

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



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

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0121-20

DATE: May 14, 2020

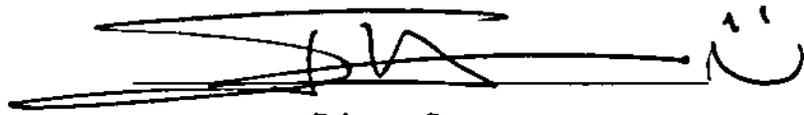
TITLE OF RESOLUTION: AN ACTION RELATING TO AN EMERGENCY FOR THE NAVAJO NATION; APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY FOR DINE COLLEGE TO ENTER INTO A PAYROLL PROTECTION PROGRAM PROMISSORY NOTE AND AGREEMENT WITH WELLS FARGO BANK

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



Primary Sponsor

TRACKING NO. 0121-20

AN ACTION

RELATING TO AN EMERGENCY FOR THE NAVAJO NATION; APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY FOR DINÈ 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 Dinè College is required to enter into the agreement with Wells Fargo Bank in order to receive funds under the federal

1 Coronavirus Aid, Relief, and Economic Security (“CARES”) Act Paycheck Protection
2 Program. Without the loan proceeds, Dinè College may be forced to close. The closure of
3 Dinè College directly threatens the sovereignty of the Navajo Nation.

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

7
8 **SECTION TWO. FINDINGS**

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

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

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

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

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

21 F. Dinè College provided a PPP Promissory Note and Agreement (the “Note and
22 Agreement”) from Wells Fargo Bank, attached as **Exhibit A**.

23 G. The Dinè College Board of Regents approved the PPP loan to Dinè College in the
24 amount of \$3,380,851. The Dinè College Board of Regents Resolution, DC-MAY-8-
25 2020, is attached as **Exhibit B**.

26 H. The Note and Agreement requires that Dinè College consent to: a Confession of
27 Judgment, indemnification as set forth in paragraph 13, arbitration as set forth
28 under the provisions in paragraph 21, and to the laws of South Dakota governing
29 the agreement as set forth in paragraph 18.

1 I. According to the PPP provisions of the CARES Act, this loan to Dinè College
2 will be forgiven provided that Dinè College satisfies the requirements as set forth
3 in paragraph 7 of **Exhibit A**.

4
5 **SECTION THREE. APPROVING A LIMITED WAIVER OF SOVEREIGN**
6 **IMMUNITY**

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

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