THE NAVAJO NATION
LEGISLATIVE BRANCH
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LEGISLATION NO: _0094-21_  SPONSOR: Eugene Tso

TITLE: An Action Relating to Health Education and Human Services, Budget and Finance, and Naabik’íyáti’ Committees and the Navajo Nation Council; Enacting the Navajo Nation Cares Fund Phase II Hardship Assistance Expenditure Plan; Allocating Navajo Nation Cares Fund Investment Earnings Thereto

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DATE: June 8, 2021

TITLE OF RESOLUTION: AN ACTION RELATING TO HEALTH EDUCATION AND HUMAN SERVICES, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; ENACTING THE NAVAJO NATION CARES FUND PHASE II HARDSHIP ASSISTANCE EXPENDITURE PLAN; ALLOCATING NAVAJO NATION CARES FUND INVESTMENT EARNINGS THERETO

PURPOSE: This resolution, if approved, will establish a second CARES Fund Hardship Assistance Expenditure Plan, funded by reallocations and investment earnings, to provide funding to those eligible Navajo members who did not receive funding under the first Hardship Assistance Expenditure Plan.

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

INTRODUCED BY

(Prime Sponsor)

TRACKING NO. 0094-21

AN ACTION

RELATING TO HEALTH EDUCATION AND HUMAN SERVICES, BUDGET AND FINANCE, AND NAABIK’ÍYÁTI’ COMMITTEES AND THE NAVAJO NATION COUNCIL; ENACTING THE NAVAJO NATION CARES FUND PHASE II HARDSHIP ASSISTANCE EXPENDITURE PLAN; ALLOCATING NAVAJO NATION CARES FUND INVESTMENT EARNINGS THERETO

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’íyáti’ 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).
D. The Health Education and Human Services Committee is a standing committee of the Navajo Nation Council empowered to provide legislative oversight on matters involving health, social services, and education. 2 N.N.C. § 400(C)(1).

SECTION TWO. FINDINGS


C. As of June 3, 2021, the Navajo Nation Health Command Operations Center has confirmed 30,847 COVID-19 cases and 1,322 COVID-19 related deaths on the Navajo Nation.


E. The CARES Act and Coronavirus Relief Fund were subsequently amended by the Consolidated Appropriations Act of 2021, Pub. L. No. 116-260, incorporated herein by reference, to extend the deadline for Coronavirus Relief Fund expenditures from December 30, 2020 to December 31, 2021.
F. The CARES Act, as amended by Division N, Title X, Section 1001 of the Consolidated Appropriations Act of 2021, provides that the Coronavirus Relief Fund shall be used to cover only those costs that:

a. are necessary expenditures incurred due to the public health emergency with respect to COVID-19;
b. are not accounted for in the Tribal budget most recently approved as of March 27, 2020; and
c. are incurred from March 1, 2020 through December 31, 2021.


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

I. In August of 2020, the Navajo Nation Council recognized that immediately providing financial assistance to Navajo individuals and families who are facing financial hardship due to the COVID-19 pandemic and attendant public health orders was necessary to comprehensively combat the devastating effects of COVID-19, and it therefore adopted Resolution No. CJY-67-20, incorporated herein by reference, enacting the Navajo Nation CARES Fund Hardship Assistance Expenditure Plan.

J. The purpose of the Navajo Nation CARES Fund Hardship Assistance Expenditure Plan enacted through Resolution No. CJY-67-20, was to immediately provide emergency financial assistance to Navajo tribal members for purchasing Personal Protective Equipment, paying past due utility bills, rent, mortgages, isolation expenses, livestock-related expenses, education-related expenses and other financial burdens created by the COVID-19 pandemic and the public health emergency orders.

K. Resolution No. CJY-67-20 also established that the “progress of all [Navajo Nation CARES Act] Expenditure Plan funded projects shall be reviewed by the Budget and
Finance and Naabik’íyáti’ Committees during the month of October 2020 [and] the funding for any project that has not made enough progress to demonstrate that it will be fully completed by December 31, 2020, will be re-allocated to the Hardship Assistance Expenditure Plan through Naabik’íyáti’ Committee resolution.” CJY-67-20, Section Three (Q); see also CS-73-20, Section Three (F).

L. Naabik’íyáti’ Committee Resolution No. NABID-63-20, attached as Exhibit 2, which amended NABIO-49-20, approved that

“Any remaining CS-73-20, CJY-67-20 and/or CJN-46-20 CARES Fund Expenditure Plans not fully expended, not including encumbered and obligated funds, by November 20, 2020, regardless of recipient or intended recipient, shall be automatically reallocated to the Hardship Assistance Expenditure Plan. With the exception of funds allocated for Powerline projects; Solar projects; Water and Wastewater projects, including cisterns; Broadband and Telecommunication projects; COVID-19 decontamination and direct care projects, including contracts for services that directly mitigate the COVID-19 pandemic through isolation/quarantining, alternative care services, testing and contract tracing; and CARES Act administrative compliance costs, funds still encumbered as of December 22, 2020, shall be unencumbered and unobligated and automatically reallocated to the Hardship Assistance Expenditure Plan if the goods or services have not been delivered by that date. The Office of Management and Budget and Office of Controller shall implement theses reallocations without the need for further authorization.” NABID-63-20, Section Three (D).

and

“Encumbered funds for Powerline projects; Solar projects; Water and Wastewater projects, including cisterns; Broadband and Telecommunication projects; and COVID-19 decontamination and direct care projects, shall be unencumbered and unobligated and automatically reallocated to the Hardship Assistance Expenditure Plan if the goods or services have not been delivered by 12:00 noon on December 28, 2020. The
Office of Management and Budget and Office of Controller shall implement these reallocations without the need for further authorization.” NABID-63-20, Section Three (E).

M. In September of 2020, Resolution No. CJY-67-20 was subsequently amended by Navajo Nation Council Resolution No. CS-74-20 to increase Navajo Nation CARES Fund funding to the Hardship Assistance Expenditure Plan by forty-nine million four hundred fifty-four thousand four hundred sixteen dollars ($49,454,416) and to increase the amount allocated to eligible Navajo members to no more than fifteen hundred dollars ($1500) per person over the age of 18 years as of March 1, 2020 and five hundred dollars ($500) per person under the age of 18 years as of March 1, 2020.

N. By Resolution No. BFO-32-20, attached as Exhibit 3, the Budget and Finance Committee established eligibility criteria and a November 30, 2020, deadline to apply for Hardship Assistance. The 308,000 enrolled Navajo members who met BFO-32-20’s application deadline and eligibility criteria have received Hardship Assistance for a total distribution amount of $318,237,024 which includes those timely applications wherein exceptions are still being resolved.

O. The Office of the Controller and Office of Vital Statistics have estimated that there are approximately 92,000 enrolled Navajo members who did not apply for Hardship Assistance by the November 30, 2020 deadline.

P. As of June 1, 2021, the Hardship Assistance Expenditure Plan has been funded with a total of $341,702,780 through CJY-67-20, CS-74-20, and the reallocations to the Hardship Assistance Expenditure Plan thereunder; and after funding applications received by the November 30, 2020 deadline in the total amount of $318,237,024, the Plan has a current remaining balance of $23,465,756. The remaining balance may increase after outstanding reallocations are received and earned investment income is added.

Q. The Navajo Nation Council has determined that it is in the best interest of the Navajo Nation and the Navajo people to enact the Navajo Nation CARES Fund PHASE II Hardship Assistance Expenditure Plan, attached as Exhibit 3, to provide financial assistance to those eligible Navajo members who were impacted by the COVID-19
pandemic and public health orders but did not receive a distribution through the Hardship Assistance Expenditure Plan approved by Council Resolution Nos. CJY-67-20 and CS-74-20.

SECTION THREE. APPROVAL AND ADOPTION OF THE CARES FUND PHASE II HARDSHIP ASSISTANCE EXPENDITURE PLAN

A. The Navajo Nation hereby approves and enacts the Navajo Nation CARES Fund PHASE II Hardship Assistance Expenditure Plan, attached as Exhibit 4, to be funded by the remaining balance of the Hardship Assistance Expenditure Plan, including the reallocation of unspent Navajo Nation CARES Fund per NABID-63-20, as approved by Council Resolution Nos. CJY-67-20 and CS-74-20.

B. The Navajo Nation also hereby approves the allocation of all current and future Navajo Nation CARES Fund investment earnings to the PHASE II Hardship Assistance Expenditure Plan.

C. The Office of the Controller shall be responsible for implementing and administering the PHASE II Hardship Assistance Expenditure Plan as set forth in Exhibit 4.

D. Funds from the Coronavirus Relief Funds, as amended by the Consolidated Appropriations Act of 2021, Pub. L. No. 116-260, are externally restricted funds and the Navajo Nation Appropriations Act, 12 N.N.C. §§ 800 et seq., as applicable to externally restricted funds, and unless excepted herein, shall apply to the PHASE II Hardship Assistance Expenditure Plan as set forth here. The detailed PHASE II Hardship Assistance Expenditure Plan budget shall not be subject to further legislative approval and shall, instead, be developed and implemented through expedited budget procedures.

SECTION FOUR. APPROVAL AND ADOPTION OF THE PHASE II HARDSHIP ASSISTANCE EXPENDITURE PLAN ADMINISTRATION

A. The PHASE II Hardship Assistance Expenditure Plan shall be administered by the Office of the Controller under the oversight of the Budget and Finance Committee.
B. The Office of Management and Budget and Office of the Controller shall ensure that the reallocations mandated by NABID-63-20 are immediately fully implemented.

C. The Office of the Controller shall ensure that all funds allocated under the PHASE II Hardship Assistance Expenditure Plan are only expended for the purposes set forth in Exhibit 4; and that such funds are fully expended by December 31, 2021.

D. The Office of the Controller shall establish, publish, and implement a sixty (60) day application period for eligible Navajos who have not previously received Hardship Assistance funds; the eligibility criteria and application forms for PHASE II Hardship Assistance Expenditure Plan funds shall be substantially the same as approved by BFO-32-20 unless recommended otherwise by the Health Education and Human Services Committee or Budget and Finance Committee through resolution. Changes to the application for ease of understanding or legal sufficiency can be made without committee resolution when such changes are concurred to or recommended by the Navajo Nation Department of Justice, as long as such changes do not change the substance of the eligibility criteria.

E. After the PHASE II Hardship Assistance application period has expired, the Office of the Controller shall pro-rate the distribution to all eligible applicants based on the total balance of the Hardship Assistance Expenditure Plan balance and ensure that no applicant receives a distribution exceeding fifteen hundred dollars ($1500) per person over the age of 18 years as of March 1, 2020 and five hundred dollars ($500) per person under the age of 18 years as of March 1, 2020.

F. The funds allocated to the Office of the Controller under the PHASE II Hardship Assistance Expenditure Plan set forth herein shall be used exclusively and only for the permissible uses set forth in the following:

1. This Resolution and the PHASE II Hardship Assistance Expenditure Plan approved herein.

2. The Coronavirus Relief Fund, as amended by the Consolidated Appropriations Act of 2021, Pub. L. No. 116-260, which allows only those costs that:

a. are necessary expenditures incurred due to the public health emergency with respect to COVID-19;
b. are not accounted for in the Navajo Nation Fiscal Year 2020 Comprehensive Budget; and
c. are incurred from March 1, 2020 through December 31, 2021.

3. Consistent with the eligible uses described in the Treasury Guidance, attached as Exhibit 1, which includes the following guidance:

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

b. expenditures must be “necessary”; the Department of the Treasury interprets this term broadly to mean that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Coronavirus Relief Fund payments;

c. expenditures may only be made to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. A cost meets this requirement if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation with the budget; or (b) the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation; and

d. expenditures must be for costs incurred during the period that begins on March 1, 2020 and ends on December 31, 2021. A cost is “incurred” when the responsible unit of government has expended funds to cover the cost.

4. Consistent with the eligible uses described in the U.S. Treasury Frequently Asked Questions (FAQ), attached as Exhibit 1.
5. Consistent with the eligible uses as may be described in any and all future guidance, rules, or regulations of the Department of the Treasury or the Department of the Interior related to the Coronavirus Relief Fund.

6. Consistent with Navajo Nation laws, rules and regulations.

I. The PHASE II Hardship Assistance Expenditure Plan and expenditures made thereunder shall be governed by, and construed in accordance with, the laws and regulations of the Navajo Nation.

SECTION FIVE. AMENDMENT
This Resolution may be amended by a two-thirds majority vote of the Navajo Nation Council subject to action of the President of the Navajo Nation under 2 N.N.C. § 221 (B) and the President’s budget line-item veto authority set forth in 2 N.N.C. §164 (A)(17) pursuant to Resolution No. CS-68-20 and CJY-62-20.

SECTION SIX. EFFECTIVE DATE
This Resolution is effective upon its approval pursuant to 2 N.N.C. § 221(B) and the President’s budget line-item veto authority set forth in 2 N.N.C. § 164 (A)(17) pursuant to Resolution No. CS-68-20 and CJY-62-20.

SECTION SEVEN. SAVING CLAUSE
Should any provision of this legislation be determined invalid by the Navajo Nation Supreme Court, or a District Court of the Navajo Nation without appeal to the Navajo Nation Supreme Court, those portions of the legislation which are not determined invalid shall remain the law of the Navajo Nation.