 N.N.C. §1002 (B). The Chapters  
17 are to make every effort to notify their community members of the telephonic or  
18 video conferencing call in numbers to allow Chapter membership to call in to the  
19 Chapter meetings. Such notice may be posted on the Chapter website and/or in  
20 other locations.
- 21 D. The Navajo Nation Council hereby authorizes the Chapter meetings to include  
22 budget matters, emergency matters, and additional topics. Additional topics shall  
23 be approved on a case-by-case basis by the Division Director of the Division of  
24 Community Development in consultation with the Navajo Department of Justice.
- 25 E. The Navajo Nation Council temporarily authorizes the Chapter President to  
26 appoint and confirm any Chapter member as pro tem vice-president and pro tem  
27 secretary/treasurer. This authorization temporarily suspends 26 N.N.C. §  
28 1001(B)(1)(d), which states that the Chapter President appoints and the  
29 membership approves/confirms. The pro tem vice-president and pro tem  
30

1 secretary-treasurer will be compensated by stipend subject to the Chapter  
2 approved budget.

3 F. The Navajo Nation Council temporarily authorizes the vice-president and  
4 secretary/treasurer to make the main motion and/or the second to the main  
5 motion at a Chapter meeting. This authorization temporarily suspends 26 N.N.C.  
6 § 1003(D)(2), which prohibits Chapter officials from making main motions or  
7 seconding motions on substantive and administrative matters during a regular  
8 Chapter meeting.

9 G. The Navajo Nation Council hereby acknowledges that the secretary/treasurer is  
10 to record the telephonic Chapter meetings pursuant to 26 N.N.C. §  
11 1001(B)(3)(d). However, if electronic recording of the telephonic Chapter  
12 meeting is not possible, then the secretary/treasurer is to write detailed meeting  
13 minutes, as is also required by 26 N.N.C. § 1001(B)(3)(d).

14 H. The Navajo Nation Council hereby acknowledges that Chapter officials are to be  
15 compensated for the number of meetings attended by teleconference or video  
16 conferencing pursuant to the approved budget. 26 N.N.C. § 1002(C)(1).

17 I. The Navajo Nation Council hereby clarifies that Resolution No. CMA-09-20  
18 which authorized a three member quorum was meant to reduce the statutory  
19 quorum requirement of 25 registered members and also for Chapters that have  
20 reduced their quorum pursuant to the Resources and Development Committee  
21 Resolution No. RDCD-127-12. There are governance certified Chapters that  
22 operate under an Alternative Form of Government (AFOG) as authorized under  
23 the former Transportation and Community Development Committee Resolution  
24 No. TCDCAP-36-01. Notwithstanding the three quorum law, the AFOGs may  
25 define their quorum requirements in accordance with their local ordinance.

26 J. The Navajo Nation Council hereby clarifies that Resolution No. CMA-09-20  
27 which authorized the three member quorum was instituted as a temporary  
28 measure to address the prohibition against gatherings of more than ten people  
29 (Navajo Department of Health Public Health Emergency Order dated March 18,  
30 2020). There is now a Navajo Department of Health Public Health Emergency

1 Order dated March 29, 2020 lowering the gathering limit to no more than five  
2 people.

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4 **Section Four. Temporarily Enable the Division of Community Development and**  
5 **Navajo Department of Justice to Guide All 110 Chapters by using the 2010 Model**  
6 **Five Management System (FMS) and to Develop Temporary Modifications to the**  
7 **Model FMS to Help Chapters Address this Emergency**

- 8 A. The Navajo Nation Council acknowledges that 26 N.N.C. § 101(A) requires “all  
9 [110] chapters...to adopt and operate under a Five Management System [FMS].”  
10 The FMS must be “consistent with applicable Navajo Nation law.”  
11 B. In 2010, the Navajo Nation Attorney General issued AG Opinion 01-10  
12 announcing the creation of a “Model Five Management System” to be used by  
13 Chapters that have not adopted their own FMS.  
14 C. The Navajo Nation Council hereby authorizes the Division of Community  
15 Development and the Department of Justice to guide all 110 Chapters using the  
16 2010 Model FMS and to suspend or modify any portion of the Model Five  
17 Management System so long as the suspension or modification is reasonably  
18 necessary for the Chapter to address this emergency.

19  
20 **Section Five. Temporarily Suspend 26 N.N.C. § 103 to authorize all non-**  
21 **governance certified Chapters to exercise certain authorities under Section 103**

- 22 A. The Navajo Nation Council recognizes that under 26 N.N.C. § 102(B) only  
23 governance certified Chapters may exercise the authorities listed in 26 N.N.C. §  
24 103.  
25 B. The Navajo Nation Council hereby temporarily suspends 26 N.N.C. § 102(B)  
26 and authorizes all Chapter Presidents to:  
27 1. Sign temporarily leases of Chapter property in order to accommodate  
28 health personnel;  
29 2. Sign contracts for goods or services at or below \$50,000.00. For goods,  
30 use the recommended purchase order templates. For services, all Chapters

1 should use the template contracts that can be found on DOJ's website:  
2 [www.nndoj.org](http://www.nndoj.org).

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4 **Section Six. Temporarily suspend 26 N.N.C. §§ 103(E) and 1004 to Allow Chapter**  
5 **Officials to Perform Limited Administrative Duties While the Chapter Staff are on**  
6 **Paid Administrative Leave**

- 7 A. The Navajo Nation Council acknowledges that 26 N.N.C. § 103(E) states that  
8 "[e]lected officials are prohibited from direct involvement in the management  
9 and operations of the Chapter administration."  
10 B. The Navajo Nation Council acknowledges that 26 N.N.C. § 1004 briefly outlines  
11 the executive functions of the Chapter employees such as implementing the Five  
12 Management System. Under subsection B, the Chapter Manager (and  
13 Community Service Coordinator) "shall co-sign all chapter checks."  
14 C. The Navajo Nation Council acknowledges that Chapter employees of non-  
15 governance certified Chapters are Navajo Nation Executive Branch employees  
16 under the Division of Community Development. Under Executive Orders 001-  
17 20 and 002-20, such employees are non-essential and are under mandatory stay-  
18 at-home orders.  
19 D. The Navajo Nation Council acknowledges that certain executive functions  
20 exercised by Chapter Officials are necessary to address this Declared State of  
21 Emergency.  
22 E. The Navajo Nation Council hereby temporarily suspends 26 N.N.C. §§ 103(E)  
23 and 1004 and Chapter Officials of non-governance certified Chapters to:  
24 1. Allow two Chapter officials to co-sign all Chapter checks;  
25 2. Allow Chapter officials to procure for emergency goods and services in strict  
26 compliance of the priorities provided in section VI(E)(2) of the Model FMS;  
27 3. Implement a Temporary Emergency Procurement Procedure which shall  
28 include: 1) Chapter resolution to use the emergency funds for the proposed  
29 contract; 2) Review of the priority businesses listed on the source list to see  
30 if products/services are available, if not, then use any available resources; 3)

1 the first vendor available with the products/services may be chosen; 4) The  
2 Secretary/Treasurer will verify fund availability and sign off on a  
3 memorandum describing the procurement measures taken for each  
4 procurement; 5) Chapter President signs the Purchase Order or Contract  
5 using the recommended Purchase Order or Contract form.

6 F. Notwithstanding the above, if Chapter Staff are willing to perform limited  
7 services thereby relieving Chapter Officials from having to perform certain  
8 executive functions, the Chapter Staff may perform such duties.  
9

### 10 **Section Seven. Budget Policies for the Chapter Emergency Fund**

11 A. The Navajo Nation Council acknowledges that the Navajo Nation Council  
12 Resolution CMA-11-20, signed by President Nez, replenished the Chapter  
13 emergency account.

14 B. The Navajo Nation Council acknowledges that on March 11, 2020, the Navajo  
15 Nation Commission on Emergency Management, with concurrence by the  
16 Navajo Nation President and Vice-President, declared a Public Health State of  
17 Emergency.

18 C. The Navajo Nation Council acknowledges that as such, all Chapters are now able  
19 to access and use the Chapter emergency account.

20 D. The Navajo Nation Council supports the mandate to require all 110 Chapters to  
21 coordinate all emergency relief efforts through the Navajo Nation Health  
22 Command Operations Center (HCOC) in order to avoid duplication of services.  
23

### 24 **Section Eight. Public Employment Program (PEP)**

25 A. The Navajo Nation Council acknowledges that all Chapters were authorized to  
26 develop their own policies for PEP under the former Transportation and  
27 Community Development Committee Resolution TCDCD-111-00. For  
28 Chapters that have not developed their own policies, the former TCDC resolution  
29 provides for a template.  
30

- 1 B. The Navajo Nation Council acknowledges that Chapters shall comply with these  
2 policies with temporary allowance for use of the PEP funds to compensate  
3 volunteers pursuant to approved projects under the Navajo Nation Chapter  
4 Emergency Plan.
- 5 C. The Navajo Nation Council temporarily allows, subject to a properly approved  
6 budget, Chapters to use PEP funds for Special Duty Pay in accordance with the  
7 Navajo Nation's policy on Special Duty Pay.
- 8 D. The Navajo Nation Council acknowledges that Chapters cannot exceed their PEP  
9 budgets and volunteers are not entitled to receive compensation beyond the  
10 Chapter budget.

11  
12 **Section Nine. Relief efforts coming from donations**

- 13 A. The Navajo Nation Council acknowledges that the recently approved Navajo  
14 Nation Council Resolution No. CMA-08-20 streamlined the process for the  
15 Navajo Nation to accept gifts.
- 16 B. The Navajo Nation Council acknowledges that Chapters are entities of delegated  
17 authorities. Chapters have not been delegated to accept gifts and, therefore, must  
18 follow CMA-08-20.
- 19 C. The Navajo Department of Justice has recently been designated to lead the  
20 "Donations Branch" within the Navajo Nation Health Command Operations  
21 Center.
- 22 D. The Navajo Nation Council directs the Navajo Department of Justice to promptly  
23 develop the processes for Chapters to obtain Chapter-specific donations by third  
24 parties.

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26 **Section Ten. Compensation of Chapter Officials attending Agency Council**  
27 **Meetings**

- 28 A. The Navajo Nation Council hereby authorizes Chapter Officials to attend  
29 Agency Council meetings via teleconference. Attendance via teleconference  
30 shall be compensated provided that the Agency Council can verify attendance.

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**Section Eleven. Effective Date**

- A. The provisions of this Action shall become effective pursuant to 2 N.N.C. § 221 (B).
- B. The provisions of this Action shall expire sixty (60) days after its effective date, unless otherwise determined by resolution of the Navajo Nation Council.

**Section Twelve. Savings Clause**

Should any provision of the amendments enacted herein 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, the remainder of the amendments shall remain the law of the Navajo Nation.