TITLE: An Action Relating to Resources and Development, Budget and Finance, and Naabik’íyáti’ Committees, and the Navajo Nation Council; Amending CAP-19-16 to Transfer the Responsibility and Permanent Trust Fund Interest Funding for the Shiprock Hotel-Restaurant Project from the Navajo Nation Gaming Enterprise to the Navajo Nation Hospitality Enterprise; Allocating $11,400,000 from the Síhasin Fund to the Navajo Nation Hospitality Enterprise for the Shiprock Hotel-Restaurant Project and Approving the Project Expenditure Plan Pursuant to 12 N.N.C. §§ 2501-2508

Date posted: November 10, 2021 at 3:53 PM

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DATE: November 5, 2021

TITLE OF RESOLUTION: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; AMENDING CAP-19-16 TO TRANSFER THE RESPONSIBILITY AND PERMANENT TRUST FUND INTEREST FUNDING FOR THE SHIPROCK HOTEL-RESTAURANT PROJECT FROM THE NAVAJO NATION GAMING ENTERPRISE TO THE NAVAJO NATION HOSPITALITY ENTERPRISE; ALLOCATING $11,400,000 FROM THE SÍHASÍN FUND TO THE NAVAJO NATION HOSPITALITY ENTERPRISE FOR THE SHIPROCK HOTEL-RESTAURANT PROJECT AND APPROVING THE PROJECT EXPENDITURE PLAN PURSUANT TO 12 N.N.C §§ 2501 – 2508

PURPOSE: This resolution, if approved, will amend CAP-19-16 to transfer $8,300,000 in Permanent Trust Fund income from the NNGE to NNHE and allocate $11,400,000 in Síhasín Funds to NNHE to complete the Shiprock Hotel-Restaurant Project.

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:

(Prime Sponsor)

Tracking No. 0236-21

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE,
AND NABIK’IYÁTI’ COMMITTEES, AND THE NAVAJO NATION COUNCIL;
AMENDING CAP-19-16 TO TRANSFER THE RESPONSIBILITY AND
PERMANENT TRUST FUND INTEREST FUNDING FOR THE SHIPROCK
HOTEL-RESTAURANT PROJECT FROM THE NAVAJO NATION GAMING
ENTERPRISE TO THE NAVAJO NATION HOSPITALITY ENTERPRISE;
ALLOCATING $11,400,000 FROM THE SÍHASIN FUND TO THE NAVAJO
NATION HOSPITALITY ENTERPRISE FOR THE SHIPROCK HOTEL-
RESTAURANT PROJECT AND APPROVING THE PROJECT EXPENDITURE
PLAN PURSUANT TO 12 N.N.C §§ 2501 – 2508

BE IT ENACTED:

SECTION ONE. AUTHORITY

A. The Resources and Development Committee is a standing committee of the Navajo
Nation Council empowered to exercise oversight over the operations of the Navajo
Nation enterprises, including the Navajo Nation Gaming Enterprise and the Navajo
Nation Hospitality Enterprise. 2 N.N.C. §501(B)(4)(e).

B. The Budget and Finance Committee is a standing committee of the Navajo Nation
Council authorized to “appropriate, allocate, cancel, re-appropriate and review the use
of Navajo Nation funds received including but not limited to all grants, contracts, gifts and other funds from all sources.” 2 N.N.C. §301(B)(3).

C. The Naabik’íyáti’ Committee is a standing committee of the Navajo Nation Council charged with the responsibility to hear proposed resolution(s) that require final action 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 purpose of the Navajo Nation Síhasin Fund (“Síhasin 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; and

2. Education opportunities for members of the Navajo Nation.

B. For the Purpose in §2502(A)(1), Fund expenditures for infrastructure shall not be limited by 12 NNC §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 Síhasin Fund provides that “Fund Principal” shall consist of all deposits made to the Síhasin Fund and that “Fund Income” shall consist of all earnings (interest, dividends, etc.) generated and realized by the Fund Principal, and that Fund Income shall be deposited in and added to Fund Principal until such time as a Fund Expenditure Plan is duly adopted. 12 N.N.C. §2504 and §2505(C).

G. The Síhasin 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 TWO. FINDINGS

A. In April of 2016, the Navajo Nation Council passed Resolution No. CAP-19-16, in which the Council approved two payments from the Navajo Nation’s Permanent Trust Fund income to the Navajo Nation Gaming Enterprise ("NNGE"), in the amount of $5,500,000 in the 2nd Year and $2,800,000 in the 3rd Year of a “PTF 5-Year Plan.” These payments, totaling $8,300,000, were intended to allow the NNGE to construct a Hotel and Restaurant in the Shiprock community ("Shiprock Hotel-Restaurant Project"). **Exhibit A.**

B. Since then, the NNGE has negotiated with the Navajo Nation Hospitality Enterprise ("NNHE") to take over construction and management of the Shiprock Hotel-Restaurant Project. In May 2021, the NNHE Board of Directors passed a resolution accepting the transfer of the Shiprock Hotel-Restaurant Project. **Exhibit B.** In June 2021, the NNGE Board of Directors also passed a resolution approving the transfer of the Shiprock Hotel-Restaurant Project to the NNHE. **Exhibit C.**

C. The NNHE has prepared a funding request, dated August 30, 2021, indicating that, after previous allocations of funds and the transfer of the $8,300,000 as proposed in this Legislation, the Shiprock Hotel-Restaurant Project still needs $11,400,000 for completion. **Exhibit D.**

D. The allocation of the $11,400,000 for the Shiprock Hotel-Restaurant Project meets the criteria for Síhasin expenditures because the Project involves “infrastructure” and “community development” such as “commercial buildings” as mentioned in 12 N.N.C. §2502(A)(1).

E. The Shiprock community and the Navajo Nation as a whole will greatly benefit from this economic development project, in terms of jobs creation, tourism, tax revenue, and other significant economic benefits.
SECTION THREE. AMENDING CAP-19-16 TO TRANSFER RESPONSIBILITY AND FUNDING FOR THE SHIPROCK HOTEL-RESTAURANT PROJECT FROM THE NNGE TO THE NNHE

A. The Navajo Nation hereby amends Exhibit A of CAP-19-16, attached herein as Exhibit A, to transfer responsibility for the construction of the Shiprock Hotel-Restaurant Project to the Navajo Nation Hospitality Enterprise.

B. The Navajo Nation further amends CAP-19-16 to transfer $8,300,000 of Permanent Trust Fund income from the Navajo Nation Gaming Enterprise to the Navajo Nation Hospitality Enterprise, for use by the Hospitality Enterprise in the planning and construction of the Shiprock Hotel-Restaurant Project.

SECTION FOUR. ALLOCATION OF $11,400,000 IN SÍHASIN FUNDS TO THE NAVAJO NATION HOSPITALITY ENTERPRISE FOR THE SHIPROCK HOTEL-RESTAURANT PROJECT

A. The Navajo Nation hereby allocates eleven million four hundred thousand dollars ($11,400,000) in Síhasin Funds to the Navajo Nation Hospitality Enterprise for the planning and construction of the Shiprock Hotel-Restaurant Project.

B. The Síhasin Funds allocated for the Shiprock Hotel-Restaurant Project 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 the recommendation of the Budget and Finance Committee and approval by a two-thirds (2/3) vote of all members of the Navajo Nation Council.

SECTION FIVE. APPROVAL OF THE SHIPROCK HOTEL-RESTAURANT PROJECT EXPENDITURE PLAN AND ITS ADMINISTRATION

A. The Navajo Nation hereby approves the Shiprock Hotel-Restaurant Project Expenditure Plan as shown in Exhibit D.

B. The Navajo Nation hereby approves the administration of the Shiprock Hotel-Restaurant Project Expenditure Plan, as follows:

1. The Navajo Nation Controller shall determine whether the source of the
$11,400,000 allocation from the Sihasin Fund will be from Fund Principal or Fund Income or a combination of both.

2. The funds allocated for the Shiprock Hotel-Restaurant Project shall be distributed to the Navajo Nation Hospitality Enterprise pursuant to a construction or other schedule agreed to by the Office of the Controller.

3. The NNHE shall be responsible for the planning and construction of the Shiprock Hotel-Restaurant Project, as well as ongoing operation, maintenance, and repairs for the Project after completion.

4. The funds allocated for the Shiprock Hotel-Restaurant Project shall be used solely for the planning and construction of the Project, and for the purchase of equipment and facilities as necessary for the Project once construction is completed.

5. Any and all cost-savings shall be returned to the Sihasin Fund once the Shiprock Hotel-Restaurant Project Expenditure Plan is completed.

6. The funds allocated for the Shiprock Hotel-Restaurant Project shall revert to the Sihasin Fund principal if not spent or encumbered within one hundred twenty (120) days of distribution to the NNHE, unless recommended otherwise by the Resources and Development Committee and approved by the Naabik'iyati' Committee.

SECTION SIX. DIRECTIVE

The Navajo Nation Hospitality Enterprise shall provide a written and verbal report on the status of its expenditures and progress with the Shiprock Hotel-Restaurant Project, to the Naabik'iyati' Committee, by the end of each Quarter of FY2022.

SECTION SEVEN. EFFECTIVE DATE

This Legislation and the Shiprock Hotel-Restaurant Project Expenditure Plan shall become effective pursuant to 2 N.N.C. § 164 (A) (17) and 12 N.N.C. §2505.

SECTION EIGHT. SAVING CLAUSE

If any provision(s) of this Legislation is determined invalid by the Navajo Nation Supreme Court or by a District Court of the Navajo Nation without appeal to the Navajo Nation
Supreme Court, the remainder of this Legislation shall remain the law of the Navajo Nation.