

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0113-21\_

SPONSOR: Herman M. Daniels

**TITLE: An Action Relating to the Resources and Development, Budget and Finance, and Naabik'iyáti Committees, and the Navajo Nation Council; Appropriating \$27,991,281 in Síhasin Funds to the Navajo Tribal Utility Authority for the Completion of 2,794 Utilities Projects Across the Navajo Nation; Approving the "NTUA 2,794 Projects Expenditure Plan" Pursuant to 12 N.N.C §2501 - §2508**

*Date posted:* July 09, 2021 at 5:16PM

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## LEGISLATION SUMMARY SHEET

TRACKING NO. 0113-21

**DATE:** July 9, 2021

**TITLE OF LEGISLATION:** RELATING TO THE RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; APPROPRIATING \$27,991,281 IN SÍHASIN FUNDS TO THE NAVAJO TRIBAL UTILITY AUTHORITY FOR THE COMPLETION OF 2,794 UTILITIES PROJECTS ACROSS THE NAVAJO NATION; APPROVING THE "NTUA 2,794 PROJECTS EXPENDITURE PLAN" PURSUANT TO 12 N.N.C §2501 – §2508

**PURPOSE OF THIS LEGISLATION:** to approve \$27,991,281 from the Síhasin Fund for 2,747 NTUA projects and to approve the required Expenditure Plan for these projects.

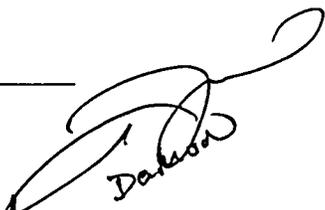
OLC No. 21-250-1

5-DAY BILL HOLD PERIOD VSredhase  
Website Posting Time/Date  
Posting End Date: July 14, 2021  
Eligible for Action: July 15, 2021

Resources & Development Committee  
Thence  
Budget & Finance Committee  
Thence  
Naabik'iyáti' Committee  
Thence  
Navajo Nation Council

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PROPOSED NAVAJO NATION COUNCIL RESOLUTION  
24<sup>th</sup> NAVAJO NATION COUNCIL – Third Year, 2021  
INTRODUCED BY

\_\_\_\_\_  
(Prime Sponsor) 

TRACKING NO. 0113-21

AN ACTION  
RELATING TO THE RESOURCES AND DEVELOPMENT, BUDGET AND  
FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION  
COUNCIL; APPROPRIATING \$27,991,281 IN SÍHASIN FUNDS TO THE NAVAJO  
TRIBAL UTILITY AUTHORITY FOR THE COMPLETION OF 2,794 UTILITIES  
PROJECTS ACROSS THE NAVAJO NATION; APPROVING THE “NTUA 2,794  
PROJECTS EXPENDITURE PLAN” PURSUANT TO 12 N.N.C §2501 – §2508

BE IT ENACTED:

SECTION 1. AUTHORITY

- (A) The Resources and Development Committee is a standing committee of the Navajo Nation Council with the authority to oversee all matters involving water, land, the environment, community development, and public utilities, among others. 2 N.N.C. §500(C).
- (B) The Budget and Finance Committee is a standing committee of the Navajo Nation Council with the responsibility to “review and recommend to the Navajo Nation Council the budgeting, appropriation, investment and management of all funds.” 2 N.N.C. §301(B)(2).
- (C) The Naabik'iyáti' Committee is a standing committee of the Navajo Nation Council that considers all proposed final actions by the Navajo Nation Council. 2 N.N.C. §164(A)(9).
- (D) The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §102(A).
- (E) The Navajo Nation Code (at 12 N.N.C. §2502, as amended by CJA-03-18) provides that the

1 purpose of the Navajo Nation Síhasin Fund (“Síhasin Fund”) is as follows:

2 §2502 Purpose

3 A. The purposes of this Fund are to provide financial support and/or financing for:

- 4 1. The planning and development of economic development and regional infrastructure  
5 supporting economic development and community development, including such  
6 infrastructure as, but not limited to, housing, commercial and government buildings,  
7 waterline, solid waste management development, powerline projects, and transportation  
8 and communication systems, within the Navajo Nation; . . .

9 B. For the Purpose in §2502(A)(1), Fund expenditures for infrastructure shall not be limited  
10 by 12 N.N.C. §1310(F) or TCDCJY-77-99.

11 C. Leveraging the Fund by way of guaranteeing loans, match funding, direct funding in part,  
12 and other weighted uses of the Fund, including loan financing from the Fund, for the  
13 purposes in §2502(A)(1), shall be favored over direct funding in whole.

14 (F) The Síhasin Fund provides that “Fund Principal” shall consist of all deposits made to the  
15 Síhasin Fund and that “Fund Income” shall consist of all earnings (interest, dividends, etc.)  
16 generated and realized by the Fund Principal, and that Síhasin Fund Income shall be deposited  
17 in, and added to, the Fund Principal until such time as a Fund Expenditure Plan is duly  
18 approved. 12 N.N.C. §2504 and §2505(C).

19 (G) The Síhasin Fund provides that “Fund Principal and Income shall not be expended except  
20 pursuant to a Fund Expenditure Plan consistent with the purposes set forth in §2502 of this  
21 Chapter and adopted by a two-thirds (2/3) vote of all members of the Navajo Nation Council.”  
22 12 N.N.C. §2505(A).

23  
24 **SECTION 2. FINDINGS**

25 (A) On January 31, 2020 the World Health Organization (“WHO”) declared a Public Health  
26 Emergency of International Concern related to the outbreak of the Novel Coronavirus  
27 (“COVID-19”), a highly contagious and sometimes fatal respiratory virus. On January 31,  
28 2020 the U.S. Department of Health and Human Services declared a Public Health Emergency  
29 related to the COVID-19 outbreak, and the WHO declared a global COVID-19 pandemic on  
30 March 11, 2020.

1 (B) Also on March 11, 2020 the Navajo Nation Commission on Emergency Management, with  
2 the concurrence of Navajo Nation President Jonathan Nez, declared a Public Health State of  
3 Emergency on the Navajo Nation because of the COVID-19 pandemic. Resolution No. CEM  
4 20-03-11. The Navajo Nation Department of Health has since issued numerous Public Health  
5 Emergency Orders to contain the spread of COVID-19. Public Health Orders No. 2020-001  
6 through and including No. 2021-014 are incorporated herein by this reference.

7 (C) The Navajo Nation Health Command Operations Center, as of July 6, 2021, has reported  
8 31,035 positive COVID-19 cases and 1,357 COVID-19-related deaths on the Navajo Nation.

9 (D) Over the past 17 months the COVID-19 pandemic has starkly demonstrated that basic  
10 residential and public utility services are absolutely essential to combating the spread of  
11 deadly viruses and maintaining the public's health, safety, and welfare.

12 (E) Pursuant to Navajo Nation Council Resolution No. CJY-67-20, incorporated herein by this  
13 reference, the Navajo Nation awarded the Navajo Tribal Utility Authority ("NTUA") one-  
14 hundred-forty-seven-million, one-hundred-sixteen-thousand, five-hundred-sixty-one dollars  
15 (\$147,116,561) for projects that complied with the CARES Act and regulations and  
16 underlying U.S. Treasury guidance. **Exhibit A.**

17 (F) As of March 5, 2021, using the approved CARES Act funds, NTUA has connected 737 homes  
18 on the Navajo Nation to the electricity grid, of which 54 homes were connected by  
19 neighboring utility companies serving the Navajo Nation. In the most isolated areas of the  
20 Navajo Nation, NTUA has also installed 300 off-grid solar units at Navajo homes. In addition,  
21 NTUA has completed 130 larger electricity capacity projects that included powerline  
22 conversions, switch/motor replacements, substation-recloser installation and utility pole  
23 replacements.

24 (G) NTUA has also installed and connected 30 potable water line connections and access to  
25 wastewater for Navajo homes, placed into service 15 large public water loading stations for  
26 potable water, and has worked on renovations and upgrades to 7 regional water loading  
27 stations. NTUA has also replaced motors and pumps for 64 water wells located throughout  
28 the Navajo Nation, completing 10 water well renovations.

29 (H) NTUA has placed into service 105 cistern systems to Navajo homes, which consist of a septic  
30 system, cistern system, residential bathroom addition and plumbing (if needed), house-wiring

1 (if needed), with an electric power source.

2 (I) NTUA has placed into service 42 Wi-Fi spots throughout the Navajo Nation (with free access  
3 to students), placed into service 85 separate broadband sites, and constructed 4 large towers  
4 for widespread broadband connections.

5 (J) Throughout the pandemic NTUA crews and personnel have been working very hard, often  
6 ten to twelve hours during business days, over the weekends, and during holidays, to meet the  
7 challenges of COVID-19 by constructing and installing various critical utilities for the Navajo  
8 people. A breakdown of the CARES Act funds used to pay for the many NTUA projects  
9 described herein is shown in **Exhibit A**.

10 (K) With its CARES Act-funded projects, NTUA has been extremely efficient in its operations,  
11 scheduling, and management activities, which actions have resulted in a substantial savings.  
12 As just one example, NTUA connected to the electricity grid approximately 141% of its initial  
13 target of 522 homes, for a total of 737 homes that were connected to the grid. Notably, NTUA  
14 was originally awarded \$13,747,562 in CARES Act funds to connect 522 homes, but the final  
15 cost for the 737 homes that NTUA ultimately connected to the grid was approximately only  
16 \$9,500,000.

17 (L) Because of NTUA's significant efficiencies in expending CARES Act funds, NTUA has  
18 realized substantial savings with its numerous projects, as compared to the overall amount of  
19 CARES Act funds approved for NTUA. In fact, NTUA returned to the CARES Act Hardship  
20 Fund the amounts of \$34,051,578 in January 2021 and \$36,235,134 in March 2021, as shown  
21 in **Exhibit A**.

22 (M) Despite completion of all of the above projects, NTUA receives urgent inquiries daily from  
23 Navajo individuals and families, Navajo Nation Council Delegates, Chapter Officials, and  
24 other Navajo Nation leadership. These persons have provided the names of families and  
25 individuals that desperately need potable water, wastewater facilities, or electricity  
26 connection. NTUA also receives inquiries from Navajo Nation leadership asking for the  
27 construction of broadband towers or access to broadband services in their areas.

28 (N) To date, NTUA has compiled a list of approximately 657 Navajo families with no electricity  
29 hook-ups who are urgently requesting that they be connected to the electricity grid. NTUA  
30 believes it can connect 420 of these Navajo homes by the end of 2021 if adequate funds are

1 quickly made available for construction and if NTUA is able to obtain rights-of-way approvals  
2 for these residential connections in a timely manner.

3 (O) The Navajo Nation has determined that quickly funding projects for the construction of  
4 potable water and wastewater facilities, electricity connections, installation of solar  
5 equipment, and broadband/telecommunications services, is absolutely vital to combat the  
6 spread of COVID-19 and to mitigate the effects of the pandemic. The documents explaining  
7 NTUA's proposed Expenditure Plan for its requested Sihasin funds are attached hereto as  
8 **Exhibits B-F**. A breakdown of the proposed Expenditure Plan, for the total amount requested  
9 of **\$27,991,281**, is as follows:

10 1. Potable water and wastewater projects. **\$9,073,912** is needed for NTUA to complete  
11 potable water and wastewater projects on the Navajo Nation, which projects include  
12 waterlines and septic systems, water hauling, water well infrastructure, water tank  
13 renovations, and overall improvements to NTUA's existing potable water and wastewater  
14 infrastructure systems. The expenditures set forth in the proposed Expenditure Plan are  
15 necessary to provide the Navajo People with ready access to safe potable water and to  
16 ensure the proper containment and disposal of wastewater. Both types of projects are  
17 necessary to combat the spread of COVID-19 and to enable Navajo residents and public  
18 facilities to comply with the Center for Disease Control ("CDC") COVID-19 prevention  
19 guidance. **Exhibit B**.

20 2. Electricity/powerline and solar projects. **\$14,150,914** is needed for NTUA to complete  
21 electricity/powerline and solar projects on the Navajo Nation, which projects include  
22 installation of electric power lines, solar units and related electricity capacity projects. The  
23 expenditures set forth in the proposed Expenditure Plan are necessary to ensure that Navajo  
24 homes and public facilities on the Navajo Nation have ready access to electricity sufficient  
25 to comply with the CDC's COVID-19 prevention guidance and to address the negative  
26 impacts of the pandemic. **Exhibit C**.

27 3. Broadband/Telecommunications projects. **\$4,766,455** is needed for NTUA to complete  
28 2085 broadband/telecommunications projects (which number includes equipment for 2000  
29 individual wireless customers) to ensure that the Navajo Nation's residents, visitors, and  
30 public facilities, including schools and institutions of higher learning, and medical facilities

1 throughout the Navajo Nation, have adequate broadband access and telecommunications  
2 capacity to address the effects of the COVID-19 pandemic. The expenditures set forth in  
3 the proposed Expenditure Plan will ensure access to public safety, healthcare, and  
4 education, and will allow Navajo Nation residents and employees to comply with stay-at-  
5 home orders. **Exhibit D.**

6 (P) The allocation of the **\$27,991,281** as requested by NTUA for these 2,794 Projects meets the  
7 criteria for Síhasin expenditures because these Projects involve “waterline, solid waste  
8 management development, powerline projects, and . . . communication systems” as  
9 described in 12 N.N.C. §2502(A)(1). **Exhibit E.**

10 (Q) A listing of all 2,794 Projects that will be funded with the \$27,991,281 in requested Síhasin  
11 funds, is attached hereto as **Exhibit F.**

12  
13 **SECTION 3. ALLOCATION OF SÍHASIN FUNDING AND APPROVAL OF**  
14 **EXPENDITURE PLAN**

15 (A) In accordance with 12 N.N.C. §2505(A), the Navajo Nation hereby allocates **\$27,991,281** in  
16 Síhasin funds for NTUA’s 2,794 Projects as explained and proposed herein.

17 (B) The Navajo Nation hereby approves the “NTUA 2,794 Projects Expenditure Plan” attached  
18 hereto as **Exhibit B, Exhibit C, Exhibit D, Exhibit E, and Exhibit F.**

19 (C) The Síhasin Funds allocated for the “NTUA 2,794 Projects Expenditure Plan” may be further  
20 leveraged by bond or loan financing pursuant to the Navajo Nation Bond Financing Act (12  
21 N.N.C. §1300 *et seq.*, as amended) using Síhasin Fund earnings for repayment and financing  
22 costs, upon approval of the Budget and Finance Committee and further approval by a two-  
23 thirds (2/3) vote of all members of the Navajo Nation Council.

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25 **SECTION 4. APPROVAL OF EXPENDITURE PLAN ADMINISTRATION**

26 The Navajo Nation hereby approves the implementation and administration of the “NTUA 2,794  
27 Projects Expenditure Plan” with certain provisos and restrictions, as follows:

28 (A) The Navajo Nation Controller shall determine whether the source of the annual allocations  
29 for the total amount of **\$27,991,281** approved herein will be Síhasin Fund Principal or Síhasin  
30 Fund Income, or a combination of both.

1 (B) The Síhasin funding for the “NTUA 2,794 Projects Expenditure Plan” shall be disbursed to  
2 the Navajo Nation Division of Community Development (“DCD”) within ten (10) days after  
3 the effective date of this legislation. The DCD shall then disburse the Síhasin funds according  
4 to specific drawdown requests and instructions submitted to DCD by NTUA.

5 (C) NTUA shall be responsible for carrying out and implementing its proposed 2,794 Projects, in  
6 accordance with its Expenditure Plan approved herein. The Síhasin funding shall be used  
7 solely to design, plan, construct, install, or purchase equipment for the 2,794 Projects, as  
8 described in the **Exhibits B-F** attached hereto.

9 (D) Any and all savings of funds shall be returned to the Síhasin Fund Principal once all 2,794  
10 Projects have been completed or upon the reversion deadline in Section 4(E) below.

11 (E) The Síhasin funding allocated for the 2,794 Projects shall not lapse on an annual basis  
12 pursuant to 12 N.N.C. §820(N); however, any Síhasin funds not spent or encumbered within  
13 thirty-six (36) months of the date that funds are provided to DCD shall revert to the Síhasin  
14 Fund Principal, unless otherwise approved by both the Resources and Development and the  
15 Naabik’íyáti’ Committees of the Navajo Nation Council.

16 (F) The 2,794 Projects shall be designed, planned, constructed, installed, or purchased by NTUA,  
17 and continuously thereafter the operation, maintenance, and repairs for the 2,794 Projects shall  
18 be performed by NTUA, except for certain home-installed equipment that will become the  
19 property and responsibility of the homeowner once construction or installation is completed.

20 (G) A utility right-of-way will be necessary for some of the 2,794 Projects. In such cases, NTUA  
21 will apply for and hold the right-of-way, which will be granted by the Navajo Nation in  
22 accordance with all applicable laws and regulations pertaining thereto.

23  
24 **SECTION 5. DIRECTIVES**

25 (A) At least once per Navajo Nation Fiscal Year quarter, NTUA in cooperation with the DCD  
26 shall provide a written report (with an oral presentation, if requested) to both the Resources  
27 and Development and Naabik’íyáti’ Committees, explaining the current status of all activities  
28 pursuant to the “NTUA 2,794 Projects Expenditure Plan” and the responsibilities of NTUA  
29 and DCD as authorized and directed in this legislation.

30 (B) The Síhasin Fund shall be reimbursed, in the \$27,991,281 amount allocated in this legislation,

1 from prospective funds available to the Navajo Nation from any and all state and federal  
2 sources, including Congressional appropriations under the American Rescue Plan Act of 2021  
3 or other COVID-19 related relief.

4  
5 **SECTION 6. EFFECTIVE DATE**

6 This legislation and the “NTUA 2,794 Projects Expenditure Plan” approved herein shall become  
7 effective pursuant to 12 N.N.C. §2505.

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9 **SECTION 7. SAVINGS CLAUSE**

10 If any provision of this legislation is determined invalid by the Supreme Court of the Navajo  
11 Nation or by any Navajo Nation District Court, without appeal to the Navajo Nation Supreme  
12 Court, the remainder of this legislation shall remain valid as the law of the Navajo Nation.