

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0127-20__

SPONSOR: Jamie Henio

TITLE: An Action Relating to the Budget and Finance Committee; As recommended by the Navajo Nation Investment Committee, authorizing the Controller, on behalf of the Navajo Nation, to consent to Navajo Nation Gaming Enterprise's (NNGE) request for the Navajo Nation to waive section 5.9 of the Gaming Loan Agreement between the Nation and NNGE and to forbear from enforcing certain covenants under the Gaming Loan Agreement and the Síhasin Fund Loan Agreement from March 17, 2020 through October 30, 2020

Date posted: May 29, 2020 at 12:54PM

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

**Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586**

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

LEGISLATIVE SUMMARY SHEET

Tracking No. 0127-20

DATE: May 26, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO THE BUDGET AND FINANCE COMMITTEE; AS RECOMMENDED BY THE NAVAJO NATION INVESTMENT COMMITTEE, AUTHORIZING THE CONTROLLER, ON BEHALF OF THE NAVAJO NATION, TO CONSENT TO NAVAJO NATION GAMING ENTERPRISE'S (NNGE) REQUEST FOR THE NAVAJO NATION TO WAIVE SECTION 5.9 OF THE GAMING LOAN AGREEMENT BETWEEN THE NATION AND NNGE AND TO FORBEAR FROM ENFORCING CERTAIN COVENANTS UNDER THE GAMING LOAN AGREEMENT AND THE SÍHASIN FUND LOAN AGREEMENT FROM MARCH 17, 2020 THROUGH OCTOBER 30, 2020

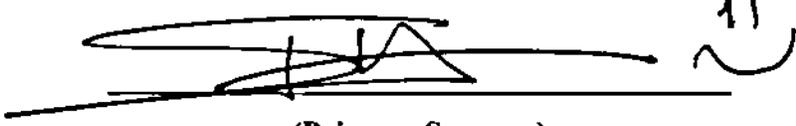
PURPOSE: The purpose of this resolution is to authorize the Controller to forbear from enforcing section 5.9 of the loan agreement between the Navajo Nation Gaming Enterprise and the Navajo Nation.

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.

5-DAY BILL HOLD PERIOD:
Website Posting Time/Date:
Posting End Date: 06-03-20
Eligible for Action: 06-04-20

**PROPOSED STANDING COMMITTEE RESOLUTION
24th NAVAJO NATION COUNCIL – FIRST YEAR, 2019**

INTRODUCED BY



(Primary Sponsor)

TRACKING NO. 0127-20

AN ACTION

**RELATING TO THE BUDGET AND FINANCE COMMITTEE;
AS RECOMMENDED BY THE NAVAJO NATION INVESTMENT COMMITTEE,
AUTHORIZING THE CONTROLLER, ON BEHALF OF THE NAVAJO NATION,
TO CONSENT TO NAVAJO NATION GAMING ENTERPRISE'S (NNGE) REQUEST
FOR THE NAVAJO NATION TO WAIVE SECTION 5.9
OF THE GAMING LOAN AGREEMENT BETWEEN THE NATION AND NNGE
AND TO FORBEAR FROM ENFORCING CERTAIN COVENANTS UNDER THE
GAMING LOAN AGREEMENT AND THE SÍHASIN FUND LOAN AGREEMENT
FROM MARCH 17, 2020 THROUGH OCTOBER 30, 2020**

BE IT ENACTED:

SECTION ONE. AUTHORITY

A. The Budget and Finance Committee of the Navajo Nation Council (the "Budget and Finance Committee") is empowered with the authority to exercise oversight in the areas including, but not limited to, budget, finance, investment, bonds, contracting, insurance, audits, accounting, taxes, loans, and Chapter budget and finance, for the purpose of coordinating, overseeing, and regulating the fiscal, financial, investment, contracting, and audit policies of the Navajo Nation pursuant to 2 N.N.C. § 300(C)(1); and to promulgate

1 rules and regulations related to contracting, investments, and financial matters pursuant to
2 2 N.N.C. § 301(B)(1).

3
4 B. The Navajo Nation created the Navajo Nation Investment Committee (the “Investment
5 Committee”) pursuant to Resolution No. CAU-39-73, and the Budget and Finance
6 Committee approved and adopted the investment policies for all Navajo Nation financial
7 resources (the “Master Investment Policy”) pursuant to Resolution No. BFD-45-18.

8 C. The Investment Committee is an advisory group to the Budget and Finance Committee in
9 the management of the Nation’s investment program and is responsible for recommending
10 to the Budget and Finance Committee the approval of the selection of investment managers
11 and custodians recommended by the Investment Consultant, subject to the approval of each
12 investment manager contract and each custodian contract by the Budget and Finance
13 Committee, pursuant to the Master Investment Policy, § 4.3(d).

14 **SECTION TWO. FINDINGS**

15
16 A. The Budget and Finance Committee previously passed Resolution No. BFN-39-17, which
17 approved and authorized the execution of the Second Amended, Restated and Consolidated
18 Loan Agreement between the Navajo Nation, as Lender, and Navajo Nation Gaming
19 Enterprise (“NNGE”), as Borrower, executed on May 18, 2018 and effective as of
20 December 1, 2017 (the “Loan Agreement,” attached hereto as **Exhibit A**) for the Nation’s
21 direct investment of \$208,759,393 in NNGE to restructure NNGE’s gaming loan; and

22 B. The Budget and Finance Committee previously passed Resolution No. BFD-42, which
23 approved and authorized the execution of that certain loan agreement between the Navajo
24 Nation and NNGE for a loan in the principal amount of \$4,000,000 from the Síhasin Fund
25 for the Twin Arrows Travel Center, dated May 23, 2018 between the Navajo Nation, as
26 Lender, and NNGE, as Borrower (the “Síhasin Loan Agreement,” attached hereto as
27 **Exhibit B**, and together with the Loan Agreement, the “Loan Agreements”); and

28 C. The Loan Agreement at Section 1.6 grants the Controller the authority to act on behalf of
29 the Navajo Nation to grant or deny any approvals, waivers, consents, amendments,
30

1 modifications, or other functions to be performed by the Navajo Nation under the Loan
2 Agreement; and

3 D. The Loan Agreement at Section 3.1 requires NNGE to pay to the Navajo Nation principle
4 and interest ("debt service payments") according to a schedule with debt service payments
5 due quarterly while the loan remains outstanding; and

6 E. The Loan Agreement at Section 5.9 requires NNGE to set aside net gaming revenues for
7 annual transfers to the Gaming Distribution Fund and the Fire Rock Permanent Facility
8 Reserve Account; and

9 F. In particular, Section 5.9 of the Loan Agreement requires that NNGE (i) pay to the Navajo
10 Nation a Gaming Distribution Fund Payment, which consists of net gaming revenues after
11 NNGE has met the financial performance goals described in the annual budget submitted
12 to the Navajo Nation pursuant to Section 7.1(c) of the Loan Agreement, and to the extent
13 monies are available after payment of Operation Expenses as defined therein (ii) fund a
14 sinking fund from twenty-five percent of excess revenues after payment of Operation
15 Expenses, the Gaming Distribution Fund Payment, and after the Fire Rock Permanent
16 Facility Account is fully funded (iii) fund a Fire Rock Permanent Facility Reserve Account
17 in amounts sufficient, as determined by NNGE, to reserve funds for the construction,
18 development, infrastructure and operation of a permanent gaming facility within the
19 Gallup, new Mexico geographic area; and

20 G. Under Section 5.9.4 of the Loan Agreement, the payments or distributions under Section
21 5.9 are due on June 30 of each year; and

22 H. The Loan Agreement at Section 6.13 provides that NNGE shall not, unless the Navajo
23 Nation consents, fail to conduct gaming at its casinos for more than ten consecutive days
24 if such failure could reasonably be expected to have a material adverse effect; and

25 I. The Síhasin Loan Agreement at Section 1.6 grants the Controller the authority to act on
26 behalf of the Navajo Nation as the lender to grant or deny any approvals, waivers, consents,
27 amendments, modifications or other functions to be performed by the Navajo Nation under
28 the Síhasin Loan Agreement; and

29
30

1 J. The Síhasin Loan Agreement at Section 6.10, provides that NNGE shall not fail to
2 continuously operate the Síhasin Fund Project as described in the Síhasin Loan Agreement;
3 and

4 K. The Navajo Nation is currently under a State of Emergency due to the global pandemic
5 related to coronavirus (COVID-19), a highly contagious and sometimes fatal respiratory
6 virus. On January 30, 2020, the World Health Organization declared a Public Health
7 Emergency of International Concern related to COVID-19 and on March 11, 2020,
8 declared a global pandemic due to COVID-19. On January 31, 2020, the U. S. Department
9 of Health and Human Services declared a Public Health Emergency related to COVID-19.
10 On March 11, 2020, the Navajo Nation Commission on Emergency Management issued
11 Resolution No. CEM 20-03-11, declaring a Public Health State of Emergency on the
12 Navajo Nation due to COVID-19. On March 20, 2020, the Navajo Nation Department of
13 Health issued Public Health Emergency Order No. 2020-003, ordering individuals living
14 on the Navajo Nation to stay home except for essential activities, prohibiting visitors to the
15 Navajo Nation, and closing all businesses on the Navajo Nation except essential
16 businesses; and

17 L. On March 17, 2020, NNGE temporarily closed its facilities. See Exhibit 2 to Investment
18 Committee Resolution No. NNICAP-07-20, attached hereto as **Exhibit C**; and

19 M. NNGE, by letter dated April 10, 2020 to Controller Pearline Kirk from NNGE Interim CEO
20 Brian Parrish, attached as Exhibit 1 to Investment Committee Resolution No. NNICAP-
21 07-20, attached hereto as **Exhibit C**, requested that the Nation consent to a waiver through
22 December 31, 2020 of NNGE's obligations under Section 5.9 of the Loan Agreement due
23 to the temporary closure of NNGE's casinos and associated lack of revenues. NNGE's
24 letter requests:

- 25
- 26 1. Relief from the required Gaming Distribution Fund Payment of \$5 million for 2019
27 and allow for NNGE usage of those funds; and
- 28
- 29 2. Relief from required set asides of \$2.4 million for the Fire Rock Permanent Facility
30 Reserve Account for 2019 and allow for usage of currently set aside funds of \$10.5

1 million in the Fire Rock Permanent Facility Reserve Account; and

- 2
3 3. NNGE will use the funds designated for the Gaming Distribution Fund Payment
4 first and the funds for the Fire Rock Permanent Facility Reserve Account second.

5
6 N. Further, by letter dated April 10, 2020, to President Jonathan Nez and Controller Pearline
7 Kirk from NNGE Interim CEO Brian Parrish, attached as Exhibit 2 to Investment
8 Committee Resolution No. NNICAP-07-20, attached hereto as **Exhibit C**, NNGE provided
9 Notice of a Potential Material Adverse Effect due to the temporary closure of NNGE
10 facilities due to COVID-19 from March 17, 2020 until at least April 30, 2020, which notice
11 is required under Section 7.1(g) of the Loan Agreement and Section 7.1(f) of the Sihasin
12 Loan Agreement; and

13 O. In addition, by letter dated April 10, 2020, to Controller Pearline Kirk from NNGE Interim
14 CEO Brian Parrish, attached as Exhibit 3 to Investment Committee Resolution No.
15 NNICAP-07-20, attached hereto as **Exhibit C**, NNGE stated that NNGE is seeking a
16 waiver of all Events of Default under the Loan Agreements that arise or relate to the closure
17 of the NNGE casinos and notice thereof through October 30, 2020 as well as a waiver of
18 the Navajo Nation's right to pursue remedies with respect to any Event of Default that
19 arises during that same time frame; and

20 P. The Investment Committee passed Resolution No. NNICAP-07-20, attached hereto as
21 **Exhibit C**, which approved and recommended to the Budget and Finance Committee the
22 consent to a waiver through December 31, 2020 of NNGE's 2019 payment obligations
23 under Section 5.9 of the Loan Agreement as follows:

- 24 1. Waive NNGE's obligation to make the Gaming Distribution Fund Payment of \$5
25 million for 2019, provided the quarterly debt service payment due June 30, 2020
26 will be paid from the \$5 million within the Gaming Distribution Fund Payment
27 unless the closure extends beyond June 8, 2020; and
- 28 2. Waive NNGE's obligation to pay set asides of \$2.4 million for the Fire Rock
29 Permanent Facility Reserve Account for 2019 and allow for usage of currently set
30 aside funds of \$10.5 million for the Fire Rock Permanent Facility Reserve Funds,

1 provided NNGE uses the \$2.4 million and \$10.5 million set-asides to cover fixed
2 expenses during shut-down and ramp up; and

- 3 3. Consent to such waiver of payments provided further that NNGE and the Office of
4 the Controller will quantify any other available funding sources (i.e. CARES Act)
5 to cover debt service, the Gaming Distribution Fund Payment, and set-asides, if
6 applicable, as soon as practical if a closure continues beyond June 8, 2020.

7 Q. In response to NNGE's request and in keeping with the recommendation provided by
8 Investment Committee Resolution No. NNICAP-07-20, attached hereto as **Exhibit B**, and
9 also taking into account NNGE's request for relief from certain covenants and other
10 requirements of the Loan Agreements, the Controller wishes to exercise her authority to
11 grant certain relief to NNGE; however, due to the importance of this matter, including
12 revenue loss to the Navajo Nation and a reduction in the Fire Rock Permanent Facility
13 Reserve Account, the Controller now seeks the concurrence of the Budget and Finance
14 Committee with her determination to act on behalf of the Navajo Nation as follows:

- 15 1. To suspend and defer all payment requirements under Section 5.9 of the Loan
16 Agreement from March 17, 2019 through December 31, 2020 and to forebear from
17 exercising any remedies with respect to the payments required under Section 5.9
18 during that time frame; provided, however, that NNGE shall pay the June 30, 2020
19 debt service payment due under Article 3 of the Loan Agreement from the monies
20 that would have gone to the Gaming Distribution Fund Payment unless the closure
21 continues beyond June 8, 2020; and
- 22 2. To allow NNGE to use the \$5 million that would have gone toward the Gaming
23 Distribution Fund Payment, the \$2.4 million that would have gone to Fire Rock
24 Permanent Facility Reserve Fund and \$10.5 million that is currently set aside for
25 the Fire Rock Permanent Facility to cover fixed expenses during shut-down and
26 ramp up, provided that NNGE uses the Gaming Distribution Fund Payment monies
27 first and the Fire Rock Permanent Facility Reserve Funds second; and
- 28 3. To reserve the right to require NNGE to make the Section 5.9 Gaming Distribution
29 Fund Payment of \$5 million, the Fire Rock Permanent Facility Reserve Funds
30 Payment of \$2.4 million and to replenish any funds used from the Fire Rock

1 Permanent Facility Reserve Account from monies that may become available,
2 including but not limited to funds from federal sources such as the CARES Act;
3 and

- 4 4. To forbear from enforcing the NNGE covenants under Sections 6.13 of the Loan
5 Agreement and Section 16.10 of the Sihasin Loan Agreement to continually operate
6 its Casinos and the Sihasin Fund Project for the duration of the time period from
7 March 17, 2020 through October 30, 2020 (the "Forbearance Period"); and
- 8 5. To consider granting forbearance with respect to any other specific covenants or
9 loan requirements that may be violated that arise or relate to the closure of the
10 Casinos and the Sihasin Fund Project during the Forbearance Period; and
- 11 6. If the closure continues beyond June 8, 2020, to require NNGE to promptly meet
12 with the Controller to discuss how NNGE will make quarterly debt service
13 payments due on September 30, 2020 and thereafter, taking into account all monies
14 that may become available to NNGE, including but not limited to funds from
15 federal sources such as the CARES Act.

16 R. The Budget and Finance Committee now considers the recommendation of the Investment
17 Committee and the reports of the Controller and NNGE presented during this meeting, and
18 finds it is in the best interests of the Nation (1) to accept the Investment Committee's
19 direction to provide NNGE with certain relief from payment requirements of Section 5.9
20 of the Loan Agreement and (2) to grant further relief by forbearing from exercising during
21 the Forbearance Period any remedies in connection with the Section 5.9 payment
22 requirements and the specific covenants referenced above.

23 24 **SECTION THREE. APPROVAL**

25 A. The Budget and Finance Committee hereby concurs with the determination of the
26 Controller to take the following actions in response to the requests from NNGE:

- 27 1. With respect to NNGE's request to waive certain requirements of Section 5.9 as set
28 forth in its letter dated April 10, 2020, attached as Exhibit 1 to Investment
29 Committee Resolution No. NNICAP-07-20, attached hereto as **Exhibit C**:
 - 30 a. To suspend and defer all payment requirements under Section 5.9 of the Loan

1 Agreement from March 17, 2019 through December 31, 2020 and to forebear
2 from exercising any remedies with respect to the payments required under
3 Section 5.9 during that time frame; provided, however, that NNGE shall pay
4 the June 30, 2020 debt service payment due under Article 3 of the Loan
5 Agreement from the monies that would have gone to the Gaming Distribution
6 Fund Payment unless the closure continues beyond June 8, 2020; and

- 7 b. To allow NNGE to use the \$5 million that would have gone toward the Gaming
8 Distribution Fund Payment for debt service payment, and to allow NNGE to
9 use the \$2.4 million that would have gone to Fire Rock Permanent Facility
10 Reserve Fund and \$10.5 million that is currently set aside for the Fire Rock
11 Permanent Facility for fixed expenses during shut-down and ramp up; and
- 12 c. To reserve the right, at the sole discretion of the Controller, to require NNGE
13 to make the Section 5.9 Gaming Distribution Fund Payment of \$5 million, the
14 Fire Rock Permanent Facility Reserve Funds Payment of \$2.4 million and to
15 replenish any funds used from the Fire Rock Permanent Facility Reserve
16 Account from future revenues or from monies that may become available,
17 including but not limited to funds from federal sources such as the CARES Act.
- 18 d. If the closure continues beyond June 8, 2020, to require NNGE to promptly
19 meet with the Controller to discuss how NNGE will make quarterly debt service
20 payments due on September 30, 2020 and thereafter, taking into account all
21 monies that may become available to NNGE, including but not limited to funds
22 from federal sources such as the CARES Act.

23 2. With respect to NNGE's request for a waiver of certain covenants, events of default
24 and remedies as set forth in in its letter dated April 10, 2020, attached as Exhibit 3
25 to Investment Committee Resolution No. NNICAP-07-20, attached hereto as
26 **Exhibit C:**

- 27 a. To forbear from enforcing the NNGE covenants under Sections 6.13 of the
28 Loan Agreement and Section 16.10 of the Síhasin Loan Agreement to
29 continually operate its Casinos and the Síhasin Fund Project respectively for the
30 duration of the Forbearance Period, which is from March 17, 2020 through

1 October 30, 2020; and

2 b. To consider granting forbearance with respect to any other specific covenants
3 or loan requirements that may be violated that arise or relate to the closure of
4 the Casinos during the Forbearance Period; and

5 c. To extend the Forbearance Period, at the sole discretion of the Controller, if in
6 her judgment the current COVID-19 crisis so warrants.

7 B. The Budget and Finance Committee further approves and delegates authority to the
8 Controller to take any reasonable and necessary actions consistent with the intent of this
9 Legislation and to effectuate the purposes of this Legislation.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30