

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0094-21\_

SPONSOR: Eugene Tso

**TITLE: An Action Relating to Health Education and Human Services, Budget and Finance, and Naabik'iyáti' 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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LEGISLATIVE SUMMARY SHEET  
Tracking No. 0094-21

**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.**

5-DAY BILL HOLD PERIOD VSREDNASC  
Website Posting Time/Date \_\_\_\_\_  
Posting End Date: JUNE 14, 2021  
Eligible for Action: JUNE 15, 2021

Health Education & Human Services Committee  
Thence  
Budget & Finance 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. 0094-21

9  
10 AN ACTION  
11 RELATING TO HEALTH EDUCATION AND HUMAN SERVICES, BUDGET  
12 AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO  
13 NATION COUNCIL; ENACTING THE NAVAJO NATION CARES FUND  
14 PHASE II HARDSHIP ASSISTANCE EXPENDITURE PLAN; ALLOCATING  
15 NAVAJO NATION CARES FUND INVESTMENT EARNINGS THERETO

16  
17 BE IT ENACTED:

18  
19 SECTION ONE. AUTHORITY

- 20 A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §  
21 102(A).  
22 B. The Naabik'iyáti' Committee is a standing committee of the Navajo Nation Council  
23 with the responsibility to hear proposed resolution(s) that require final action by the  
24 Navajo Nation Council. 2 N.N.C. § 164(A)(9).  
25 C. The Budget and Finance Committee is a standing committee of the Navajo Nation  
26 Council with the enumerated powers to review and recommend to the Navajo Nation  
27 Council the budgeting, appropriation, investment and management of all funds and to  
28 promulgate rules and regulations related to contracting and financial matters. 2 N.N.C.  
29 §§ 300(B)(1) and (2).  
30

1 D. The Health Education and Human Services Committee is a standing committee of the  
2 Navajo Nation Council empowered to provide legislative oversight on matters  
3 involving health, social services, and education. 2 N.N.C. § 400(C)(1).  
4

## 5 SECTION TWO. FINDINGS

6 A. The World Health Organization (“WHO”) declared a Public Health Emergency of  
7 International Concern related to the outbreak of coronavirus (COVID-19), a highly  
8 contagious and sometimes fatal respiratory virus, on January 30, 2020; the U.S.  
9 Department of Health and Human Services declared a Public Health Emergency related  
10 to the COVID-19 outbreak on January 31, 2020; and the WHO declared a global  
11 pandemic due to COVID-19 on March 11, 2020.

12 B. The Navajo Nation Commission on Emergency Management, with the concurrence of  
13 Navajo Nation President Jonathan Nez, declared a Public Health State of Emergency  
14 on the Navajo Nation on March 11, 2020 due to COVID-19. Resolution No. CEM 20-  
15 03-11. The Navajo Nation Department of Health subsequently issued numerous Public  
16 Health Emergency Orders. Public Health Orders 2020-001 through 2021-011 are  
17 incorporated herein by reference.

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

21 D. The U.S. Congress on March 27, 2020, enacted the Coronavirus Aid, Relief, and  
22 Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020) (the “CARES Act”),  
23 which, at Title V, §5001, entitled “Coronavirus Relief Fund,” incorporated herein by  
24 reference, set aside \$8 billion in emergency aid for Tribal governments for the COVID-  
25 19 pandemic.

26 E. The CARES Act and Coronavirus Relief Fund were subsequently amended by the  
27 Consolidated Appropriations Act of 2021, Pub. L. No. 116-260, incorporated herein by  
28 reference, to extend the deadline for Coronavirus Relief Fund expenditures from  
29 December 30, 2020 to December 31, 2021.  
30

- 1 F. The CARES Act, as amended by Division N, Title X, Section 1001 of the Consolidated  
2 Appropriations Act of 2021, provides that the Coronavirus Relief Fund shall be used  
3 to cover only those costs that:
- 4 a. are necessary expenditures incurred due to the public health emergency with  
5 respect to COVID-19;
  - 6 b. are not accounted for in the Tribal budget most recently approved as of  
7 March 27, 2020; and
  - 8 c. are incurred from March 1, 2020 through December 31, 2021.
- 9 G. The U.S. Treasury on January 15, 2021 issued “Coronavirus Relief Fund Guidance for  
10 State, Territorial, Local, and Tribal Governments” (“Treasury Guidance”) and  
11 “Coronavirus Relief Fund Frequently Asked Questions” (“Treasury FAQ”), attached  
12 as **Exhibit 1**.
- 13 H. As of June 30, 2020, the Navajo Nation has received seven hundred fourteen million  
14 one hundred eighty-nine thousand six hundred thirty-one dollars and forty-seven cents  
15 (\$714,189,631.47) as the Nation’s share of the U.S. Treasury’s initial distributions of  
16 the Coronavirus Relief Fund.
- 17 I. In August of 2020, the Navajo Nation Council recognized that immediately providing  
18 financial assistance to Navajo individuals and families who are facing financial  
19 hardship due to the COVID-19 pandemic and attendant public health orders was  
20 necessary to comprehensively combat the devastating effects of COVID-19, and it  
21 therefore adopted Resolution No. CJY-67-20, incorporated herein by reference,  
22 enacting the Navajo Nation CARES Fund Hardship Assistance Expenditure Plan.
- 23 J. The purpose of the Navajo Nation CARES Fund Hardship Assistance Expenditure Plan  
24 enacted through Resolution No. CJY-67-20, was to immediately provide emergency  
25 financial assistance to Navajo tribal members for purchasing Personal Protective  
26 Equipment, paying past due utility bills, rent, mortgages, isolation expenses, livestock-  
27 related expenses, education-related expenses and other financial burdens created by the  
28 COVID-19 pandemic and the public health emergency orders.
- 29 K. Resolution No. CJY-67-20 also established that the “progress of all [Navajo Nation  
30 CARES Act] Expenditure Plan funded projects shall be reviewed by the Budget and

1 Finance and Naabik'iyáti' Committees during the month of October 2020 [and] the  
2 funding for any project that has not made enough progress to demonstrate that it will  
3 be fully completed by December 31, 2020, will be re-allocated to the Hardship  
4 Assistance Expenditure Plan through Naabik'iyáti' Committee resolution." CJY-67-  
5 20, Section Three (Q); *see also* CS-73-20, Section Three (F).

6 L. Naabik'iyáti' Committee Resolution No. NABID-63-20, attached as **Exhibit 2**, which  
7 amended NABIO-49-20, approved that

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

24 and

25 "Encumbered funds for Powerline projects; Solar projects; Water and  
26 Wastewater projects, including cisterns; Broadband and  
27 Telecommunication projects; and COVID-19 decontamination and direct  
28 care projects, shall be unencumbered and unobligated and automatically  
29 reallocated to the Hardship Assistance Expenditure Plan if the goods or  
30 services have not been delivered by 12:00 noon on December 28, 2020. The

1 Office of Management and Budget and Office of Controller shall implement  
2 these reallocations without the need for further authorization.” NABID-63-  
3 20, Section Three (E).

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

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

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

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

27 Q. The Navajo Nation Council has determined that it is in the best interest of the Navajo  
28 Nation and the Navajo people to enact the Navajo Nation CARES Fund PHASE II  
29 Hardship Assistance Expenditure Plan, attached as **Exhibit 3**, to provide financial  
30 assistance to those eligible Navajo members who were impacted by the COVID-19

1 pandemic and public health orders but did not receive a distribution through the  
2 Hardship Assistance Expenditure Plan approved by Council Resolution Nos. CJY-67-  
3 20 and CS-74-20.

4  
5 **SECTION THREE. APPROVAL AND ADOPTION OF THE CARES FUND PHASE**  
6 **II HARDSHIP ASSISTANCE EXPENDITURE PLAN**

- 7 A. The Navajo Nation hereby approves and enacts the Navajo Nation CARES Fund  
8 PHASE II Hardship Assistance Expenditure Plan, attached as **Exhibit 4**, to be funded  
9 by the remaining balance of the Hardship Assistance Expenditure Plan, including the  
10 reallocation of unspent Navajo Nation CARES Fund per NABID-63-20, as approved  
11 by Council Resolution Nos. CJY-67-20 and CS-74-20.
- 12 B. The Navajo Nation also hereby approves the allocation of all current and future Navajo  
13 Nation CARES Fund investment earnings to the PHASE II Hardship Assistance  
14 Expenditure Plan.
- 15 C. The Office of the Controller shall be responsible for implementing and administering  
16 the PHASE II Hardship Assistance Expenditure Plan as set forth in **Exhibit 4**.
- 17 D. Funds from the Coronavirus Relief Funds, as amended by the Consolidated  
18 Appropriations Act of 2021, Pub. L. No. 116-260, are externally restricted funds and  
19 the Navajo Nation Appropriations Act, 12 N.N.C. §§ 800 *et seq.*, as applicable to  
20 externally restricted funds, and unless excepted herein, shall apply to the PHASE II  
21 Hardship Assistance Expenditure Plan as set forth here. The detailed PHASE II  
22 Hardship Assistance Expenditure Plan budget shall not be subject to further legislative  
23 approval and shall, instead, be developed and implemented through expedited budget  
24 procedures.

25  
26 **SECTION FOUR. APPROVAL AND ADOPTION OF THE PHASE II HARDSHIP**  
27 **ASSISTANCE EXPENDITURE PLAN ADMINISTRATION**

- 28 A. The PHASE II Hardship Assistance Expenditure Plan shall be administered by the  
29 Office of the Controller under the oversight of the Budget and Finance Committee.

- 1 B. The Office of Management and Budget and Office of the Controller shall ensure that  
2 the reallocations mandated by NABID-63-20 are immediately fully implemented.
- 3 C. The Office of the Controller shall ensure that all funds allocated under the PHASE II  
4 Hardship Assistance Expenditure Plan are only expended for the purposes set forth in  
5 **Exhibit 4**; and that such funds are fully expended by December 31, 2021.
- 6 D. The Office of the Controller shall establish, publish, and implement a sixty (60) day  
7 application period for eligible Navajos who have *not* previously received Hardship  
8 Assistance funds; the eligibility criteria and application forms for PHASE II Hardship  
9 Assistance Expenditure Plan funds shall be substantially the same as approved by BFO-  
10 32-20 unless recommended otherwise by the Health Education and Human Services  
11 Committee or Budget and Finance Committee through resolution. Changes to the  
12 application for ease of understanding or legal sufficiency can be made without  
13 committee resolution when such changes are concurred to or recommended by the  
14 Navajo Nation Department of Justice, as long as such changes do not change the  
15 substance of the eligibility criteria.
- 16 E. After the PHASE II Hardship Assistance application period has expired, the Office of  
17 the Controller shall pro-rate the distribution to all eligible applicants based on the total  
18 balance of the Hardship Assistance Expenditure Plan balance and ensure that no  
19 applicant receives a distribution exceeding fifteen hundred dollars (\$1500) per person  
20 over the age of 18 years as of March 1, 2020 and five hundred dollars (\$500) per person  
21 under the age of 18 years as of March 1, 2020.
- 22 F. The funds allocated to the Office of the Controller under the PHASE II Hardship  
23 Assistance Expenditure Plan set forth herein shall be used exclusively and only for the  
24 permissible uses set forth in the following:
- 25 1. This Resolution and the PHASE II Hardship Assistance Expenditure Plan approved  
26 herein.
  - 27 2. The Coronavirus Relief Fund, as amended by the Consolidated Appropriations Act  
28 of 2021, Pub. L. No. 116-260, which allows only those costs that:
    - 29 a. are necessary expenditures incurred due to the public health emergency with  
30 respect to COVID-19;

- 1           b. are not accounted for in the Navajo Nation Fiscal Year 2020 Comprehensive  
2           Budget; and
- 3           c. are incurred from March 1, 2020 through December 31, 2021.
- 4       3. Consistent with the eligible uses described in the Treasury Guidance, attached as  
5       **Exhibit 1**, which includes the following guidance:
- 6           a. expenditures must be incurred “due to” the public health emergency which  
7           means that expenditures must be used for actions taken to respond to the public  
8           health emergency; these expenditures may include expenditures incurred to  
9           allow the Tribal government to respond directly to the emergency, such as by  
10          addressing medical or public health needs, as well as expenditures incurred to  
11          respond to second-order effects of the emergency, such as by providing  
12          economic support to those suffering from employment or business interruptions  
13          due to COVID-19-related business closures;
- 14          b. expenditures must be “necessary”; the Department of the Treasury interprets  
15          this term broadly to mean that the expenditure is reasonably necessary for its  
16          intended use in the reasonable judgment of the government officials responsible  
17          for spending Coronavirus Relief Fund payments;
- 18          c. expenditures may only be made to cover costs that were not accounted for in  
19          the budget most recently approved as of March 27, 2020. A cost meets this  
20          requirement if either (a) the cost cannot lawfully be funded using a line item,  
21          allotment, or allocation with the budget; *or* (b) the cost is for a substantially  
22          different use from any expected use of funds in such a line item, allotment, or  
23          allocation; and
- 24          d. expenditures must be for costs incurred during the period that begins on March  
25          1, 2020 and ends on December 31, 2021. A cost is “incurred” when the  
26          responsible unit of government has expended funds to cover the cost.
- 27       4. Consistent with the eligible uses described in the U.S. Treasury Frequently Asked  
28       Questions (FAQ), attached as **Exhibit 1**.
- 29
- 30

1 5. Consistent with the eligible uses as may be described in any and all future guidance,  
2 rules, or regulations of the Department of the Treasury or the Department of the  
3 Interior related to the Coronavirus Relief Fund.

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

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

8  
9 **SECTION FIVE. AMENDMENT**

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

14  
15 **SECTION SIX. EFFECTIVE DATE**

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

19  
20 **SECTION SEVEN. SAVING CLAUSE**

21 Should any provision of this legislation be determined invalid by the Navajo Nation  
22 Supreme Court, or a District Court of the Navajo Nation without appeal to the Navajo  
23 Nation Supreme Court, those portions of the legislation which are not determined invalid  
24 shall remain the law of the Navajo Nation.