

THE NAVAJO NATION
LEGISLATIVE BRANCH
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LEGISLATION NO: _0197-20__

SPONSOR: Mark Freeland

TITLE: An Action Relating to Resources and Development, Budget and Finance, and Naabik'íyáti' Committees, and Navajo Nation Council; Approving and Adopting the Navajo Nation CARES Fund Chapter Distribution Expenditure Plan

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0197-20

DATE: August 19, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; APPROVING AND ADOPTING THE NAVAJO NATION CARES FUND CHAPTER DISTRIBUTION EXPENDITURE PLAN

PURPOSE: This resolution, if approved, will establish the CARES Fund Chapter Distribution Expenditure Plan and allocate \$90,000,000 to Chapters under the 50-50 formula for COVID-19 relief, response and mitigation efforts.

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.

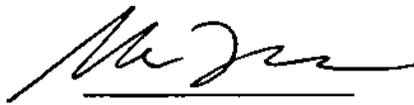
OLC No. 20-333-1

5-DAY BILL HOLD PERIOD: Johnson
Website Posting Time/Date: _____
Posting End Date: 08-24-20
Eligible for Action: 08-25-20

Resources & Development Committee
Thence
Budget & Finance Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL -- Second Year, 2020

INTRODUCED BY



(Prime Sponsor)

TRACKING NO. 0197-20



AN ACTION
RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND
FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION
COUNCIL; APPROVING AND ADOPTING THE NAVAJO NATION CARES
FUND CHAPTER DISTRIBUTION EXPENDITURE PLAN

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A).
- B. The Naabik'iyáti' Committee is a standing committee of the Navajo Nation Council with the responsibility to hear proposed resolution(s) that require final action by the Navajo Nation Council. 2 N.N.C. § 164(A)(9).
- C. The Budget and Finance Committee is a standing committee of the Navajo Nation Council with the enumerated powers to review and recommend to the Navajo Nation Council the budgeting, appropriation, investment and management of all funds and to promulgate rules and regulations related to contracting and financial matters. 2 N.N.C. §§ 300(B)(1) and (2).

1 D. The Resources and Development Committee is a standing committee of the Navajo
2 Nation Council empowered to provide legislative oversight on matters involving
3 Chapter activities. 2 N.N.C. § 500(C).
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 sometimes fatal respiratory virus, on January 30, 2020; the U.S.
9 Department of Health and Human Services declared a Public Health Emergency related
10 to the COVID-19 outbreak on January 31, 2020; and the WHO declared a global
11 pandemic due to COVID-19 on March 11, 2020.

12 B. The Navajo Nation Commission on Emergency Management, with the concurrence of
13 Navajo Nation President Jonathan Nez, declared a Public Health State of Emergency
14 on the Navajo Nation on March 11, 2020 due to COVID-19. Resolution No. CEM 20-
15 03-11. The Navajo Nation Department of Health subsequently issued numerous Public
16 Health Emergency Orders. Public Health Orders 2020-001 through 2020-014 are
17 incorporated by reference into this resolution.

18 C. As of August 18, 2020, the Navajo Nation Health Command Operations Center has
19 confirmed 9,486 COVID-19 cases and 484 COVID-related deaths on the Navajo
20 Nation.

21 D. The U.S. Congress on March 27, 2020, enacted the Coronavirus Aid, Relief, and
22 Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020) (the "CARES Act"),
23 which, at Title V, §5001, entitled "Coronavirus Relief Funds," attached as Exhibit 1-
24 A, sets aside \$8 billion in emergency aid for Tribal governments for the COVID-19
25 pandemic.

26 E. The CARES Act provides the Coronavirus Relief Fund shall be used to cover only
27 those costs that:

- 28 a. are necessary expenditures incurred due to the public health emergency
29 with respect to COVID-19;

1 b. are not accounted for in the Tribal budget most recently approved as of
2 March 27, 2020; and

3 c. are incurred from March 1, 2020 through December 30, 2020.

4 F. The U.S. Treasury on April 22, 2020 issued "Coronavirus Relief Fund Guidance for
5 State, Territorial, Local, and Tribal Governments" ("Treasury Guidance") related to the
6 permissible uses of the Coronavirus Relief Fund. **Exhibit 1-B.**

7 G. On May 28, 2020, the U.S. Treasury issued "Coronavirus Relief Fund Frequently
8 Asked Questions" ("Treasury FAQ"), attached as **Exhibit 1-C.**

9 H. As of June 30, 2020, the Navajo Nation has received seven hundred fourteen million
10 one hundred eighty-nine thousand six hundred thirty-one dollars and forty-seven cents
11 (\$714,189,631.47) as the Nation's share of the U.S. Treasury's initial distributions of
12 the Coronavirus Relief Fund.

13 I. The Navajo Nation has determined that immediately providing funding to Navajo
14 Nation Chapters to combat the effects of COVID-19 and mitigate the future spread at
15 the community level is vital in sustaining a comprehensive response to the COVID-19
16 public health emergency and mitigating the effects of the pandemic.

17 J. The purpose of the Navajo Nation CARES Fund Chapter Distribution Plan, attached
18 as **Exhibit 2**, is to immediately provide ninety million dollars (\$90,000,000) to Navajo
19 Nation Chapters (both LGA Certified and non-certified), through the Division of
20 Community Development, to respond to the COVID-19 pandemic and ensure that
21 Navajo communities have access to the funding necessary to ensure that community
22 members are adequately protected from exposure to COVID-19 and able to comply
23 with the Center for Disease Control (CDC) COVID-19 prevention guidance necessary
24 to mitigate the spread of the virus.

25
26 **SECTION THREE. APPROVAL AND ADOPTION OF THE CARES FUND**
27 **CHAPTER DISTRIBUTION EXPENDITURE PLAN**

28 A. The Navajo Nation hereby approves and adopts the CARES Fund Chapter Distribution
29 Expenditure Plan, as outlined in **Exhibit 2**, and hereby allocates ninety million dollars
30 (\$90,000,000) to Navajo Nation Chapters (both LGA Certified and non-certified),

1 through the Division of Community Development pursuant to 12 N.N.C. § 820 (O)'s
2 50/50 Chapter Distribution formula. Subject to technical correction by the Office of
3 Management and Budget, the amounts allocated to each Chapter are set forth at **Exhibit**
4 **3**.

5 B. The Coronavirus Relief Funds are externally restricted funds and the Navajo Nation
6 Appropriations Act, 12 N.N.C. §§ 800 *et seq.*, as applicable to externally restricted
7 funds, shall apply to the Expenditure Plans set forth herein; detailed Expenditure Plan
8 budgets shall not be subject to further legislative approval and shall, instead, be
9 developed and implemented through expedited budget procedures. The Office of
10 Management and Budget shall process the detailed budgets in the most expeditious
11 manner available to ensure that the funds are distributed within fifteen (15) days after
12 enactment of this resolution.

13 C. As set forth in Navajo Nation Council Resolution No. CJY-67-20, the progress of all
14 Navajo Nation CARES Fund Expenditure Plans, which shall now include the Chapter
15 Distribution Expenditure Plan, shall be reviewed by the Budget and Finance and
16 Naabik'iyáti' Committees during the month of October 2020. The funding for any
17 project that has not made enough progress to demonstrate that it will be fully completed
18 by December 30, 2020 will be reallocated to the Hardship Assistance Expenditure Plan
19 enacted by CJY-67-20 through Naabik'iyáti' Committee resolution.

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21 **SECTION FOUR. APPROVAL AND ADOPTION OF THE CHAPTER**
22 **DISTRIBUTION EXPENDITURE PLAN ADMINISTRATION**

23 A. All entities receiving Navajo Nation CARES Fund funding herein shall ensure that all
24 funds allocated under the Chapter Distribution Expenditure Plan are only expended for
25 the purposes set forth in **Exhibit 2**.

26 B. All entities receiving Navajo Nation CARES Fund funding herein shall ensure that all
27 funds allocated under their respective Expenditure Plans shall be incurred and
28 expended by no later than December 30, 2020.

29 C. All entities receiving Navajo Nation CARES Fund funding herein shall ensure that no
30 funds allocated under their respective Expenditure Plans are incurred or expended for

1 costs accounted for in the approved Fiscal Year 2020 Navajo Nation Comprehensive
2 Budget approved by Navajo Nation Council Resolution No. CS-30-19.

3 D. The Office of the Controller shall release the funding allocated under the respective
4 Expenditure Plans as soon as the expedited budget procedures are completed.

5 E. The CARES Fund Expedited Procurement Rules and Procedures, enacted through
6 CJY-67-20, shall apply to procurement activities for the Expenditure Plan set forth
7 herein.

8 F. The funds allocated under the Navajo Nation CARES Fund Expenditure Plan set forth
9 herein shall be used exclusively and only for the permissible uses set forth in the
10 following:

11 1. This Resolution approving the Navajo Nation CARES Fund Chapter Distribution s
12 Expenditure Plan.

13 3. The Coronavirus Relief Fund which allows only those costs that:

14 a. are necessary expenditures incurred due to the public health emergency with
15 respect to COVID-19;

16 b. are not accounted for in the Navajo Nation Fiscal Year 2020 Comprehensive
17 Budget.

18 c. are incurred from March 1, 2020 through December 30, 2020;

19 4. Consistent with the eligible uses described in the Treasury Guidance which includes
20 the following guidance:

21 a. expenditures must be incurred "due to" the public health emergency which
22 means that expenditures must be used for actions taken to respond to the public
23 health emergency; these expenditures may include expenditures incurred to
24 allow the Tribal government to respond directly to the emergency, such as by
25 addressing medical or public health needs, as well as expenditures incurred to
26 respond to second-order effects of the emergency, such as by providing
27 economic support to those suffering from employment or business interruptions
28 due to COVID-19-related business closures;

29 b. expenditures must be "necessary"; the Department of the Treasury interprets
30 this term broadly to mean that the expenditure is reasonably necessary for its

- 1 intended use in the reasonable judgment of the government officials responsible
2 for spending Coronavirus Relief Fund payments;
- 3 c. expenditures may only be made to cover costs that were not accounted for in
4 the budget most recently approved as of March 27, 2020. A cost meets this
5 requirement if either (a) the cost cannot lawfully be funded using a line item,
6 allotment, or allocation with the budget; *or* (b) the cost is for a substantially
7 different use from any expected use of funds in such a line item, allotment, or
8 allocation; and
- 9 d. expenditures must be for costs incurred during the period that begins on March
10 1, 2020, and ends on December 30, 2020. A cost is "incurred" when the
11 responsible unit of government has expended funds to cover the cost.
- 12 5. Consistent with the eligible uses described in the U.S. Treasury Frequently Asked
13 Questions (FAQ).
- 14 6. Consistent with the eligible uses as may be described in any and all future guidance,
15 rules, or regulations of the Department of the Treasury or the Department of the
16 Interior related to the Coronavirus Relief Fund pursuant to Title V of the CARES
17 Act.
- 18 7. Consistent with Navajo Nation laws, rules and regulations.
- 19 G. All entities receiving Navajo Nation CARES Act Expenditure Plan funding herein
20 expressly agree and affirm that by drawing down or receiving any of the funds allocated
21 under their respective Expenditure Plan:
- 22 a. the requested funds shall only be used for the purposes specified in Title V of
23 the federal CARES Act and the Navajo Nation CARES Fund Act;
- 24 b. the administration, management, and implementation of this Expenditure Plan
25 shall be consistent with the Navajo Nation CARES Fund Act, this legislation,
26 and other applicable laws and regulations of the Navajo Nation; and
- 27 c. the costs to be covered under this Expenditure Plan are not included in the
28 Navajo Nation Fiscal Year 2020 Comprehensive Budget, approved by Navajo
29 Nation Council Resolution No. CS-30-19.
- 30

- 1 I. All recipients of Navajo Nation funds from the Navajo Nation CARES Fund must
2 follow and apply Generally Accepted Accounting Principles (GAAP), as established
3 by the Governmental Accounting Standards Board (GASB) for governmental entities,
4 and by the Financial Accounting Standards Board (FASB) for public and private
5 companies and non-profits.
- 6 J. If the Department of Justice, Office of the Controller, and Office of Management and
7 Budget concur that a proposed expenditure in the Expenditure Plans included herein is
8 an ineligible cost under the Navajo Nation CARES Fund, Coronavirus Relief Fund or
9 U.S. Treasury guidance, the amount of such proposed expenditure shall be returned to
10 the Navajo Nation CARES Fund after written notice, including analysis, to the Office
11 of the President and Vice-President and Naabik'iyáti' Committee.
- 12 K. The Budget and Finance Committee and Resources and Development Committee of
13 the Navajo Nation Council shall serve as the oversight committees for the Navajo
14 Nation Cares Fund Chapter Distribution Expenditure Plan.
- 15 L. The Chapter Distribution Expenditure Plan and expenditures made there under shall be
16 governed by and construed in accordance with the laws and regulations of the Navajo
17 Nation.

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19 **SECTION FIVE. AMENDMENT**

20 This Resolution may be amended by a two-thirds majority vote of the Navajo Nation
21 Council subject to action of the President of the Navajo Nation under 2 N.N.C. § 221 (B)
22 and the budget line-item veto authority delegated to the President by vote of the Navajo
23 People in 2009.

24
25 **SECTION SIX. EFFECTIVE DATE**

26 This Resolution is effective upon its approval pursuant to 2 N.N.C. § 221(B) and the budget
27 line-item veto authority delegated to the President by vote of the Navajo People in 2009.

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29 **SECTION SEVEN. SAVING CLAUSE**

1 Should any provision of this legislation be determined invalid by the Navajo Nation
2 Supreme Court, or a District Court of the Navajo Nation without appeal to the Navajo
3 Nation Supreme Court, those portions of the legislation which are not determined invalid
4 shall remain the law of the Navajo Nation.

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