TITLE: An Action Relating to the Budget and Finance Committee; Approving the Navajo Nation Fiscal Recovery Fund Application Procedures, Forms, and Expenditure Plan Template, Pursuant to CJY-41-21

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DATE: August 18, 2021

TITLE OF RESOLUTION: AN ACTION RELATING TO THE BUDGET AND FINANCE COMMITTEE; APPROVING THE NAVAJO NATION FISCAL RECOVERY FUND APPLICATION PROCEDURES, FORMS, AND EXPENDITURE PLAN TEMPLATE, PURSUANT TO CJY-41-21

PURPOSE: This resolution, if approved, will enact and establish the ARPA-FRF application procedures and processes and include an FRF Expenditure Plan template.

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

Primary Sponsor

TRACKING NO. 0172-21

AN ACTION
RELATING TO THE BUDGET AND FINANCE COMMITTEE;
APPROVING THE NAVAJO NATION FISCAL RECOVERY FUND
APPLICATION PROCEDURES, FORMS, AND EXPENDITURE
PLAN TEMPLATE, PURSUANT TO CJY-41-21

BE IT ENACTED:

SECTION 1. AUTHORITY
A. The Budget and Finance Committee is a standing committee of the Navajo Nation Council with the authority to promulgate rules and regulations regarding financial matters. 2 N.N.C. §300(B)(1) and §300(B)(2).
B. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §102(A).
C. The Navajo Nation Council has the power to delegate its authority to the standing committees of the Navajo Nation Council. 2 N.N.C. §102(G).

SECTION 2. FINDINGS
A. The World Health Organization (“WHO”) declared a Public Health Emergency of International Concern related to the Coronavirus (“COVID-19”), a highly contagious and sometimes fatal respiratory virus, on January 30, 2020; the U.S. Department of Health and Human Services declared a Public Health Emergency related to the COVID-19 outbreak...


C. The coronavirus pandemic of 2019 has caused large scale infections and loss of life throughout the world, the United States, and within the Navajo Nation. As of August 9, 2021, the Navajo Nation Health Command Operations Center has confirmed 31,650 COVID-19 cases and 1,383 COVID-related deaths on the Navajo Nation. COVID-19 variants have recently emerged that threaten to increase these numbers and continue the pandemic’s assault on the Navajo People.

D. The devastating effects of COVID-19 continue throughout the Navajo Nation, and include widescale negative financial effects, such as employment losses, business closures, food and housing insecurity, and other economic disruptions.

E. In response to the pandemic, on March 11, 2021, President Biden signed the American Rescue Plan Act ("ARP A") into law. Section 9901 of ARP A established the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund (together the "Fiscal Recovery Funds" or "FRF") by amending Title VI of the Social Security Act, which provided $362 billion for state, local, and tribal governments, including $20 billion designated for tribal governments.

F. As of May 29, 2021, the United States Department of Treasury allocated $1,861,554,458.43 to the Navajo Nation under the Fiscal Recovery Funds provisions of ARP A. The Fiscal Recovery Funds are designed to build on and expand the relief provided in the 2020 Coronavirus Aid, Relief, and Economic Security Act or CARES Act.

G. The ARP A/Fiscal Recovery Funds are intended to support governmental efforts to mitigate and contain the spread of COVID-19, as well as to respond to the health, social and
economic impacts of COVID-19 suffered by residents and businesses.

H. Pursuant to Section 9901 of ARPA, the Fiscal Recovery Funds are specifically intended to:

1. respond to the COVID-19 public health emergency and its negative economic impacts, including assistance to households, small businesses, and non-profits; and/or aid to impacted industries such as tourism, travel, and hospitality;

2. respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the tribal government; under this category, the Navajo Nation can provide premium pay to government workers performing essential work, and can provide grants to eligible employers that have eligible workers who perform essential work;

3. provide government services to the extent of the reduction in Navajo Nation revenue due to the COVID-19 public health emergency, relative to revenues collected in the most recent full fiscal year prior to the emergency; and

4. make necessary investments in water, sewer, or broadband infrastructure.

I. Pursuant to ARPA:

1. Fiscal Recovery Fund costs must be incurred by December 31, 2024, meaning the Navajo Nation must obligate FRF funds by that date; and

2. The Fiscal Recovery Fund period of performance runs until December 31, 2026, meaning all FRF-funded projects must be completed by that date.

J. While its acceptance of the Fiscal Recovery Funds obligates the Navajo Nation to comply with ARPA and other federal laws and regulations, the Navajo Nation can and will fulfill these obligations while retaining and exercising its tribal sovereignty in allocating and disbursing Fiscal Recovery Funds.

K. On July 23, 2021 the Navajo Nation Council adopted Resolution No. CJY-41-21 that established the Navajo Nation’s own Fiscal Recovery Fund (“NNFRF”), into which the Navajo Nation’s allocation of $1,861,554,458.43 has been deposited. CJY-41-21 also approved a general expenditure authorization process for Fiscal Recovery Funds. On August 2, 2021 the Navajo Nation President signed Resolution No. CJY-41-21 into law.

L. In Section Four(A) of CJY-41-21, the Navajo Nation Council directed the Office of
Management and Budget, in consultation with the Office of the Controller and the Department of Justice, to develop formal FRF application and review procedures, as well as an expenditure plan template, that shall be used for preparing and submitting requests for Navajo Nation Fiscal Recovery Funds, all of which shall be adopted by the Budget and Finance Committee. This Budget and Finance Committee legislation is intended to fulfill the Navajo Nation Council’s directive in CJY-41-21.

M. To ensure the Navajo Nation’s compliance with ARPA, Section Four (B) of CJY-41-21 the Navajo Nation Council directs the Navajo Nation Department of Justice to “do an initial determination of whether a NNFRF funding request satisfies the legal requirements of the Fiscal Recovery Funds provisions of ARPA and applicable Navajo Nation laws, regulations, and policies and procedures.”

SECTION 3. ADOPTION OF APPLICATION AND REVIEW PROCEDURES

The Budget and Finance Committee hereby approves and adopts THE NAVAJO NATION FISCAL RECOVERY FUNDS APPLICATION PROCEDURES AND INSTRUCTIONS FOR REQUESTING FISCAL RECOVERY FUNDS UNDER THE AMERICAN RESCUE PLAN ACT OF 2021 (“ARPA”), as follows:

1. NAVAJO NATION GOVERNMENT UNITS – attached as Exhibit 1;
2. NON-GOVERNANCE-CERTIFIED CHAPTERS – attached as Exhibit 2;
3. GOVERNANCE-CERTIFIED CHAPTERS – attached as Exhibit 3;
4. NAVAJO NATION-OWNED ENTITIES – attached as Exhibit 4;
5. EXTERNAL ENTITIES – attached as Exhibit 5.

SECTION 4. ADOPTION OF APPLICATION FORMS AND EXPENDITURE PLAN TEMPLATE FOR FISCAL RECOVERY FUNDS

A. The Budget and Finance Committee hereby approves and adopts THE NAVAJO NATION FISCAL RECOVERY FUNDS REQUEST FORM & EXPENDITURE PLAN, which consists of five templates, as follows:

1. NAVAJO NATION GOVERNMENT UNITS – attached as APPENDIX A to Exhibit 1;
2. NON-GOVERNANCE-CERTIFIED CHAPTERS – attached as APPENDIX A to Exhibit 2;
3. GOVERNANCE-CERTIFIED CHAPTERS – attached as APPENDIX A to Exhibit 3;
4. NAVAJO NATION-OWNED ENTITIES – attached as APPENDIX A to Exhibit 4;
5. EXTERNAL ENTITIES – attached as APPENDIX A to Exhibit 5.

B. The Budget and Finance Committee hereby approves and adopts THE NAVAJO NATION FISCAL RECOVERY FUNDS EXPENDITURE PLAN BUDGET Form, which consists of five templates, as follows:
1. NAVAJO NATION GOVERNMENT UNITS – attached as APPENDIX B to Exhibit 1;
2. NON-GOVERNANCE-CERTIFIED CHAPTERS – attached as APPENDIX B to Exhibit 2;
3. GOVERNANCE-CERTIFIED CHAPTERS – attached as APPENDIX B to Exhibit 3;
4. NAVAJO NATION-OWNED ENTITIES – attached as APPENDIX B to Exhibit 4;
5. EXTERNAL ENTITIES – attached as APPENDIX B to Exhibit 5.

C. The Budget and Finance Committee hereby approves and adopts THE NAVAJO NATION FISCAL RECOVERY FUNDS BUDGET REVISION REQUEST Form, which consists of five templates, as follows:
1. NAVAJO NATION GOVERNMENT UNITS – attached as APPENDIX C to Exhibit 1;
2. NON-GOVERNANCE-CERTIFIED CHAPTERS – attached as APPENDIX C to Exhibit 2;
3. GOVERNANCE-CERTIFIED CHAPTERS – attached as APPENDIX C to Exhibit 3;
4. NAVAJO NATION-OWNED ENTITIES – attached as APPENDIX C to Exhibit 4;
5. EXTERNAL ENTITIES – attached as APPENDIX C to Exhibit 5.

SECTION 5. DIRECTIVES
The Office of Management and Budget and the Office of the Controller shall post the Procedures and Forms approved herein, and Resolution No. CJY-41-21, on their respective websites.

SECTION 6. EFFECTIVE DATE
This legislation shall be effective upon its approval pursuant to 2 N.N.C. §221(C).

SECTION 7. SAVING CLAUSE
If any provision of this legislation is determined invalid by the Navajo Nation Supreme Court, or by a Navajo Nation District Court without appeal to the Navajo Nation Supreme Court, those provisions of this legislation not determined invalid shall remain the law of the Navajo Nation.