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

Date posted: January 27, 2021 at 10:24PM

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

SECTION TWO. TITLE 12 FINANCE ACT SUPPLEMENTAL APPROPRIATION REQUIREMENTS

A. The Navajo Nation Council has the authority to approve supplemental appropriations. 12 N.N.C. § 820(L). Pursuant to 12 N.N.C. § 820(L), "[t]he Navajo Nation Council may adopt and approve supplemental appropriations to the Annual Comprehensive Budget during the fiscal year. Supplemental appropriations of General Funds within the current fiscal year are permitted, if and when additional sources of revenues above and beyond the initial or current revenue projections are projected and which are also in excess of the reserve amount set forth at § 820(J)."

B. All requests for annual operating funds and supplemental funds shall be submitted to the Office of Management and Budget for budget impact analysis. 12 N.N.C. § 820(M).

C. When the Controller identifies additional sources of revenues above and beyond the initial or current revenue projections, supplemental appropriations may be approved by the Navajo Nation Council. 12 N.N.C. § 820(L).

D. Supplemental Appropriations made from non-recurring revenues shall only be made for non-recurring operations or purposes, as set forth at § 820(F). The Controller of the Navajo Nation shall be responsible for the designation of recurring and non-recurring revenues. 12 N.N.C. § 820(L).

E. The Nation shall budget all recurring operating expenses, including capital maintenance, from recurring revenues. Long term debt shall not be used to finance recurring operating expenses. 12 N.N.C. § 820(E).

F. The Navajo Nation Code provides, "[t]he Nation shall restrict non-recurring revenues to budget non-recurring expenditures. In addition, non-recurring revenues will be budgeted only after an examination by the Controller to determine whether or not the revenues are subsidizing an imbalance between recurring revenues and expenditures, and expenditures may be authorized only if a long-term (three-five year) forecast shows that the operating
deficit will not continue. Otherwise, non-recurring revenues will be added to the
Unreserved, Undesignated Fund Balance. This provision may be amended or waived by
a two-thirds vote of the full Navajo Nation Council.” 12 N.N.C. § 820(F).

SECTION THREE. FINDINGS

A. The novel coronavirus (or “COVID-19”), is a highly contagious and potentially fatal
respiratory virus, that has severely impacted the Navajo Nation’s and the Navajo Nation
Enterprises’ ability to generate revenue for the Navajo Nation and to maintain employment
for Navajo People.

B. This Resolution is offered as an emergency due to the damaging economic impact COVID-
19 has had within the Navajo Nation. The Navajo Nation Enterprises provide employment
throughout the Navajo Nation, and should the enterprises be forced to close, or be unable to
end layoffs, it will directly threaten the Navajo Nation’s sovereignty.

C. The U.S. Department of Health and Human Services declared a Public Health Emergency
related to the COVID-19 outbreak on January 31, 2020; and the World Health

D. The Navajo Nation Commission on Emergency Management, with the concurrence of
Navajo Nation President Jonathan Nez, declared a Public Health State of Emergency on
the Navajo Nation on March 11, 2020 due to COVID-19 in Resolution No. CEM 20-
03-11. The Navajo Nation Department of Health subsequently issued numerous Public
Health Emergency Orders. Public Health Emergency Orders 2020-001 through 2021-02
(“Public Health Emergency Orders”) are incorporated by reference into this resolution.

E. Navajo Nation Enterprises have worked with Navajo leaders to reduce the spread of
COVID-19 by closing their operations or restricting their operations to essential
employees. As a result of closures caused by the COVID-19 pandemic, the Navajo
Nation Enterprises are struggling to meet financial business obligations and keep
employees in the work force.

F. The Navajo Nation Gaming Enterprise has implemented a layoff twice within
approximately a 10-month period of nearly 1,000 members of the Navajo Nation
currently on layoff status until further notice, or until immediate relief funding can be received by the NNGE.

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

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

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

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

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

K. In its approval of the Navajo Nation Budget Instruction Manual ("BIM") for Fiscal Year 2021, the Budget and Finance Committee recognized the difficulties involved in obtaining signatures on budget forms related to requests for appropriation. The Fiscal Year 2021 BIM, therefore, reflects that divisions and departments are encouraged, rather than
required, to have written concurrence from the appropriate Branch Chief or Division
Director. Navajo Nation BIM, Fiscal Year 2021, Section XII.B.1.a.i.
L. The Office of the Controller has been requested to provide a memorandum to satisfy the
requirements in 12 N.N.C. § 820 (L). Due to the emergency nature of this legislation, the
memorandum was not ready at the time of drafting this resolution, but will be included as
an exhibit when it is available.
M. The Office of Management and Budget has been requested to provide a memorandum to
satisfy the requirements in 12 N.N.C. § 820 (M). Due to the emergency nature of this
legislation, the memorandum was not ready at the time of drafting this resolution, but will
be included as an exhibit when it is available.

SECTION FOUR. WAIVING 12 N.N.C. §§ 820 (E), (F), AND (J), TO THE EXTENT
THese PROVISIONS PREVENT THE UNRESERVED, UNDESiGNATED FUND
BALANCE TO BE USED TO FUND RECURRING EXPENDITURES
The Navajo Nation Council hereby waives 12 N.N.C. §§ 820(E), (F) and (J) to allow UUF
funds to be used for recurring expenditures.

SECTION FIVE. APPROVING SUPPLEMENTAL FUNDING FROM THE
UNRESERVED, UNDESIGNATED FUND BALANCE IN THE AMOUNT OF
THIRTY-TWO MILLION ONE HUNDRED NINETY-THREE THOUSAND FIVE
HUNDRED FOURTEEN DOLLARS ($32,193,514) TO THE NAVAJO NATION
ENTERPRISES
A. This supplemental appropriation of $32,193,514 shall be from that amount of funds that
exceeds the minimum fund balance of the Unreserved, Undesignated Fund Balance as
determined by the Office of the Controller, and as shown in Exhibit A-E.
B. The Navajo Nation hereby approves supplemental funding from the Unreserved,
Undesignated Fund Balance in the amount of $32,193,514 for funds as indicated in the
documents in Exhibit A-E.
SECTION SIX. DIRECTIVE TO THE OFFICE OF THE CONTROLLER AND THE
OFFICE OF MANAGEMENT AND BUDGET
In order to carry out the intent of the Navajo Nation Council in the approval of this
legislation, expeditious implementation of this Resolution is of utmost importance. The
Office of Management and Budget and the Office of the Controller are directed to take all
steps necessary to give effect to this Resolution immediately after it becomes effective in
Section Seven, below.

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

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