TITLE: 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

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

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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 Sihasin Fund for 2,747 NTUA projects and to approve the required Expenditure Plan for these projects.
PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th 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 SIHASIN 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'íyáti' 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
The purpose of the Navajo Nation Sihasin Fund ("Sihasin Fund") is as follows:

§2502 Purpose

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

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

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

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

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

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

SECTION 2. FINDINGS

(B) Also on March 11, 2020 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 because of the COVID-19 pandemic. Resolution No. CEM 20-03-11. The Navajo Nation Department of Health has since issued numerous Public Health Emergency Orders to contain the spread of COVID-19. Public Health Orders No. 2020-001 through and including No. 2021-014 are incorporated herein by this reference.

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

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

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

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

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

(H) NTUA has placed into service 105 cistern systems to Navajo homes, which consist of a septic system, cistern system, residential bathroom addition and plumbing (if needed), house-wiring
(if needed), with an electric power source.

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

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

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

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

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

(N) To date, NTUA has compiled a list of approximately 657 Navajo families with no electricity hook-ups who are urgently requesting that they be connected to the electricity grid. NTUA believes it can connect 420 of these Navajo homes by the end of 2021 if adequate funds are
quickly made available for construction and if NTUA is able to obtain rights-of-way approvals for these residential connections in a timely manner.

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

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

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

3. Broadband/Telecommunications projects. $4,766,455 is needed for NTUA to complete 2085 broadband/telecommunications projects (which number includes equipment for 2000 individual wireless customers) to ensure that the Navajo Nation’s residents, visitors, and public facilities, including schools and institutions of higher learning, and medical facilities
throughout the Navajo Nation, have adequate broadband access and telecommunications capacity to address the effects of the COVID-19 pandemic. The expenditures set forth in the proposed Expenditure Plan will ensure access to public safety, healthcare, and education, and will allow Navajo Nation residents and employees to comply with stay-at-home orders. Exhibit D.

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

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

SECTION 3. ALLOCATION OF SÍHASIN FUNDING AND APPROVAL OF EXPENDITURE PLAN

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

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

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

SECTION 4. APPROVAL OF EXPENDITURE PLAN ADMINISTRATION

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

(A) The Navajo Nation Controller shall determine whether the source of the annual allocations for the total amount of $27,991,281 approved herein will be Síhasin Fund Principal or Síhasin Fund Income, or a combination of both.
(B) The Sihasin funding for the “NTUA 2,794 Projects Expenditure Plan” shall be disbursed to the Navajo Nation Division of Community Development (“DCD”) within ten (10) days after the effective date of this legislation. The DCD shall then disburse the Sihasin funds according to specific drawdown requests and instructions submitted to DCD by NTUA.

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

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

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

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

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

SECTION 5. DIRECTIVES

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

(B) The Sihasin Fund shall be reimbursed, in the $27,991,281 amount allocated in this legislation,
from prospective funds available to the Navajo Nation from any and all state and federal
sources, including Congressional appropriations under the American Rescue Plan Act of 2021
or other COVID-19 related relief.

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

SECTION 7. SAVINGS CLAUSE
If any provision of this legislation is determined invalid by the Supreme Court of the Navajo
Nation or by any Navajo Nation District Court, without appeal to the Navajo Nation Supreme
Court, the remainder of this legislation shall remain valid as the law of the Navajo Nation.