

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0013-21_

SPONSOR: Jamie Henio

TITLE: An Action Relating to an Emergency for the Navajo Nation Council; Approving a Supplemental Appropriation from the Unreserved, Undesignated Fund Balance in the Total Amount of Thirty-Two Million One Hundred Ninety-Three Thousand Five Hundred Fourteen Dollars (\$32,193,514) to the Navajo Nation Gaming Enterprise, Navajo Tribal Utility Authority, Navajo Nation Hospitality Enterprise, Navajo Nation Shopping Center, Inc., and Navajo Engineering and Construction Authority; Waiving 12 N.N.C. §§ 820 (E), (F), and (J) of the Appropriations Act

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0013-21

DATE: January 27, 2021

TITLE OF RESOLUTION: AN ACTION RELATING TO AN EMERGENCY FOR THE NAVAJO NATION COUNCIL; APPROVING A SUPPLEMENTAL APPROPRIATION FROM THE UNRESERVED, UNDESIGNATED FUND BALANCE IN THE TOTAL AMOUNT OF THIRTY-TWO MILLION ONE HUNDRED NINETY-THREE THOUSAND FIVE HUNDRED FOURTEEN DOLLARS (\$32,193,514) TO THE NAVAJO NATION GAMING ENTERPRISE, NAVAJO TRIBAL UTILITY AUTHORITY, NAVAJO NATION HOSPITALITY ENTERPRISE, NAVAJO NATION SHOPPING CENTERS, INC., AND NAVAJO ENGINEERING AND CONSTRUCTION AUTHORITY; WAIVING 12 N.N.C. §§ 820 (E), (F), AND (J) OF THE APPROPRIATIONS ACT

PURPOSE: The purpose of this resolution is to approve a supplemental appropriation for enterprises of 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.

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

INTRODUCED BY


(Prime Sponsor) 

TRACKING NO. 0013-21

AN ACTION

RELATING TO AN EMERGENCY FOR THE NAVAJO NATION COUNCIL;
APPROVING A SUPPLEMENTAL APPROPRIATION FROM THE
UNRESERVED, UNDESIGNATED FUND BALANCE IN THE TOTAL AMOUNT
OF THIRTY-TWO MILLION ONE HUNDRED NINETY-THREE THOUSAND
FIVE HUNDRED FOURTEEN DOLLARS (\$32,193,514) TO THE NAVAJO
NATION GAMING ENTERPRISE, NAVAJO TRIBAL UTILITY AUTHORITY,
NAVAJO NATION HOSPITALITY ENTERPRISE, NAVAJO NATION SHOPPING
CENTERS, INC., AND NAVAJO ENGINEERING AND CONSTRUCTION
AUTHORITY; WAIVING 12 N.N.C. §§ 820 (E), (F), AND (J) OF THE
APPROPRIATIONS ACT

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Navajo Nation Council is the governing of body of the Navajo Nation. 2 N.N.C. § 102(A).
- B. The Navajo Nation Code provides, “[m]atters constituting an emergency shall be limited to the cessation of law enforcement services, and disaster relief services, fire protection services or other direct services required as an entitlement under Navajo Nation or

1 Federal law, or which directly threaten the sovereignty of the Navajo Nation. Such an
2 emergency matter must arise due to the pressing public need for such resolution(s) and
3 must be a matter requiring final action by the Council. 2 N.N.C.§ 164(16).
4

5 **SECTION TWO. TITLE 12 FINANCE ACT SUPPLEMENTAL APPROPRIATION**
6 **REQUIREMENTS**

- 7 A. The Navajo Nation Council has the authority to approve supplemental appropriations. 12
8 N.N.C. § 820(L). Pursuant to 12 N.N.C. § 820(L), “[t]he Navajo Nation Council may adopt
9 and approve supplemental appropriations to the Annual Comprehensive Budget during the
10 fiscal year. Supplemental appropriations of General Funds within the current fiscal year
11 are permitted, if and when additional sources of revenues above and beyond the initial or
12 current revenue projections are projected and which are also in excess of the reserve
13 amount set forth at § 820(J).”
- 14 B. All requests for annual operating funds and supplemental funds shall be submitted to the
15 Office of Management and Budget for budget impact analysis. 12 N.N.C. § 820(M).
- 16 C. When the Controller identifies additional sources of revenues above and beyond the
17 initial or current revenue projections, supplemental appropriations may be approved by
18 the Navajo Nation Council. 12 N.N.C. § 820(L).
- 19 D. Supplemental Appropriations made from non-recurring revenues shall only be made for
20 non-recurring operations or purposes, as set forth at § 820(F). The Controller of the
21 Navajo Nation shall be responsible for the designation of recurring and non-recurring
22 revenues. 12 N.N.C. § 820(L).
- 23 E. The Nation shall budget all recurring operating expenses, including capital maintenance,
24 from recurring revenues. Long term debt shall not be used to finance recurring operating
25 expenses. 12 N.N.C. §820(E).
- 26 F. The Navajo Nation Code provides, “[t]he Nation shall restrict non-recurring revenues to
27 budget non-recurring expenditures. In addition, non-recurring revenues will be budgeted
28 only after an examination by the Controller to determine whether or not the revenues are
29 subsidizing an imbalance between recurring revenues and expenditures, and expenditures
30 may be authorized only if a long-term (three-five year) forecast shows that the operating

1 deficit will not continue. Otherwise, non-recurring revenues will be added to the
2 Unreserved, Undesignated Fund Balance. This provision may be amended or waived by
3 a two-thirds vote of the full Navajo Nation Council.” 12 N.N.C. § 820(F).
4

5 **SECTION THREE. FINDINGS**

- 6 A. The novel coronavirus (or “COVID-19”), is a highly contagious and potentially fatal
7 respiratory virus, that has severely impacted the Navajo Nation’s and the Navajo Nation
8 Enterprises’ ability to generate revenue for the Navajo Nation and to maintain employment
9 for Navajo People.
- 10 B. This Resolution is offered as an emergency due to the damaging economic impact COVID-
11 19 has had within the Navajo Nation. The Navajo Nation Enterprises provide employment
12 throughout the Navajo Nation, and should the enterprises be forced to close, or be unable to
13 end layoffs, it will directly threaten the Navajo Nation’s sovereignty.
- 14 C. The U.S. Department of Health and Human Services declared a Public Health Emergency
15 related to the COVID-19 outbreak on January 31, 2020; and the World Health
16 Organization declared a global pandemic due to COVID-19 on March 11, 2020.
- 17 D. The Navajo Nation Commission on Emergency Management, with the concurrence of
18 Navajo Nation President Jonathan Nez, declared a Public Health State of Emergency on
19 the Navajo Nation on March 11, 2020 due to COVID-19 in Resolution No. CEM 20-
20 03-11. The Navajo Nation Department of Health subsequently issued numerous Public
21 Health Emergency Orders. Public Health Emergency Orders 2020-001 through 2021-02
22 (“Public Health Emergency Orders”) are incorporated by reference into this resolution.
- 23 E. Navajo Nation Enterprises have worked with Navajo leaders to reduce the spread of
24 COVID-19 by closing their operations or restricting their operations to essential
25 employees. As a result of closures caused by the COVID-19 pandemic, the Navajo
26 Nation Enterprises are struggling to meet financial business obligations and keep
27 employees in the work force.
- 28 F. The Navajo Nation Gaming Enterprise has implemented a layoff twice within
29 approximately a 10-month period of nearly 1,000 members of the Navajo Nation
30

1 currently on layoff status until further notice, or until immediate relief funding can be
2 received by the NNGE.

3 G. If the Enterprises do not receive COVID-19 relief funding, the Nation will risk the health,
4 safety, and well-being of many Navajo People vulnerable to job loss and loss of health
5 insurance, including the many dependent children, elders and other relatives who are also
6 covered by the Enterprises' health benefits.

7 H. The Navajo Nation Enterprises listed below have submitted requests for supplemental
8 funding from the Unreserved, Undesignated Fund Balance, along with budget forms,
9 supplemental funding proposal summaries, and grant applications, for a total of
10 \$32,193,514:

- 11 1. Navajo Nation Gaming Enterprise has requested funding of \$15,000,000 as
12 indicated in **Exhibit A**;
- 13 2. Navajo Tribal Utility Authority has requested funding of \$7,830,191 as
14 indicated in **Exhibit B**;
- 15 3. Navajo Nation Shopping Centers, Inc. has requested funding of \$903,541 as
16 indicated in **Exhibit C**;
- 17 4. Navajo Engineering and Construction Authority has requested funding of
18 \$6,996,576 as indicated in **Exhibit D**; and
- 19 5. Navajo Nation Hospitality Enterprise has requested funding of \$1,463,206,
20 as indicated in **Exhibit E**.

21 I. Support for the Navajo Nation Enterprises is a priority in order for the Navajo Nation to
22 remain competitive within their respective industries and to help recover from the
23 devastating impacts of the COVID-19 pandemic.

24 J. The Controller has updated the balance of the UUFB and indicated that as of January 21,
25 2021, \$63,795,352 is available for supplemental appropriations in Fiscal Year 2021.

26 K. In its approval of the Navajo Nation Budget Instruction Manual ("BIM") for Fiscal Year
27 2021, the Budget and Finance Committee recognized the difficulties involved in obtaining
28 signatures on budget forms related to requests for appropriation. The Fiscal Year 2021
29 BIM, therefore, reflects that divisions and departments are encouraged, rather than
30

1 required, to have written concurrence from the appropriate Branch Chief or Division
2 Director. Navajo Nation BIM, Fiscal Year 2021, Section XII.B.1.a.i.

3 L. The Office of the Controller has been requested to provide a memorandum to satisfy the
4 requirements in 12 N.N.C. § 820 (L). Due to the emergency nature of this legislation, the
5 memorandum was not ready at the time of drafting this resolution, but will be included as
6 an exhibit when it is available.

7 M. The Office of Management and Budget has been requested to provide a memorandum to
8 satisfy the requirements in 12 N.N.C. § 820 (M). Due to the emergency nature of this
9 legislation, the memorandum was not ready at the time of drafting this resolution, but will
10 be included as an exhibit when it is available.

11
12 **SECTION FOUR. WAIVING 12 N.N.C. §§ 820 (E), (F), AND (J), TO THE EXTENT**
13 **THESE PROVISIONS PREVENT THE UNRESERVED, UNDESIGNATED FUND**
14 **BALANCE TO BE USED TO FUND RECURRING EXPENDITURES**

15 The Navajo Nation Council hereby waives 12 N.N.C. §§ 820(E), (F) and (J) to allow UUFB
16 funds to be used for recurring expenditures.

17
18 **SECTION FIVE. APPROVING SUPPLEMENTAL FUNDING FROM THE**
19 **UNRESERVED, UNDESIGNATED FUND BALANCE IN THE AMOUNT OF**
20 **THIRTY-TWO MILLION ONE HUNDRED NINETY-THREE THOUSAND FIVE**
21 **HUNDRED FOURTEEN DOLLARS (\$32,193,514) TO THE NAVAJO NATION**
22 **ENTERPRISES**

23 A. This supplemental appropriation of \$32,193,514 shall be from that amount of funds that
24 exceeds the minimum fund balance of the Unreserved, Undesignated Fund Balance as
25 determined by the Office of the Controller, and as shown in **Exhibit A-E**.

26 B. The Navajo Nation hereby approves supplemental funding from the Unreserved,
27 Undesignated Fund Balance in the amount of \$32,193,514 for funds as indicated in the
28 documents in **Exhibit A-E**.

1 **SECTION SIX. DIRECTIVE TO THE OFFICE OF THE CONTROLLER AND THE**
2 **OFFICE OF MANAGEMENT AND BUDGET**

3 In order to carry out the intent of the Navajo Nation Council in the approval of this
4 legislation, expeditious implementation of this Resolution is of utmost importance. The
5 Office of Management and Budget and the Office of the Controller are directed to take all
6 steps necessary to give effect to this Resolution immediately after it becomes effective in
7 Section Seven, below.

8
9 **SECTION SEVEN. EFFECTIVE DATE**

10 The provisions of this Action shall become effective in accordance with 2 N.N.C. § 221(B).

11
12 **SECTION EIGHT. SAVING CLAUSE**

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