

THE NAVAJO NATION
LEGISLATIVE BRANCH
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LEGISLATION NO: _0172-21_

SPONSOR: Jamie Henio

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

Date posted: August 19, 2021 at 4:49PM

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LEGISLATIVE SUMMARY SHEET
Tracking No. 0/72-21

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.

5-DAY BILL HOLD PERIOD: YSPDUNNR
Website Posting Time/Date:
Posting End Date: August 24, 2021
Eligible for Action: August 25, 2021

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION
2 24th NAVAJO NATION COUNCIL – Third Year, 2021
3 INTRODUCED BY

4
5 _____
6 Primary Sponsor

7
8 TRACKING NO. 0172-21

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

15
16 BE IT ENACTED:

17
18 SECTION 1. AUTHORITY

- 19 A. The Budget and Finance Committee is a standing committee of the Navajo Nation Council
20 with the authority to promulgate rules and regulations regarding financial matters. 2 N.N.C.
21 §300(B)(1) and §300(B)(2).
22 B. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §102(A).
23 C. The Navajo Nation Council has the power to delegate its authority to the standing
24 committees of the Navajo Nation Council. 2 N.N.C. §102(G).

25
26 SECTION 2. FINDINGS

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

1 on January 31, 2020; and the WHO declared a global pandemic due to COVID-19 on
2 March 11, 2020.

3 B. The Navajo Nation Commission on Emergency Management, with the concurrence of
4 Navajo Nation President Jonathan Nez, declared a Public Health State of Emergency on
5 the Navajo Nation on March 11, 2020, due to the COVID-19 outbreak. *See* Resolution No.
6 CEM 20-03-11, incorporated herein by reference. The Navajo Nation Department of
7 Health has subsequently issued numerous Public Health Emergency Orders. Public Health
8 Orders 2020-001 through 2021-016 are incorporated herein by reference. These Public
9 Health Emergency Orders are available at www.ndoh.navajo-nsn.gov.

10 C. The coronavirus pandemic of 2019 has caused large scale infections and loss of life
11 throughout the world, the United States, and within the Navajo Nation. As of August 9,
12 2021, the Navajo Nation Health Command Operations Center has confirmed 31,650
13 COVID-19 cases and 1,383 COVID-related deaths on the Navajo Nation. COVID-19
14 variants have recently emerged that threaten to increase these numbers and continue the
15 pandemic's assault on the Navajo People.

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

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

25 F. As of May 29, 2021, the United States Department of Treasury allocated
26 \$1,861,554,458.43 to the Navajo Nation under the Fiscal Recovery Funds provisions of
27 ARPA. The Fiscal Recovery Funds are designed to build on and expand the relief provided
28 in the 2020 Coronavirus Aid, Relief, and Economic Security Act or CARES Act.

29 G. The ARPA/Fiscal Recovery Funds are intended to support governmental efforts to mitigate
30 and contain the spread of COVID-19, as well as to respond to the health, social and

1 economic impacts of COVID-19 suffered by residents and businesses.

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

- 4 1. respond to the COVID-19 public health emergency and its negative economic
5 impacts, including assistance to households, small businesses, and non-profits;
6 and/or aid to impacted industries such as tourism, travel, and hospitality;
- 7 2. respond to workers performing essential work during the COVID-19 public
8 health emergency by providing premium pay to eligible workers of the tribal
9 government; under this category, the Navajo Nation can provide premium pay
10 to government workers performing essential work, and can provide grants to
11 eligible employers that have eligible workers who perform essential work;
- 12 3. provide government services to the extent of the reduction in Navajo Nation
13 revenue due to the COVID-19 public health emergency, relative to revenues
14 collected in the most recent full fiscal year prior to the emergency; and
- 15 4. make necessary investments in water, sewer, or broadband infrastructure.

16 I. Pursuant to ARPA:

- 17 1. Fiscal Recovery Fund costs must be incurred by December 31, 2024, meaning
18 the Navajo Nation must obligate FRF funds by that date; and
- 19 2. The Fiscal Recovery Fund period of performance runs until December 31,
20 2026, meaning all FRF-funded projects must be completed by that date.

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

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

30 L. In Section Four(A) of CJY-41-21, the Navajo Nation Council directed the Office of

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

7 M. To ensure the Navajo Nation’s compliance with ARPA, Section Four (B) of CJY-41-21
8 the Navajo Nation Council directs the Navajo Nation Department of Justice to “do an initial
9 determination of whether a NNFRF funding request satisfies the legal requirements of the
10 Fiscal Recovery Funds provisions of ARPA and applicable Navajo Nation laws,
11 regulations, and policies and procedures.”
12

13 **SECTION 3. ADOPTION OF APPLICATION AND REVIEW PROCEDURES**

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

- 18 1. NAVAJO NATION GOVERNMENT UNITS – attached as **Exhibit 1**;
- 19 2. NON-GOVERNANCE-CERTIFIED CHAPTERS – attached as **Exhibit 2**;
- 20 3. GOVERNANCE-CERTIFIED CHAPTERS – attached as **Exhibit 3**;
- 21 4. NAVAJO NATION-OWNED ENTITIES – attached as **Exhibit 4**;
- 22 5. EXTERNAL ENTITIES – attached as **Exhibit 5**.

23 24 **SECTION 4. ADOPTION OF APPLICATION FORMS AND EXPENDITURE PLAN** 25 **TEMPLATE FOR FISCAL RECOVERY FUNDS**

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

- 29 1. NAVAJO NATION GOVERNMENT UNITS – attached as **APPENDIX A** to
30 **Exhibit 1**;

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

7 B. The Budget and Finance Committee hereby approves and adopts THE NAVAJO NATION
8 FISCAL RECOVERY FUNDS EXPENDITURE PLAN BUDGET Form, which consists
9 of five templates, as follows:

- 10 1. NAVAJO NATION GOVERNMENT UNITS – attached as **APPENDIX B** to
- 11 **Exhibit 1;**
- 12 2. NON-GOVERNANCE-CERTIFIED CHAPTERS – attached as **APPENDIX B** to
- 13 **Exhibit 2;**
- 14 3. GOVERNANCE-CERTIFIED CHAPTERS – attached as **APPENDIX B** to **Exhibit**
- 15 **3;**
- 16 4. NAVAJO NATION-OWNED ENTITIES – attached as **APPENDIX B** to **Exhibit 4;**
- 17 5. EXTERNAL ENTITIES – attached as **APPENDIX B** to **Exhibit 5.**

18 C. The Budget and Finance Committee hereby approves and adopts THE NAVAJO NATION
19 FISCAL RECOVERY FUNDS BUDGET REVISION REQUEST Form, which consists
20 of five templates, as follows:

- 21 1. NAVAJO NATION GOVERNMENT UNITS – attached as **APPENDIX C** to
- 22 **Exhibit 1;**
- 23 2. NON-GOVERNANCE-CERTIFIED CHAPTERS – attached as **APPENDIX C** to
- 24 **Exhibit 2;**
- 25 3. GOVERNANCE-CERTIFIED CHAPTERS – attached as **APPENDIX C** to **Exhibit**
- 26 **3;**
- 27 4. NAVAJO NATION-OWNED ENTITIES – attached as **APPENDIX C** to **Exhibit 4;**
- 28 5. EXTERNAL ENTITIES – attached as **APPENDIX C** to **Exhibit 5.**

29
30 **SECTION 5. DIRECTIVES**

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

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5 **SECTION 6. EFFECTIVE DATE**

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

7 **SECTION 7. SAVING CLAUSE**

8 If any provision of this legislation is determined invalid by the Navajo Nation Supreme Court,
9 or by a Navajo Nation District Court without appeal to the Navajo Nation Supreme Court,
10 those provisions of this legislation not determined invalid shall remain the law of the Navajo
11 Nation.