

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0116-20__

SPONSOR: Edmund Yazzie

TITLE: An Action Relating to Budget and Finance and Naabik'iyáti' Committees, and the Navajo Nation Council; Establishing the Navajo Nation CARES Fund to be comprised of the share of the Coronavirus Relief Fund received from the United States pursuant to the Federal CARES Act; Authorizing the President of the Navajo Nation to establish an Expenditure Plan(s) in accordance with the Federal CARES Act and other laws; Authorizing the formation of the Dikos Ntsaaígíí-19 Relief Fund Work Group; Providing for Audit of the Fund and reporting to the Federal Government

Date posted: May 14, 2020 at 6:45PM

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0116-20

DATE: May 13, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO BUDGET AND FINANCE AND NAABÍK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; ESTABLISHING THE NAVAJO NATION CARES FUND TO BE COMPRISED OF THE SHARE OF THE CORONAVIRUS RELIEF FUND RECEIVED FROM THE UNITED STATES PURSUANT TO THE FEDERAL CARES ACT; AUTHORIZING THE PRESIDENT OF THE NAVAJO NATION TO ESTABLISH AN EXPENDITURE PLAN(S) IN ACCORDANCE WITH THE FEDERAL CARES ACT AND OTHER LAWS; AUTHORIZING THE FORMATION OF THE DIKOS NTSAAÍGÍÍ-19 RELIEF FUND WORK GROUP; PROVIDING FOR AUDIT OF THE FUND AND REPORTING TO THE FEDERAL GOVERNMENT

PURPOSE: This resolution, if approved, will adopt the Navajo Nation CARES Fund Act that authorizes the President to develop expenditure plans for the Nation's share of the federal CARES Act, Title V, funds.

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: None
Website Posting Time/Date: _____
Posting End Date: 05-19-20
Eligible for Action: 05-20-20

Budget & Finance Committee
Thence
Naabik'iyati' Committee
Thence
Navajo Nation Council

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION
2 24th NAVAJO NATION COUNCIL – Second Year, 2020

3 INTRODUCED BY

4
5
6 Primary Sponsor

7 TRACKING NO. 0116-20

8
9 AN ACTION

10 RELATING TO BUDGET AND FINANCE AND NAABIK'YATI'
11 COMMITTEES, AND THE NAVAJO NATION COUNCIL; ESTABLISHING
12 THE NAVAJO NATION CARES FUND TO BE COMPRISED OF THE SHARE
13 OF THE CORONAVIRUS RELIEF FUND RECEIVED FROM THE UNITED
14 STATES PURSUANT TO THE FEDERAL CARES ACT; AUTHORIZING THE
15 PRESIDENT OF THE NAVAJO NATION TO ESTABLISH AN EXPENDITURE
16 PLAN(S) IN ACCORDANCE WITH THE FEDERAL CARES ACT AND OTHER
17 LAWS; AUTHORIZING THE FORMATION OF THE DIKOS NTSAAIGII-19
18 RELIEF FUND WORK GROUP; PROVIDING FOR AUDIT OF THE FUND AND
19 REPORTING TO THE FEDERAL GOVERNMENT

20
21 BE IT ENACTED:

22
23 Section One. Authority

- 24 A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §
25 102(A).
26 B. The Naabik'iyati' Committee is a standing committee of the Navajo Nation Council with
27 the responsibility to hear proposed resolution(s) that require final action by the Navajo
28 Nation Council. 2 N.N.C. § 164 (A)(9).
29 C. The Budget and Finance Committee is a standing committee of the Navajo Nation
30 Council with the enumerated powers to review and recommend to the Navajo Nation

1 Council the budgeting, appropriation, investment and management of all funds and to
2 promulgate rules and regulations relative to contracting and financial matters. 2 N.N.C.
3 §§ 300 (B)(1) and (2).
4

5 **Section Two. Findings**

6 A. The World Health Organization (WHO) declared a Public Health Emergency of
7 International Concern related to the outbreak of coronavirus (COVID-19), a highly
8 contagious and, at times, fatal respiratory virus, on January 30, 2020; the U.S.
9 Department of Health and Human Services declared a Public Health Emergency
10 related to the COVID-19 outbreak on January 31, 2020; and the WHO declared a
11 global pandemic due to COVID-19 on March 11, 2020. The pandemic has reached
12 the Navajo Nation.

13 B. On March 11, 2020, the Navajo Nation Commission on Emergency Management,
14 with the concurrence of the Navajo Nation President and Vice President, declared a
15 Public Health State of Emergency on the Navajo Nation due to the presence of
16 COVID-19 in areas surrounding the Navajo Nation. Resolution No. CEM 20-03-11.
17 The President and Commission have issued other Public Health Emergency Orders:
18 including: Order No. 2020-001 dated March 18, 2020 (declaring the outbreak of
19 COVID-19 and limiting mass gatherings); Order No. 2020-002 dated March 19, 2020
20 (quarantining the Chilchinbeto Community); Order No. 2020-003 dated March 20,
21 2020 (ordering individuals living on the Navajo Nation to stay home and shelter in
22 place except for essential activities, prohibiting visitors to the Navajo Nation, and
23 closing all businesses on the Navajo Nation except essential businesses); Order No.
24 2020-004 dated March 29, 2020 (implementing a daily curfew from 8:00 p.m. to 5:00
25 a.m. for all Navajo Nation residents, extending the shelter in place order, and further
26 limiting public gatherings); Order No. 2020-005 dated April 5, 2020 (implementing a
27 57-hour weekend curfew on April 10-13); Order No. 2020-006 dated April 16, 2020
28 (extending the weekend curfew for April 17-20 and April 24-27, and closing Navajo
29 Nation essential businesses during curfew hours); Order No. 2020-007 (requiring face
30 masks in public); and Order No. 2020-008 dated April 29, 2020 (extending the

1 weekend curfew to May 11). The Navajo Nation Office of the President and Vice
2 President issued Executive Order 002-20 on March 31, 2020 (closing all Navajo
3 Nation offices except essential personnel through April 21); and Executive Order
4 003-20 on April 21, 2020 (extending the closure order to May 17, 2020).

5 C. As of May 13, 2020, the Navajo Nation Health Command Operations Center
6 confirmed a total of 3,392 COVID-19 cases on the Navajo Nation and 119 related
7 deaths, these numbers continue to increase.

8 D. The U.S. Congress on March 27, 2020, enacted the Coronavirus Aid, Relief, and
9 Economic Security Act ("CARES Act"), Pub. L. No. 116-136, 134 Stat. 281 (2020).
10 The federal CARES Act, at Title V, § 5001, entitled "Coronavirus Relief Funds," set
11 aside \$8 billion in emergency aid for Tribal governments to address the COVID-19
12 pandemic. The federal CARES Act is attached as **Exhibit A**.

13 E. On April 22, 2020, the U.S. Treasury issued "Coronavirus Relief Fund Guidance for
14 State, Territorial, Local, and Tribal Governments" (hereinafter "Treasury's
15 Guidance") related to the permissible uses of the Coronavirus Relief Fund. See,
16 **Exhibit B**. Examples of eligible expenditures and ineligible expenditures are included
17 in Treasury's Guidance. After litigation in *Confederated Tribes of the Chehalis*
18 *Reservation v. Mnuchin*, Case No. 1:20-cv-01002-APM, in which the Navajo Nation
19 participated as a party, on May 5, 2020, the U.S. Departments of Treasury and
20 Interior issued a joint press release announcing that the U.S. Treasury would
21 distribute 60% of the \$8 billion, or \$4.8 billion, to Tribal governments. Of this, the
22 Navajo Nation's share from the federal Coronavirus Relief Fund initially distributed
23 from the U.S. Treasury on or about May 5, 2020 is \$600,559,530.10. The funds have
24 been deposited into Navajo Nation accounts.

25 F. The federal CARES Act expressly provides that Coronavirus Relief Fund shall be
26 used to cover costs that are necessary expenditures incurred due to the public health
27 emergency with respect to COVID-19 and related purposes. The Navajo Nation may
28 need to expand the scope of the relief fund in providing services to residents of the
29 Navajo Nation. For example, water and telecommunication developments are not
30 specifically mentioned in the federal CARES Act or Treasury's Guidance, but it is

1 needed to provide Navajo families with water and communication as part of the effort
2 to combat the COVID-19 pandemic. Further, Navajo Nation needs to prepare for a
3 possible second wave of COVID-19. Navajo families are running into lockdowns of
4 towns bordering the Navajo Nation and cannot shop as they wish. The Navajo Nation
5 may need to use federal CARES Act fund to provide relief to Navajo families to shop
6 for necessary commodities when border towns are locked down; Navajo Nation may
7 have to provide needed relief to Navajo families to obtain fuel, food, sanitizing
8 products, personal protective equipment, and other necessary supplies. The President
9 should be allowed to negotiate with the federal government to provide for needed
10 relief to Navajo families.

11 G. Like the States, the pandemic was not expected by the Navajo Nation and no funds
12 were appropriated in anticipation of the pandemic response. Thus, federal CARES
13 Act funds are not general fund revenues. They are limited emergency federal funds
14 provided by the federal government to the Navajo Nation. Existing laws of the
15 Navajo Nation cannot accommodate the rapid expenditure of the federal CARES Act
16 funds and special expending and auditing procedures need to be devised.

17 H. Because the funds are not projected revenue, they should not be subject to any
18 provisions of the Navajo Nation Code which requires a portion of funds to be set-
19 aside and deposited into any other fund of the Navajo Nation.

20 I. The Navajo Nation Council further finds that because the Coronavirus Relief Fund
21 can only be used for expenditures through December 30, 2020, procurements
22 expending these funds must be expedited. The President should provide proposed
23 regulations within ten days to the Budget and Finance Committee for approval. The
24 proposed regulations shall provide for expedited expenditure of the CARES Act
25 funds and accounting of the funds.

26 J. Since the restructuring of Navajo Nation government in 1989, the Navajo Nation is
27 facing a pandemic for the first time requiring social distancing, hygiene practices,
28 healthcare treatment at a distance, distant educational learning, provision of food,
29 water, fuel, and other supplies to quarantined or curfewed Navajo families and other
30 issues of first impression. Navajo Nation has to decrease the number of infectious

1 cases, take measures for the safeguarding of Navajo population, construct
2 infrastructure to treat patients, provide for water to homes, institute telemedicine and
3 telehealth, establish distance learning, development of businesses on Navajoland,
4 reconfigure work stations and offices for employees, and to supplement governmental
5 efforts like providing or selling food, water, personal protective equipment, and other
6 necessary supplies.

7 K. The Navajo Nation Council finds it in the best interests of the Navajo Nation to enact
8 the "Navajo Nation CARES Fund Act".
9

10 **Section Three. Establishment and Expenditure of the Navajo Nation CARES Fund**

- 11 A. There is established the "Navajo Nation CARES Fund" (hereinafter "Fund").
12 B. The Navajo Nation hereby designates that the monies that the Navajo Nation has
13 received, and will later receive, from the United States pursuant to the federal
14 CARES Act, shall be deposited into the Navajo Nation CARES Fund.
15 C. Any monies deposited into the Fund shall be used in accordance with Title V of the
16 CARES Act, Treasury's Guidance and any further guidance, rulemaking and
17 regulations, whether federal or Navajo Nation, and agreements between the Navajo
18 Nation and the federal government on the use of the Fund.
19 D. The Fund shall be a continuing account and shall not lapse on an annual basis
20 pursuant to 12 N.N.C. § 820(N).
21 E. Purpose. The purpose of the Fund is to serve as a depository into which the
22 Coronavirus Relief Funds appropriated by the United States for the benefit of the
23 Navajo Nation under Title V of the CARES Act are deposited, and from which the
24 Navajo Nation shall expend funds as stated herein.
25 F. Expenditures of the Fund. Pursuant to Section Five (A) and (C) below, the President
26 shall develop and prepare all expenditure plans. The President shall incorporate the
27 needs of the Executive Branch in an expenditure plan for the Executive Branch. The
28 President shall incorporate the needs of the Legislative Branch, after consulting with
29 the Speaker of the Navajo Nation Council, in an expenditure plan for the Legislative
30 Branch. The President shall incorporate the needs of the Judicial Branch, after

1 consulting with the Chief Justice, in an expenditure plan for the Judicial Branch.
2 Such expenditure plans shall be in accordance with Title V of the federal CARES
3 Act, U.S. Treasury guidance and any other guidelines or regulations as stated herein
4 in paragraph C above.

5 G. Expenditure plans shall not be considered as appropriations and shall not be subject to
6 the Navajo Nation Appropriations Act, 12 N.N.C. §§ 800 *et seq.* or its underlying
7 policies and regulations, including the Budget Instructions Manual.

8 H. Audit. The Controller shall keep records sufficient to demonstrate that the
9 Coronavirus Relief Funds appropriated by the U.S. Congress to the Navajo Nation
10 have been used in accordance with the federal CARES Act and § 601(d) of the Social
11 Security Act. The Fund shall be subject to annual audit by the Navajo Nation's
12 independent auditor. The Navajo Nation Council and/or the Navajo Nation President
13 may require an interim audit at any time. The Controller is responsible for providing
14 any and all records required by the U.S. Department of Treasury.

15
16 **Section Four. Authorizing Immediate Expenditures**

17 A. The Navajo Nation Council hereby authorizes the immediate expenditure of
18 \$50,559,530.10 from the Fund by the Health Incident Command Center, within the
19 Department of Health, for the following purposes:

- 20 1. Personal Protective Equipment (PPE) and related items in the amount of
21 \$8,000,000 for Navajo Nation government employees, volunteers, enterprises;
- 22 2. Food, Water and Basic Necessities care packages and related items in the
23 amount of \$10,000,000;
- 24 3. Payroll expenses in the amount of \$5,000,000;
- 25 4. Disinfection of public areas, Government Buildings, and other Navajo Nation
26 facilities in the amount of \$10,000,000;
- 27 5. Reconfiguring Navajo Nation offices for the safe return of Government
28 Employees in the amount of \$10,000,000;

1 6. Computer hardware and software for Navajo Nation government offices to
2 improve telework capabilities for Government Employees in the amount of
3 \$2,000,000

4 7. Assistance to P.L. 93-638 healthcare facilities on the Navajo Nation in the
5 amount of \$3,000,000, provided that if this amount is not expended or
6 necessary then it shall be incorporated into the other categories in this section
7 at the option of the President; and

8 8. Expenses to facilitate the procurement and/or improvement of the Navajo
9 Nation's Financial System to process Navajo Nation CARES Fund
10 expenditures in the amount of \$2,559,530.10.

11 B. The Office of the Controller shall assist in the budgeting and expenditure of these
12 funds and shall be responsible for ensuring that any expenditures meet the
13 requirements of the Coronavirus Relief Fund, Treasury Guidance and the Navajo
14 Nation CARES Fund Act.

15 C. These immediate expenditures shall not be part of an initial expenditure plan and may
16 be supplemented in future expenditure plans at the recommendation of the Work
17 Group.

18 D. Failure to expend these funds by August 31, 2020, shall result in such funds being
19 redeposited into the Navajo Nation CARES Fund.

20
21 **Section Five. Authorizing the President to Introduce Legislation into the Legislative**
22 **Process**

23 For the purposes set forth in this legislation, the President is authorized under 2 N.N.C. §
24 164 (A)(1) to introduce a proposed legislation, specifically including expenditure plan
25 legislation(s), to the Standing Committees and the Navajo Nation Council.

26
27 **Section Six. Authorizing the Navajo Nation President to Form the Dikos Ntsaaígíí-19**
28 **Relief Fund Work Group to Assist in Creating Expenditure Plan(s)**

29 A. The President is hereby authorized to form the Dikos Ntsaaígíí-19 Relief Fund Work
30 Group (Work Group) and shall be comprised of four members from the Executive

1 Branch, four members from the Legislative Branch, and four members from the
2 Judicial Branch; and may include representatives from Navajo chapters and persons
3 who have certain expertise. The Work Group shall be tasked with creating an
4 expenditure plan(s).

- 5 B. The President may appoint Federal Advisory Representatives as consulting members
6 to the Work Group including, but not limited to, representatives from the following
7 Federal Agencies: Bureau of Indian Affairs – Navajo Region, Indian Health Service,
8 Bureau of Indian Education, Army Corps of Engineers, Homeland Security,
9 Department of Energy, Federal Communications Commission, Environmental
10 Protection Agency, and the Federal Emergency Management Agency.
- 11 C. The Work Group is to present an expenditure plan(s) for expending the Fund to the
12 President within 15 days after the enactment of this legislation.
- 13 D. The President shall then present a final expenditure plan(s) to expend \$550,000,000,
14 as well as future deposits in the Fund, to the Budget and Finance Committee,
15 Naabiki'yati' Committee, and the Navajo Nation Council for approval.
- 16 E. The President may also submit other proposed legislation to the respective Standing
17 Committees and Navajo Nation Council necessary to expedite the implementation of
18 the expenditure plan.
- 19 F. The Office of the Controller shall produce a report within 30 days from the enactment
20 of this legislation of total COVID-19 expenditures the Navajo Nation has spent from
21 March 1, 2020 to date. This amount will be deducted from the remaining balance the
22 Work Group must produce an expenditure plan for. The amount presented must
23 qualify as an expenditure under Coronavirus Relief Fund and the U.S. Treasury
24 Guidelines.
- 25 G. The Work Group term shall expire six (6) months after the enactment of the last
26 public health emergency order and the Work Group shall prepare and present a final
27 report to the Navajo Nation Council and the Navajo Nation President and Vice
28 President.
- 29
30

1 **Section Seven. Authorizing Expenditures for Waterline, Electricity, Telecommunication**
2 **and Other Projects to Combat Covid-19.**

3 As allowed by the Coronavirus Relief Fund and the U.S. Treasury Guidelines and/or
4 Navajo Nation agreements with the federal government, the President may incorporate
5 waterline, electricity, telecommunication projects and other infrastructure projects into
6 the expenditure plan(s) using the \$550,000,000 and implement and construct such
7 eligible projects under the authority of the Navajo Nation CARES Fund Act.
8

9 **Section Eight. Prevailing Law; Allowing for Expedited Procurement Rules and Procedures.**

10 A. To ensure that Navajo Nation expenditures using Coronavirus Relief Funds are
11 expended by December 31, 2020 as required by the U.S. Treasury and
12 notwithstanding any provision of Navajo Nation law to the contrary, the provisions of
13 this legislation shall take priority and govern the expenditure of funding from the
14 Coronavirus Relief Fund. As determined by the Attorney General of the Navajo
15 Nation, any contradicting financial, procurement, preference, construction, or other
16 general laws of the Navajo Nation, as well as any attendant regulations, shall yield to
17 the Navajo Nation CARES Fund Act so that the funds may be expended in a timely
18 manner and purchases and construction occur in an expeditious manner.

19 B. The President may introduce legislation regarding any laws that need to be waived to
20 accomplish the purposes of the Navajo Nation Cares Fund Act and notify the Navajo
21 Nation Council of the measures that have been taken to mitigate the law being
22 waived.
23

24 **Section Nine. Effective Date**

25 This Act is effective upon its approval pursuant to 2 N.N.C. § 221(B).
26

27 **Section Ten. Savings Clause**

28 Should any provision of the Navajo Nation CARES Fund Act ("Act") or the expenditure
29 plan(s) thereunder be determined invalid by the Navajo Nation Supreme Court, or a
30 District Court of the Navajo Nation without appeal to the Navajo Nation Supreme Court,

1 those portions of the Act or expenditure plan which are not determined invalid shall
2 remain the law of the Navajo Nation.

3
4 **Section Eleven. 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 similar to an
7 independent inspector general or auditor general to determine whether expenditures
8 of the CARES Act funding are in compliance with the permissible uses of the
9 appropriated funding as set forth in the federal CARES Act, Treasury's Guidance, the
10 Navajo Nation CARES Fund Act and the applicable Expenditure Plan; to notify the
11 Navajo Nation division, department, program, chapter, or entity to which the
12 appropriations are allocated if any expenditures are ineligible under the CARES Act
13 and to provide written reports to the Naabik'iyáti' Committee and the President of the
14 Navajo Nation of all ineligible expenditures.
- 15 B. Upon submission of an expenditure plan by the Office of the President and Vice
16 President and approval by the Budget and Finance Committee, the Office of
17 Management and Budget is directed to develop expedited budget procedures,
18 including forms, if necessary, for the expeditious expenditure of Navajo Nation
19 CARES Fund Act funding. Thereafter, the Office of the Controller, Department of
20 Justice, Office of Management and Budget and Office of Legislative Counsel are
21 directed to develop an expenditure plan template within ten (10) days of the
22 enactment of this legislation.
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