



Law and Order, Budget and Finance, Naabik'iyáti' Committees approve of proposed Navajo Nation CARES Fund Act

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WINDOW ROCK, Ariz. — The Law and Order (LOC), Budget and Finance (B&FC), and Naabik'iyáti' Committees considered the proposed Navajo Nation CARES Fund Act Wednesday and Thursday after receiving more than 100 public comments on the Council's legislation on the \$600 million in federal CARES Act relief funding. The legislation includes proposed amendments to help establish an accountable and expedited process for spending the federal coronavirus relief for the benefit of the Navajo People.

The legislation would establish the Navajo Nation CARES Fund and would deposit all federal CARES Act funding into that Fund. That money would then be available for use for the benefit of the Navajo people and within the federal requirements that funding will be used for coronavirus relief activities.

At a special meeting of the B&FC on Thursday, May 14, the committee was joined by staff from the Navajo Nation Department of Justice, Kayenta Township, the Office of the Controller and representatives from various executive branch programs. 24th Navajo Nation Council Speaker Seth Damon introduced the legislation to the committees, stating that each provision in the legislation was necessary to begin properly appropriating the \$600 million in federal funding.

That funding, which would be open to any entity of the Navajo Nation as well as external entities like schools, hospitals, care homes, businesses, and more, can develop expedited expenditure plans with the goal of spending all the federal relief money by Dec. 30, 2020. That is the deadline set by the federal government before the money would be reverted to the US Treasury Department or misspent money would become a debt the Nation owes the federal government.

Other provisions of Legislation No. 0115-20 would establish the expenditure plans that can speed up the current Navajo Nation granting process. That will be led by the Naabik'iyáti' Committee to ensure the highest levels of accountability and to eliminate needless 'red-tape' in getting money and supplies to communities.

Dana Bobroff, chief legislative counsel to the Navajo Nation Council said, "This is the legal infrastructure for establishing the expenditures." She noted that there can be more than one expenditure plan for the Navajo Nation CARES Fund. This would help fund proposals that are ready, without the need to wait for other projects to catch up that would hold back a large appropriation bill with many projects.

"We set it up so detailed budgets are not required," said Bobroff. She said that a plan submitted by Council Delegate Nathaniel Brown addressing specific needs could easily be turned into an expenditure plan and approved quickly with the passage of Legislation No. 0115-20.

Speaker Damon explained that the legislation establishes a process similar to the Síhásin Fund. Detailed budgets would be done at the administrative level to make things easier and more concise for people to follow. The requirements for expenditure plans are established by section four of the legislation that will help the Nation establish the legality of the plans.

Templates to help the Navajo Nation speed up the budgeting and procurement process will also be developed by the Office of Management and Budget, per a directive in the legislation. Bobroff also said

OMB will be required to submit the plan for expediting the budgeting process within ten days of it being signed into law.

Bobroff explained that Exhibit B set forth expedited procurement procedures for Navajo Nation CARES Fund projects. The legislation waives the Navajo Nation procurement act to streamline the payments process for the Fund projects. “This takes care of not only the adoption but the expenditure of an expenditure plan,” she said.

“If any of the funds are spent out side of those provisions, the nation needs to reimburse the Treasury,” said Bobroff. She said the Treasury has the authority to take money directly out of any other funding to the Nation, since the nation received the federal CARES fund under Title 5. If a million dollars were found to be disallowed, it could take it out of the next 638 distribution to the nation, she said.

In responding to a question by Delegate Brown, Bobroff clarified that entities, like the Kayenta Township, do qualify for a portion through an expenditure plan under the proposed Navajo Nation CARES Fund Act.

Speaker Damon added that the Office of the Controller is directed, under the legislation, to immediately contract with an external agency to improve its ability to handle the increase in processing payments. That would address an important bottleneck in spending the entire \$600 million.

In responding to the question from Council Delegate Amber Kanazbah Crotty on including transparency with the expenditures, Speaker Damon said there could be directives to the Controller’s office to develop a reporting template. A further directive can be included to the Department of Information Technology to identify, acquire and implement a purchase and project tracking system for the public to view.

Speaker Damon also discussed the options available for replicating the public safety buildings previously built for Twin Arrows Casino Resort. Former Council Delegate Walter Phelps had developed an idea to replicate that model multiple times across the nation, said Speaker Damon. That model could be quickly deployed within an expenditure plan to ensure public safety facilities can be built quickly.

Speaker Damon also emphasized, in response to a question from the committee, that the reason there was no task force included in the legislation is because the process would be facilitated directly by the Council, which is the ultimate authority for creating legislation. Additionally, he noted that the Navajo people and council delegates expressed concern that a task force would create more ‘red-tape’ and ultimately extend the process.

Speaker Damon added to a question about a federal extension from Delegate Begay that the Office of the Speaker has already been working with US Senator Martin Heinrich and US Senator Martha McSally, who have staff working on an amendment to the federal CARES Act addressing several specific issues. He said Senator McSally also has many questions on the deadline set by the federal act.

Bobroff also described the background on the LOC’s discussion with the Controller’s Office. That involved the Nation’s ability to contract with an outside firm that has the ability to enter budgets and generate payments. She said may firms hire from outside to handle payroll, with monies going into escrow accounts, as an example. That may be an option to pursue as the Controller sees fit.

She said the deadline extension will need to come from the Federal government. She also said there are efforts to change the definition of ‘expenditure.’ This would include the ability to encumber CARES Act money in contracts, as opposed to money out the door. That would have the effect of allowing the Navajo Nation to carry the money for projects beyond Dec. 30, 2020, as long as they’re within the scope of preventing or addressing COVID-19.

Delegate Brown asked for recommendations for further taking away the ‘red-tape’ in the Navajo Nation system to get the money spent. “Would it be possible to get somebody from the US Treasury to

help us? To make sure that we do not have to pay back,” said Delegate Brown. This would help the nation ensure it does not spend money on things that are not allowed.

Vice Chair Raymond Smith, Jr. said many Navajo Nation companies are limited in their capacity. With respect to the procurement portion of the legislation, he asked if the waivers were able to accommodate the procurement of outside contractors.

“The other one is [the National Environmental Policy Act], that’s a big factor,” said Vice Chair Smith. He stated the rights-of-way and the NEPA clearances are hindrances in the process of building water lines and electric access roads. “We have less than 300 days to move and to make this happen,” said Vice Chair Smith.

Speaker Damon responded by pointing out that in the directives, the Controller, with support from the Navajo Nation Department of Justice, that an outside firm would be contracted with to ensure expenditures qualify for the CARES Act.

Council Delegate Jimmy Yellowhair said his concern regards the extension of the spending deadline. He also added that the Office of Management and Budget can issue a simplified process for budgets. He said road construction is needed because emergency responders cannot get to the Black Mesa Chapter or similar areas.

Delegate Brown added two questions regarding support for traditional ceremonies and whether a percentage of the funding can be mandated to go through Navajo companies.

Delegate Crotty noted that, of the priorities presented throughout the discussion, the issue the Navajo Nation faces is a health issue. That would need to be the basis for all projects approved through the proposed Navajo Nation CARES Fund Act.

She also asked for greater clarification on the waivers of the procurement process in the legislation. She explained that, in the Bureau of Indian Affairs presentation to delegates, granting of rights of way on Navajo Nation land is generally easier. Transparency needs to be included to ensure the process does not get held up by a single office, Delegate Crotty said.

“Health is wealth,” shared Delegate Crotty. She emphasized the health component of the COVID-19 pandemic, particularly as Navajo citizens face various underlying health impacts that complicate recovery from COVID-19. She outlined a potential paradigm shift involving solutions.

“We’re going to need at least 400 people on the ground,” said Delegate Crotty of the social service programs provided by the Navajo Nation. “How are we preparing our nation and our people?” She said that her comments should be seen as enhancements. “We have to get it right. There’s not time,” said Delegate Crotty.

Speaker Damon said the health response will be put on the agenda when Naabik’iyáti’ Committee meetings start. “[The Indian Health Service] has received over \$600 million in CARES funding, and we need to know what they’re spending money on,” said Speaker Damon. He called on the members of the Council to help in identifying the individuals that need to be called in to provide information.

With regard to NEPA waivers and the rights of way process, the expenditure plans will need to include the acceptable language for waivers in consultation with the Navajo Nation Land Department, Environmental Protection Agency, and others. He said that the Council has that authority and must make these decisions to move the money out.

Public Law 93-638 hospitals, the Navajo Nation Division of Social Services and the IHS will need to be brought to the table soon, said Speaker Damon.

Bobroff stated that the waivers would best be included in the expenditure plans. In addition, a directive

can be included to the Land Department and related Navajo Nation programs to provide guidelines. “It gets really uncomfortable when we just waive things wholesale,” said Bobroff. She said she’ll be starting the draft language for waivers.

In responding to Delegate Elmer Begay’s question about another legislation on CARES funding, Bobroff said that legislation may be ready to drop later on Thursday.

Delegate Yellowhair brought up the unallowable costs and expenses. He said the Nation can ask for prior-approval for certain expenditures.

Delegate Begay asked for a timeline on the full guidelines for what tribes can spend the funding on. “We need to know the conditions and terms beforehand,” said Delegate Begay.

Speaker Damon said he understood the concern about eligibility, which is why the language regarding the Controller is included in the legislation, which allows the Department of Justice to be consulted in allowable expenditures.

Bobroff said the legislation includes language that allows all entities to apply for funding through expenditure plans. Delegate Brown motioned to add language specifically to include “Kayenta Township” in the legislation.

Delegate Begay brought up a concern that the money might be spent off the Navajo Nation. Following his statement, Delegate Smith asked if the president’s signature for contracts would introduce more red-tape to the process. Bobroff explained that, for granting funds to external entities, the purpose of the provision is to ensure the Navajo Nation has documentation to enforce the expenditure of the funds, because the Nation would be liable for paying back anything otherwise.

She added that support to Kayenta Township could be made in the form of direct funding, a grant agreements, and other ways, as stated in the sixth paragraph of the legislation.

Delegate Yellowhair said he didn’t know why the memorandum of agreement (MOA) language was included in the legislation. “It’s going to be a power struggle between the President and the Council,” said Delegate Yellowhair. “We have enough red-tape in here already.” Chairman Henio described the language of the sixth paragraph of the expenditure plan requirements and administration section of the legislation.

Speaker Damon explained that the mechanism for allocating funding to Navajo Nation programs or external entities can be done through the listed mechanisms. He said the Navajo Nation Council had to create new mechanisms for entities to receive funding from the Sihásin Fund. He said the MOA for one of the Navajo Nation’s agricultural projects required the project managers to report quarterly to the Council before the next portion of the funding draw-down was issued. “Without that, we would have never found out that there was \$300,000 missing,” said Speaker Damon.

The Navajo Nation Department of Justice added to Speaker Damon’s comments by stating that MOAs are not required for expenditures. But that it allows the Navajo Nation to have some control over external entities. If the language was changed, there would be no enforcement, or a requirement for those entities to report to the Navajo Nation. The risk would fall back on the Navajo Nation to repay any amounts spent by the external entities for any misspent funds.

The Controller stated that the CARES Act funding has to be spent according to the purposes in the federal act. She said the discussion on waiving any procurement policies is concerning, because the inspector general of the Treasury Department will audit the Navajo Nation specifically on the federal CARES Act funding.

She said the former 164(B) process, even if it is no longer part of the Navajo Nation’s internal accountability process, is still utilized by the Office of the Controller because it’s an important audit documentation process. Otherwise, many contracts and grants will almost be seen as discretionary.

The Department of Justice stated that the Navajo Nation Council previously took out the 164(B) process and replaced it with the requirement that the president execute agreements within 10 days.

Lengthy discussions took place at the Law and Order, Budget and Finance, and Naabik'iyáti' Committees, which each ultimately voted to support the proposed Navajo Nation CARES Fund Act. The Navajo Nation Council will consider the legislation at a special session May 15.

Speaker Damon sponsored the legislation, which has garnered more than 100 public comments on both the text of the legislation and the ideas for uses of the \$600 million. "The important aspect of this legislation is that it lays the solid groundwork for the Navajo Nation to get funding to important projects. And, it opens this process up to involvement from the Executive and Judicial Branches," said Speaker Damon.

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