

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0011-21__

SPONSOR: Eugenia Charles-Newton

TITLE: An Act Relating to Budget and Finance Committee, Law and Order Committee and Naabik'iváti' Committee and Navajo Nation Council; Establishing the Navajo Nation Hashkééjí Nahat'á Béeso Bá Hooghan by Amending Title Twelve of the Navajo Nation Code; Directing that the Award Received Through Navajo Nation V. Department of Interior, No. 14-cv-1909 (TSC), Be Deposited in the Hashkééjí Nahat'á Béeso Bá Hooghan After Reimbursment of Litigations Costs; Directing that the Proceeds from Future Litigations Related to the Judicial Branch's P.L. 93-638 Contracts or Annual Funding Agreements Be Deposited in the Hashkééjí Nahat'á Béeso Bá Hooghan; Establishing that the Fixed Cost Litigation Account Shall Be Reimbursed for Litigation Costs

Date posted: January 21, 2021 at 5:20PM

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0011-21

DATE: January 15, 2021

TITLE OF RESOLUTION: AN ACT RELATING TO BUDGET AND FINANCE COMMITTEE, LAW AND ORDER COMMITTEE AND NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION COUNCIL; ESTABLISHING THE NAVAJO NATION HASHKÉÉJÍ NAHAT'Á BÉESO BÁ HOOGHAN BY AMENDING TITLE TWELVE OF THE NAVAJO NATION CODE; DIRECTING THAT THE AWARD RECEIVED THROUGH *NAVAJO NATION V. DEPARTMENT OF INTERIOR*, NO. 14-cv-1909 (TSC), BE DEPOSITED IN THE HASHKÉÉJÍ NAHAT'Á BÉESO BÁ HOOGHAN AFTER REINBURSEMENT OF LITIGATION COSTS; DIRECTING THAT THE PROCEEDS FROM FUTURE LITIGATIONS RELATED TO THE JUDICIAL BRANCH'S P.L. 93-638 CONTRACTS OR ANNUAL FUNDING AGREEMENTS BE DEPOSITED IN THE HASHKÉÉJÍ NAHAT'Á BÉESO BÁ HOOGHAN; ESTABLISHING THAT THE FIXED COST LITIGATION ACCOUNT SHALL BE REIMBURSED FOR LITIGATION COSTS

PURPOSE: This resolution, if approved, will establish a fund (Hashkééjí Nahat'á Béeso Bá Hooghan) for the benefit of the Judicial Branch from the proceeds of *Navajo Nation v. Department of Interior*, No. 14-cv-1909 (TSC), and reimburse the Fixed Cost Litigation Account for the costs of the litigation.

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. 21-018-1

5-DAY BILL HOLD PERIOD: Johnson
Website Posting Time/Date: _____
Posting End Date: 01-26-21
Eligible for Action: 01-27-21

Budget & Finance Committee
Thence
Law & Order Committee
Thence
Naabik'iyáti Committee
Thence
Navajo Nation Council

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION
2 24th NAVAJO NATION COUNCIL – Third Year, 2021

3 INTRODUCED BY

4 
5

6 (Prime Sponsor)

7
8 TRACKING NO. 0011-21

9
10 AN ACT

11 RELATING TO BUDGET AND FINANCE COMMITTEE, LAW AND ORDER
12 COMMITTEE AND NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION
13 COUNCIL; ESTABLISHING THE NAVAJO NATION HASHKÉÉJÍ NAHAT'Á
14 BÉESO BÁ HOOGHAN BY AMENDING TITLE TWELVE OF THE NAVAJO
15 NATION CODE; DIRECTING THAT THE AWARD RECEIVED THROUGH
16 *NAVAJO NATION V. DEPARTMENT OF INTERIOR*, NO. 14-cv-1909 (TSC), BE
17 DEPOSITED IN THE HASHKÉÉJÍ NAHAT'Á BÉESO BÁ HOOGHAN AFTER
18 REINBURSEMENT OF LITIGATION COSTS; DIRECTING THAT THE PROCEEDS
19 FROM FUTURE LITIGATIONS RELATED TO THE JUDICIAL BRANCH'S P.L. 93-
20 638 CONTRACTS OR ANNUAL FUNDING AGREEMENTS BE DEPOSITED IN
21 THE HASHKÉÉJÍ NAHAT'Á BÉESO BÁ HOOGHAN; ESTABLISHING THAT THE
22 FIXED COST LITIGATION ACCOUNT SHALL BE REIMBURSED FOR
23 LITIGATION COSTS

24
25 **BE IT ENACTED:**

26
27 **SECTION ONE. AUTHORITY**

28 A. The Navajo Nation Council is the governing body of the Navajo Nation and
29 empowered to enact positive law of the Navajo Nation. 2 N.N.C. §§ 102 (A) and
30 164 (A).

- 1 B. The Naabik'iyati' Committee of the Navajo Nation Council is empowered to review
2 all proposed legislation which requires final action by the Navajo Nation Council.
3 2 N.N.C. §164 (A)(9).
- 4 C. The Budget and Finance Committee of the Navajo Nation Council is empowered
5 to review and recommend to the Navajo Nation Council the budgeting,
6 appropriation, investment, and management of all funds. 2 N.N.C. § 301 (B)(2).
- 7 D. The Law and Order Committee of the Navajo Nation Council is empowered to
8 provide oversight over the Judicial Branch of the Navajo Nation and the Navajo
9 Nation Department of Justice. 2 N.N.C. §§ 601 (C)(1) and (2).
- 10

11 **SECTION TWO. FINDINGS**

- 12 A. In the 1950s, the Navajo Nation shifted from a federal Court of Indian Offenses
13 court system to a tribal court system due to Congress enacting Public Law 83-280
14 which granted certain states criminal jurisdiction over Indians on reservations and
15 allowed civil litigation that had come under tribal or federal court jurisdiction to be
16 handled by state courts. N.N.C. Resolution No. CO-69-58.
- 17 B. Since its inception, the independence and strength of the Navajo Nation Judicial
18 Branch has been a cornerstone for protecting the sovereignty of the Navajo Nation.
19 N.N.C. Resolution No. CD-94-85.
- 20 C. The Navajo Nation Council has consistently sought to ensure Navajo tradition and
21 Diné Fundamental Law as foundational to the Diné jurisprudence practiced in the
22 Navajo Nation Judicial Branch. CD-94-85. Diné Fundamental Law is embodied in
23 statutes and the Courts of the Navajo Nation are required to implement the
24 principles and practice of Diné Fundamental Law. Diné Fundamental Law
25 distinguishes Navajo jurisprudence from Anglo-American jurisprudence because
26 Diné Fundamental Law embodies Diné customs, traditions, values, and beliefs.
- 27 D. The Navajo Nation Council, for decades, has sought to ensure the independence of
28 the Courts of the Navajo Nation. The Judiciary Committee, in recommending
29 judicial reform in 1985, stated that the Navajo Nation Courts have “an inherent
30 right to the financial support needed to carry out their duties...and the Judicial

1 Branch is a separate branch of government and in its duty to operate efficiently and
2 economically must be able to make day-to-day decisions regarding operating costs
3 and expenditures with a minimum of interference and delay.” Judiciary Committee
4 (attachment to CD-94-85).

5 E. In 1982, the Navajo Peacemaker Court was created by Navajo judges through vote
6 of the Judicial Conference. The Navajo judges wanted to find an alternative to
7 Anglo-American judicial methods that had roots in Diné Fundamental Law and that
8 incorporated Diné wisdom, methods, and customs in resolving disputes. At the
9 time, the Peacemaking Court did not properly reflect Diné traditions because
10 standard court procedures, rules, and practices were applied to the Peacemaking
11 process which made the process strongly resemble Anglo-American dispute
12 resolution methods rather than Diné traditions and culture.

13 F. In early 2000, the Peacemaking Court was renamed, rules were replaced with
14 Guidelines, and the traditional Diné Fundamental Law principles and practices
15 were better reflected in the Courts and in Peacemaking.

16 G. The Judicial Branch continues to implement Title 1 of the Navajo Nation Code,
17 Diné Bi Beenahaz’áanii, and recognize Diné jurisprudence and Fundamental Law
18 as foundational to the entire branch and the interworking of the Courts, the
19 Peacemaking Program, and the Probation and Parole Program.

20 H. In 1975, Congress enacted the Indian Self-Determination and Education Assistance
21 Act (ISDEAA), 25 U.S.C. §§ 5301 *et seq.* (P.L. 93-638, As Amended), to assist
22 Indian tribes in assuming responsibility for federal government programs. In 2012,
23 the Bureau of Indian Affairs (BIA) and the Navajo Nation Judicial Branch entered
24 into a five (5) year self-determination contract (aka “638 contract”) pursuant to the
25 ISDEAA whereby the BIA funded the Judicial Branch’s provision of federal
26 government programs. This included ensuring that Diné jurisprudence was
27 reflected throughout the Judicial Branch.

28 I. Judicial Branch leadership and staff have worked tirelessly for years to illuminate
29 the grave underfunding of the Navajo Nation judicial system by the federal
30 government, particularly the BIA. The Judicial Branch timely submitted a proposed

1 annual funding agreement for Calendar Year 2014 in the amount of \$17,055,517 to
2 the BIA on October 3, 2013 for its federal self-determination contract. The BIA,
3 however, failed to respond to the Judicial Branch's proposal as statutorily required
4 and attempted to partially decline the funding amount.

5 J. In 2014, the Chief Justice of the Navajo Nation requested the Navajo Nation
6 Attorney General and Department of Justice (NNDOJ) to file a lawsuit against the
7 U.S. Department of Interior (DOI) and Bureau of Indian Affairs (BIA) for violating
8 the ISDEAA. The Attorney General subsequently filed suit against the DOI and
9 other federal government programs on behalf of the Navajo Nation contending that
10 the BIA failed to approve or decline the Calendar Year 2014 annual funding
11 agreement within the statutorily mandated ninety (90) day window and thus, the
12 BIA had to deem the annual funding agreement approved as a matter of law. The
13 lawsuit was titled *Navajo Nation v. Department of Interior, et al.*, No. 14-cv-1909
14 (TSC)

15 K. On April 4, 2017, the U.S. Court of Appeals for the District of Columbia ruled in
16 favor of the Navajo Nation and the Judicial Branch. On June 12, 2020, the U.S.
17 District Court for the District of Columbia ruled in favor of the Navajo Nation and
18 the Judicial Branch and awarded the Navajo Nation \$15.7 million. The federal
19 government did not appeal the decision and the final award in the amount of
20 \$18,279,923.32, attached as **Exhibit A**, includes statutory interest to the date of the
21 award.

22 L. NNDOJ expended Fixed Cost Litigation Account funds to litigate against the DOI
23 and other federal government agencies on behalf of the Judicial Branch. **Exhibit B**
24 [Marked as "confidential" by the Navajo Nation Attorney General pursuant to 2
25 N.N.C. § 164 (A)(6).]

26 M. Through its leadership, the Judicial Branch, with the assistance of NNDOJ,
27 continues to fight to increase the federal self-determination contract to a level of
28 funding that reflects the federally contracted work that the Judicial Branch
29 performs. For years, the Judicial Branch has argued that the underfunding by the
30 BIA of its federal self-determination contract has created a void of available

1 services to Navajo people. The Judicial Branch has consistently maintained that
2 the \$17,055,517 originally requested for Calendar Year 2014 was based upon the
3 actual fiscal needs of the Judicial Branch to provide the federally contracted
4 services on an annual basis.

5 N. The Navajo Nation recognizes that this initial lawsuit turned on the failure of the
6 BIA to respond to the Judicial Branch as required by federal statute and continues
7 to fight to that ensure that the Judicial Branch federal self-determination contracts
8 are fully funded.

9 O. The Navajo Nation recognizes the substantial needs of the Judicial Branch to be
10 fully funded to continue developing one of the most complex indigenous judicial
11 systems throughout the world that fully contemplates Diné jurisprudence and Diné
12 Bi Beenahaz'áanii. Navajo Nation sovereignty demands a comprehensive system
13 that fully integrates Diné Bi Beenahaz'áanii into peacemaking and court systems to
14 provide a judicial system to Navajo people that is reflective of Navajo traditions
15 and culture.

16 P. The Navajo Nation recognizes that a fully funded, independent judiciary and
17 peacemaking system is necessary to protect the sovereignty of the Navajo Nation
18 and respects the expertise of the Judicial Branch leadership to identify the priorities
19 for expending the funds awarded by the federal court through *Navajo Nation v.*
20 *Department of Interior, et al.*, No. 14-cv-1909 (TSC), as well as the funds from any
21 subsequent awards or settlements.

22 Q. Pursuant to 12 N.N.C. § 820 (K) of the Navajo Nation Appropriations Act, funds
23 received in excess of the initial or current revenue projections, e.g., court awards or
24 settlements, shall be deposited in to the General Fund Unreserved Undesignated
25 Fund balance unless otherwise designated by the Navajo Nation Council.

26 R. The Navajo Nation appreciates that the Judicial Branch is a unique judicial system
27 and has funding needs that are not considered during the annual comprehensive
28 budget process and that funding of this nature, i.e., an award from the federal court,
29 can and should be directed primarily to the Judicial Branch to develop long-term
30

1 planning and systems that benefit the entire Judicial Branch and enhance judicial
2 services across the Navajo Nation.

3 S. Hashkééjí Nahat'á dóó Hózhóójí Nahat'á t'áá sahdii béeso yee ák'inaaldzil dóó yee
4 naalnish.

5 T. Hashkééjí Nahat'á dóó Hózhóójí Nahat'á t'áá sahdii béeso choyool'í dóó t'áá sahdii
6 yee ák'inaaldzil hóldzilgo yee bik'ó' dilti'doo biniyé.
7

8 **SECTION THREE. ESTABLISHING NAVAJO NATION HASHKÉÉJÍ NAHAT'Á**
9 **BÉESO BÁ HOOGHAN**

10 The Navajo Nation hereby establishes the Navajo Nation Hashkééjí Nahat'á Béeso
11 Bá Hooghan and approves its enabling legislation as follows:
12

13
14 *****

15 **Title 12. FISCAL MATTERS**

16 **CHAPTER 28. NAVAJO NATION HASHKÉÉJÍ NAHAT'Á BÉESO BÁ**
17 **HOOGHAN**

18
19 **§ 2801. Establishment**

20 There is established the "Navajo Nation Hashkééjí Nahat'á Béeso Bá Hooghan",
21 hereinafter referred to as "Fund".

22 A. The Navajo Nation Council hereby designates that the net proceeds and
23 earnings thereon awarded to the Navajo Nation by the litigation captioned
24 Navajo Nation vs. United States Department of Interior, No. 14-cv-1909 (TSC)
25 shall be deposited into the Fund after the Fixed Cost Litigation Account has
26 been reimbursed for the actual costs of said litigation, as calculated and attested
27 to by the Attorney General of the Navajo Nation.

28 B. The net proceeds of all settlement or judgement awards stemming from
29 litigation brought on behalf of the Judicial Branch of the Navajo Nation related
30 to the underfunding of the Judicial Branch Indian Self-Determination and

1 Education Assistance Act contract(s) and annual funding agreement(s) shall be
2 deposited into the Fund after the Fixed Cost Litigation Account has been
3 reimbursed for the actual costs of such litigation, as calculated and attested to
4 by the Attorney General of the Navajo Nation.

5 C. The Navajo Nation Council may make additional appropriations to the Fund
6 from any other sources of revenue that become available to the Navajo Nation.

7 D. Any money deposited in or appropriated to the Fund, regardless of source,
8 including earnings thereon, shall be used only as provided in this Chapter.

9 E. The Fund shall be a continuing account and shall not lapse on an annual basis
10 pursuant to 12 N.N.C. 820(N).

11
12 **§ 2802. Purpose**

13 A. The purpose(s) of this Fund are to provide financial support and/or financing for
14 the continuing development of the Judicial Branch true to its core of Diné
15 Fundamental law by reinstating peacemaking and traditional Navajo concepts
16 throughout the Branch's systems and facilities, including:

- 17 1. to plan, develop, purchase, and/or construct Judicial Branch facilities,
18 including power, water, electrical, roads infrastructure, parking lots,
19 government and traditional hogan buildings and surrounding infrastructure
20 necessary for the use of government buildings; and
- 21 2. to meet the operational and systematic needs of the Judicial Branch,
22 including but not limited to information technology; and
- 23 3. to develop and implement programs and projects of the Navajo Nation
24 Courts, Peacemaking Program, Administrative Offices of the Courts, and
25 Probation and Parole Program that enhance public services for the Navajo
26 people and improve development of the Judicial Branch's operations and
27 internal systems.

28 B. Expenditures from the Fund shall not be subject to or limited by 12 N.N.C. §§ 810
29 (F) and of the Appropriations Act, 12 N.N.C. § 1310 (F) of the Bond Financing Act
30

1 or the Capital Improvement Project Guidelines, Policies, and Procedures approved
2 through TCDCJY-77-99.

3
4 **§ 2803. Investment of the Fund**

5 All monies deposited in the Fund shall be subject to the Master Investment Policies, as
6 amended, and invested as soon as practical in accordance with the degree of care
7 exercised by reasonable and prudent managers of investments intended to produce
8 maximum growth of the investments with a high degree of safety necessary to fulfill
9 the purposes and objectives of the Fund.

10
11 **§ 2804. Definition of Fund Principal and Income**

- 12 A. “Fund Principal” shall consist of all deposits made to the Fund pursuant to § 2801
13 of this Chapter.
14 B. “Fund Income” shall consist of all earnings (interest, dividends, etc.) generated and
15 realized through the investment of the Fund Principal. Realized Fund Income shall
16 be added to the Fund Principal after Fund management and administration
17 expenses, as set forth in this Chapter, have been deducted.

18
19 **§ 2805. Expenditure of the Fund**

- 20 A. The Fund Principal and Income shall be expended upon recommendation by the
21 Chief Justice of the Navajo Nation Supreme Court through an annual or multi-year
22 expenditure plan approved by the Law and Order and Budget and Finance
23 Committees. Any changes or modifications to an approved expenditure plan shall
24 be approved by the Law and Order Committee and Budget and Finance Committee
25 upon the recommendation of the Chief Justice of the Navajo Nation.
26 B. Any Fund amounts, whether Fund Principal or Fund Income, not included in an
27 expenditure plan, shall remain invested as set forth in this Chapter.

28
29 **§ 2806. Annual Audit**

1 The Fund shall be audited annually by independent auditors and within 120 days of the
2 end of each fiscal year, an audit report shall be distributed to the members of the Navajo
3 Nation Council. The audit report shall be written in easily understandable language.

4
5 **§ 2807. Expenses**

6 All expenses directly associated with the administration and management of the Fund
7 shall be paid from the Fund Income. Such expenses shall include investment advisory
8 and management fees, audit costs, and other related expenses, all pursuant to duly
9 approved contracts for such services.

10
11 **§ 2808. Amendments**

12 Any section(s) of this Chapter may be amended by a two-thirds (2/3) majority vote of
13 the full membership of the Navajo Nation Council and approval of the President of the
14 Navajo Nation.

15
16 **§ 2809. Termination**

17 The Fund shall expire and terminate when all Fund Principal and Fund Income have
18 been expended.

19
20 ****

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22
23 **SECTION FOUR. APPROVING REIMBURSEMENT OF LITIGATION COSTS**

24 A. The Navajo Nation Department of Justice expended Fixed Cost Litigation Account
25 funds to litigate *Navajo Nation v. Department of Interior*, No. 14-cv-1909 (TSC).
26 See **Exhibit B** [Marked as “confidential” by the Navajo Nation Attorney General
27 pursuant to 2 N.N.C. § 164 (A)(6)].

28 B. The Fixed Cost Litigation Account is to be reimbursed for the actual litigation costs
29 and expenses, as calculated and attested to by the Attorney General, expended on
30 *Navajo Nation v. Department of Interior*, No. 14-cv-1909 (TSC) prior to the award

1 being deposited in Hashkééjį Nahat'á Béeso Bá Hooghan. The budget documents
2 supporting the reimbursement are attached as **Exhibit C** [Marked as "confidential"]
3 by the Navajo Nation Attorney General pursuant to 2 N.N.C. § 164 (A)(6)].

4 C. The Fixed Cost Litigation Account is to be reimbursed for actual litigation costs
5 and expenses out of all future awards and settlements stemming from litigation on
6 behalf of the Navajo Nation, specifically including litigation brought on behalf of
7 the Judicial Branch related to the underfunding of the Judicial Branch Indian Self-
8 Determination and Education Assistance Act contract(s) and annual funding
9 agreement(s)

10
11 **SECTION FIVE. EFFECTIVE DATE**

12 This Act is effective upon its approval pursuant to 2 N.N.C. 221(B).
13

14 **SECTION SIX. CODIFICATION**

15 The provisions of this Act which amend or adopt new sections of the Navajo Nation
16 Code shall be codified by the Office of Legislative Counsel. The Office of Legislative
17 Counsel shall incorporate such amended provisions in the next codification of the
18 Navajo Nation Code.
19

20 **SECTION SEVEN. SAVINGS CLAUSE**

21 Should any provision(s) of this Act be determined invalid by the Navajo Nation
22 Supreme Court or the District Courts of the Navajo Nation, without appeal to the
23 Navajo Nation Supreme Court, the remainder of the Act shall remain the law of the
24 Navajo Nation.
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