

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0144-20\_\_

SPONSOR: Amber Kanazbah Crotty

**TITLE: An Action Relating to Health Education and Human Resources, Budget and Finance and Resources and Development, and Naabik'iyáti' Committee, and the Navajo Nation Council; Approving and Adopting the Navajo Nation CARES Fund Expenditure Plans for Water Projects, Powerline Projects and Broadband-Telecommunication Projects**

***Date posted: June 30, 2020 at 11:58PM***

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**LEGISLATIVE SUMMARY SHEET**

Tracking No. 0144-20

**DATE:** June 30, 2020

**TITLE OF RESOLUTION: AN ACTION RELATING TO HEALTH EDUCATION AND HUMAN RESOURCES, BUDGET AND FINANCE AND RESOURCES AND DEVELOPMENT, AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; APPROVING AND ADOPTING THE NAVAJO NATION CARES FUND EXPENDITURE PLANS FOR WATER PROJECTS, POWERLINE PROJECTS AND BROADBAND-TELECOMMUNICATION PROJECTS**

**PURPOSE:** This resolution, if approved, will adopt the Navajo Nation CARES Fund Expenditure Plans for water projects, powerline projects and broadband-telecommunication projects.

**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:                       
Website Posting Time/Date:                       
Posting End Date: 07-05-20  
Eligible for Action: 07-06-20

Health Education & Human Services Committee  
Thence  
Budget & Finance Committee  
Thence  
Resources & Development Committee  
Thence  
Naabik'iyáti' 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 (Prime Sponsor)

7   
8 TRACKING NO. \_\_\_\_\_

9  
10 AN ACTION  
11 RELATING TO HEALTH EDUCATION AND HUMAN RESOURCES, BUDGET  
12 AND FINANCE AND RESOURCES AND DEVELOPMENT, AND  
13 NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL;  
14 APPROVING AND ADOPTING THE NAVAJO NATION CARES FUND  
15 EXPENDITURE PLANS FOR WATER PROJECTS, POWERLINE PROJECTS  
16 AND BROADBAND-TELECOMMUNICATION PROJECTS

17  
18 BE IT ENACTED:

19  
20 SECTION ONE. AUTHORITY

- 21 A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §  
22 102(A).  
23 B. The Naabik'iyáti' Committee is a standing committee of the Navajo Nation Council  
24 with the responsibility to hear proposed resolution(s) that require final action by the  
25 Navajo Nation Council. 2 N.N.C. § 164(A)(9).  
26 C. The Health Education and Human Services Committee is a standing committee of the  
27 Navajo Nation Council charged with over the Department of Information Technology  
28 within the Division of General Services. 2 N.N.C. § 401 (C)(1).  
29 D. 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 related to contracting and financial matters. 2 N.N.C.  
3 §§ 300(B)(1) and (2).

- 4 E. The Resources and Development Committee is a standing committee of the Navajo  
5 Nation Council empowered to provide legislative oversight on matters involving, but  
6 not limited to, water, communications and utilities, information technology, rights-of-  
7 way, public utilities, and telecommunications. 2 N.N.C. § 500(C).

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9 **SECTION TWO. FINDINGS**

- 10 A. The World Health Organization (WHO) declared a Public Health Emergency of  
11 International Concern related to the outbreak of coronavirus (COVID-19), a highly  
12 contagious and sometimes fatal respiratory virus, on January 30, 2020; the U.S.  
13 Department of Health and Human Services declared a Public Health Emergency related  
14 to the COVID-19 outbreak on January 31, 2020; and the WHO declared a global  
15 pandemic due to COVID-19 on March 11, 2020.
- 16 B. The Navajo Nation Commission on Emergency Management, with the concurrence of  
17 Navajo Nation President Jonathan Nez, declared a Public Health State of Emergency  
18 on the Navajo Nation on March 11, 2020 due to COVID-19. Resolution No. CEM 20-  
19 03-11. The Navajo Nation Department of Health subsequently issued numerous Public  
20 Health Emergency Orders. Public Health Orders 2020-001 through 2020-014 are  
21 incorporated by reference into this resolution.
- 22 C. As of June 30, 2020, the Navajo Nation Health Command Operations Center has  
23 confirmed 7,532 COVID-19 cases and 363 COVID-related deaths on the Navajo  
24 Nation.
- 25 D. The U.S. Congress on March 27, 2020, enacted the Coronavirus Aid, Relief, and  
26 Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020) (the "CARES Act"),  
27 which, at Title V, §5001, entitled "Coronavirus Relief Funds," attached as **Exhibit 1-**  
28 **A**, sets aside \$8 billion in emergency aid for Tribal governments for the COVID-19  
29 pandemic.

- 1 E. The CARES Act provides the Coronavirus Relief Fund shall be used to cover only  
2 those costs that:
- 3 a. are necessary expenditures incurred due to the public health emergency  
4 with respect to COVID-19;
  - 5 b. are not accounted for in the Tribal budget most recently approved as of  
6 March 27, 2020; and
  - 7 c. are incurred from March 1, 2020 through December 30, 2020.
- 8 F. The U.S. Treasury on April 22, 2020 issued “Coronavirus Relief Fund Guidance for  
9 State, Territorial, Local, and Tribal Governments” (“Treasury Guidance”) related to the  
10 permissible uses of the Coronavirus Relief Fund. **Exhibit 1-B.**
- 11 G. On May 28, 2020, the U.S. Treasury issued “Coronavirus Relief Fund Frequently  
12 Asked Questions” (“Treasury FAQ”), attached as **Exhibit 1-C.**
- 13 H. As of June 30, 2020, the Navajo Nation has received seven hundred fourteen million  
14 one hundred eighty-nine thousand six hundred thirty-one dollars and forty-seven cents  
15 (\$714,189,631.47) as the Nation’s share of the U.S. Treasury’s initial distributions of  
16 the Coronavirus Relief Fund.
- 17 I. Navajo Nation Council Resolution CMY-44-20, attached as **Exhibit 1**, established the  
18 Navajo Nation CARES Fund, codified at 12 N.N.C. §§ 2601 *et seq.*; the purpose of the  
19 Navajo Nation Cares Fund is “to serve as a depository into which the Coronavirus  
20 Relief Funds appropriated by the United States for the benefit of the CARES Act are  
21 deposited, and from which the Navajo Nation appropriates funds exclusively and only  
22 for the uses specified in this Chapter (i.e., 12 N.N.C. §§ 2601 *et seq.*.” 12 N.N.C. §  
23 2603 [explanation added].
- 24 J. The Navajo Nation CARES Fund establishes that the Navajo Nation’s expenditures of  
25 the Coronavirus Relief Funds will be “accomplished through the approval of an  
26 Expenditure Plan(s) adopted by a two-thirds (2/3) vote of all members of the Navajo  
27 Nation Council, subject to final action of the President pursuant to 2 N.N.C. § 1005  
28 (C)(10), (11), and (12).” 12 N.N.C. § 2604 (A).
- 29 K. The Navajo Nation has determined that immediately funding water projects, powerline  
30 projects and broadband-telecommunication projects is vital in sustaining its response

1 to the COVID-19 public health emergency and mitigating the effects of the pandemic;  
2 a summary of the Navajo Nation CARES Fund Expenditure Plans addressing water  
3 projects, powerline projects and broadband-telecommunication projects is attached as  
4 **Exhibit 2**.

5 L. The purpose of the Navajo Nation CARES Fund Water Projects Expenditure Plan,  
6 attached as **Exhibit 3**, is to immediately provide sixty-four million two hundred twenty-  
7 six thousand three hundred seventeen dollars (\$64,226,317) to the Navajo Department  
8 of Water Resources for water projects on the Navajo Nation, including but not limited  
9 to, waterline and cistern projects, water hauling, windmill repairs, water well  
10 infrastructure, and earthen dam and irrigation project rehabilitation; the expenditures  
11 set forth in the Water Projects Expenditure Plan are necessary to ensure that the Navajo  
12 Nation populace has adequate access to safe potable water necessary to stem the spread  
13 of COVID-19 and comply with Center for Disease Control (CDC) COVID-19  
14 prevention guidance.

15 M. The purpose of the CARES Fund Powerline Projects Expenditure Plan, attached as  
16 **Exhibit 4**, is to immediately provide thirty six million four hundred fifty-six thousand  
17 three hundred ninety-five dollars (\$36,456,395) for power line projects, including  
18 power line capital projects and electrical line extensions; the expenditures set forth in  
19 the Power Line Projects Expenditure Plan are necessary to ensure that homes and  
20 facilities on the Navajo Nation have access to electricity sufficient to comply with CDC  
21 COVID-19 prevention guidance and ensure that infection recovery is viable.

22 N. The purpose of the CARES Fund Broadband-Telecommunication Projects Expenditure  
23 Plan, attached as **Exhibit 5**, is to immediately provide thirty million nine hundred  
24 twenty thousand six hundred thirty-six dollars (\$30,920,636) to ensure that the Navajo  
25 Nation populace and public facilities, including schools and institutions of higher  
26 learning, throughout the Navajo Nation have adequate broadband access and  
27 telecommunication capacity to comply with stay-at-home orders issued to stem the  
28 spread of the COVID-19 pandemic and access to public safety, healthcare and  
29 education.

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1 **SECTION THREE. APPROVAL AND ADOPTION OF THE NAVAJO NATION**  
2 **CARES FUND EXPENDITURE PLANS**

- 3 A. The Navajo Nation hereby approves and adopts the CARES Fund Water Projects  
4 Expenditure Plan, as outlined in **Exhibit 3**; the CARES Fund Powerline Projects  
5 Expenditure Plan as outlined in **Exhibit 4**; and the CARES Fund Broadband-  
6 Telecommunication Projects Expenditure Plan as outlined in **Exhibit 5**.
- 7 B. The Navajo Nation hereby approves and adopts total funding for the Water Projects  
8 Expenditure Plan from the Navajo Nation CARES Fund in the amount of sixty-four  
9 million two hundred twenty-six thousand three hundred seventeen dollars  
10 (\$64,226,317) and allocates the funding to the Department of Water Resources for  
11 funding the 2020 projects set forth in **Exhibit 3**. The projects for years 2021 through  
12 2024 totaling \$291,907,869 that are not capable of completion before the federal  
13 CARES Act deadline of December 30, 2020, will be considered for future funding from  
14 other sources or from CARES Act funding if Congress extends the federal deadline.
- 15 C. The Navajo Nation hereby approves and adopts total funding for the Powerline Projects  
16 Expenditure Plan from the Navajo Nation CARES Fund in the amount of thirty six  
17 million four hundred fifty-six thousand three hundred ninety-five dollars (\$36,456,395)  
18 and allocates the funding through the Division of Community Development to the  
19 Navajo Tribal Utility Authority, Jemez Mountains Electrical Cooperative, and  
20 Continental Divide Cooperative for the respective purposes and amounts set forth for  
21 2020 projects in **Exhibit 4**.
- 22 D. The Navajo Nation hereby approves and adopts total funding for the Broadband and  
23 Telecommunications Expenditure Plan from the Navajo Nation CARES Fund in the  
24 amount of thirty million nine hundred twenty thousand six hundred thirty-six dollars  
25 (\$30,920,636) and allocates the funding to the Department of Information Technology  
26 and through the Department of Information Technology to the Native Broadcast  
27 Enterprise, Navajo Technical University and Diné College for the respective purposes  
28 and amounts set forth in **Exhibit 5**.
- 29 E. The Coronavirus Relief Funds are externally restricted funds and the Navajo Nation  
30 Appropriations Act, 12 N.N.C. §§ 800 *et seq.*, as applicable to externally restricted

1 funds, shall apply to the Expenditure Plans set forth herein; detailed Expenditure Plan  
2 budgets shall not be subject to further legislative approval and shall, instead, be  
3 developed and implemented through expedited budget procedures as directed in CMY-  
4 44-20, Section Nine (B); if the CMY-44-20 expedited budget procedures are not in  
5 place at the time the Expenditure Plans herein are adopted by the Navajo Nation  
6 Council, the Office of Management and Budget shall process the detailed budgets in  
7 the most expeditious manner available to ensure that the funds are distributed within  
8 fifteen (15) days after enactment of this resolution.  
9

10 **SECTION FOUR. APPROVAL AND ADOPTION OF THE EXPENDITURE**  
11 **PLANS' ADMINISTRATION**

- 12 A. All entities receiving Navajo Nation CARES Fund funding herein shall ensure that all  
13 funds allocated under their respective Expenditure Plan are only expended for the  
14 purposes set forth in **Exhibits 3, 4, and 5**.
- 15 B. All entities receiving Navajo Nation CARES Fund funding herein shall ensure that all  
16 funds allocated under their respective Expenditure Plans shall be incurred and  
17 expended by no later than December 30, 2020.
- 18 C. All entities receiving Navajo Nation CARES Fund funding herein shall ensure that no  
19 funds allocated under their respective Expenditure Plans are incurred or expended for  
20 costs accounted for in the approved Fiscal Year 2020 Navajo Nation Comprehensive  
21 Budget approved by Navajo Nation Council Resolution No. CS-30-19.
- 22 D. The Office of the Controller shall release the funding allocated under the respective  
23 Expenditure Plans as soon as the expedited budget procedures are completed.
- 24 E. The CARES Fund Expedited Procurement Rules and Procedures, as set forth in **Exhibit**  
25 **1-E**, shall apply to procurement activities for the Expenditure Plans set forth herein.
- 26 F. The funds allocated under the Navajo Nation CARES Fund Expenditure Plans set forth  
27 herein shall be used exclusively and only for the permissible uses set forth in the  
28 following:  
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30



- 1 1. This Resolution approving the Navajo Nation CARES Fund Water Projects  
2 Expenditure Plan, CARES Fund Powerline Projects Expenditure Plan, and the  
3 CARES Fund Broadband and Telecommunication Projects Expenditure Plan.
- 4 2. The Navajo Nation CARES Fund Act, 12 N.N.C. §§ 2501 *et seq.*, and any rules,  
5 regulations or procedures adopted thereunder.
- 6 3. The Coronavirus Relief Fund which allows only those costs that:
  - 7 a. are necessary expenditures incurred due to the public health emergency with  
8 respect to COVID-19;
  - 9 b. are not accounted for in the Navajo Nation Fiscal Year 2020 Comprehensive  
10 Budget.
  - 11 c. are incurred from March 1, 2020 through December 30, 2020;
- 12 4. Consistent with the eligible uses described in the Treasury Guidance which includes  
13 the following guidance:
  - 14 a. expenditures must be incurred “due to” the public health emergency which  
15 means that expenditures must be used for actions taken to respond to the public  
16 health emergency; these expenditures may include expenditures incurred to  
17 allow the Tribal government to respond directly to the emergency, such as by  
18 addressing medical or public health needs, as well as expenditures incurred to  
19 respond to second-order effects of the emergency, such as by providing  
20 economic support to those suffering from employment or business interruptions  
21 due to COVID-19-related business closures;
  - 22 b. expenditures must be “necessary”; the Department of the Treasury interprets  
23 this term broadly to mean that the expenditure is reasonably necessary for its  
24 intended use in the reasonable judgment of the government officials responsible  
25 for spending Coronavirus Relief Fund payments;
  - 26 c. expenditures may only be made to cover costs that were not accounted for in  
27 the budget most recently approved as of March 27, 2020. A cost meets this  
28 requirement if either (a) the cost cannot lawfully be funded using a line item,  
29 allotment, or allocation with the budget; *or* (b) the cost is for a substantially  
30

1 different use from any expected use of funds in such a line item, allotment, or  
2 allocation; and

3 d. expenditures must be for costs incurred during the period that begins on March  
4 1, 2020, and ends on December 30, 2020. A cost is "incurred" when the  
5 responsible unit of government has expended funds to cover the cost.

6 5. Consistent with the eligible uses described in the U.S. Treasury Frequently Asked  
7 Questions (FAQ).

8 6. Consistent with the eligible uses as may be described in any and all future guidance,  
9 rules, or regulations of the Department of the Treasury or the Department of the  
10 Interior related to the Coronavirus Relief Fund pursuant to Title V of the CARES  
11 Act.

12 G. All entities receiving Navajo Nation CARES Act Expenditure Plan funding herein  
13 expressly agree and affirm that by drawing down or receiving any of the funds allocated  
14 under their respective Expenditure Plan:

15 a. the requested funds shall only be used for the purposes specified in Title V of  
16 the federal CARES Act and the Navajo Nation CARES Fund Act;

17 b. the administration, management, and implementation of this Expenditure Plan  
18 shall be consistent with the Navajo Nation CARES Fund Act, this legislation,  
19 and other applicable laws and regulations of the Navajo Nation; and

20 c. the costs to be covered under this Expenditure Plan are not included in the  
21 Navajo Nation Fiscal Year 2020 Comprehensive Budget, approved by Navajo  
22 Nation Council Resolution No. CS-30-19.

23 H. As set forth in CMY-44-20, Section Four (B), in the event that the entities receiving  
24 Expenditure Plan herein fail to comply with and complete the expedited budget  
25 procedures within fifteen (15) days of the date the Expenditure Plans becomes law, the  
26 funds allocated to them will revert back to the Navajo Nation CARES Fund, upon the  
27 Budget and Finance Committee's acceptance of a report from the Office of  
28 Management and Budget.

29 I. All recipients of Navajo Nation funds from the Navajo Nation CARES Fund must  
30 follow and apply Generally Accepted Accounting Principles (GAAP), as established

1 by the Governmental Accounting Standards Board (GASB) for governmental entities,  
2 and by the Financial Accounting Standards Board (FASB) for public and private  
3 companies and non-profits.

4 J. If the Department of Justice, Office of the Controller, and Office of Management and  
5 Budget concur that a proposed expenditure in the Expenditure Plans included herein is  
6 an ineligible cost under the Navajo Nation CARES Fund, Coronavirus Relief Fund or  
7 U.S. Treasury guidance, the amount of such proposed expenditure shall be returned to  
8 the Navajo Nation CARES Fund after written notice, including analysis, to the Office  
9 of the President and Vice-President and Naabik'íyáti' Committee.

10 K. The Budget and Finance Committee and Resources and Development Committee of  
11 the Navajo Nation Council shall serve as the oversight committees for the Navajo  
12 Nation Cares Fund Water Projects, Powerline Projects and Broadband-  
13 Telecommunication Expenditure Plans, except that the Health Education and Human  
14 Services Committee shall serve as the oversight committee for Department of  
15 Information Technology portion of the Broadband-Telecommunication Projects  
16 Expenditure Plan.

17 L. The Expenditure Plans and expenditures made there under shall be governed by and  
18 construed in accordance with the laws and regulations of the Navajo Nation.

19  
20 **SECTION FIVE. AMENDMENT**

21 This Resolution may be amended by a two-thirds majority vote of the Navajo Nation  
22 Council subject to action of the President of the Navajo Nation under 2 N.N.C. §164(A)(17).  
23

24 **SECTION SIX. EFFECTIVE DATE**

25 This Resolution is effective upon its approval pursuant to 2 N.N.C. § 221(B) and 2 N.N.C. §  
26 164(A)(17).  
27

28 **SECTION SEVEN. SAVING CLAUSE**

29 Should any provision of this legislation be determined invalid by the Navajo Nation  
30 Supreme Court, or a District Court of the Navajo Nation without appeal to the Navajo

1 Nation Supreme Court, those portions of the legislation which are not determined invalid  
2 shall remain the law of the Navajo Nation.  
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