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 NNHE’S Shiprock Hotel Restaurant Project Expenditure Plan Pursuant to 12 N.N.C. §§2501-2508

Date posted: November 30, 2021 at 5:08PM

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DATE: November 17, 2021

TITLE OF LEGISLATION: 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 NNHE'S SHIPROCK HOTEL-RESTAURANT PROJECT EXPENDITURE PLAN PURSUANT TO 12 N.N.C §§2501 – 2508

PURPOSE OF THIS LEGISLATION: to amend CAP-19-16 to transfer responsibility and allocated PTF funds for the Shiprock Hotel and Restaurant Project from NNGE to NNHE; to allocate an additional $11,400,000 of Síhasin Funds to NNHE for the Project and approve the Project Expenditure Plan.
PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL – Third Year, 2021

Introduced by:

(Prime Sponsor)

Tracking No. 0258-21

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE,
AND Naabik’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 SIHASIN FUND TO THE NAVAJO NATION HOSPITALITY
ENTERPRISE FOR THE SHIPROCK HOTEL-RESTAURANT PROJECT AND
APPROVING THE NNHE’S SHIPROCK HOTEL-RESTAURANT 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
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 that 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 the “PTF 5-Year Plan.” These two payments, totaling $8,300,000, were intended to allow the NNGE to construct a Hotel-Restaurant Project in the Shiprock community (“Shiprock Project”). Exhibit A.

B. The NNGE prepared a status report for the Shiprock Project on February 7, 2017. Exhibit B.

C. In Resolution No. RDCJY-79-17, dated July 25, 2017, the Resources and Development Committee approved a 5-Year Plan for the Division of Economic Development, which Plan included an allocation of $2,805,000 (from the Navajo Nation’s Sales Tax Fund) for the “Shiprock Hotel” project. RDCJY-79-17 did not specifically provide the $2,805,000 to any particular entity, but simply approved the funds for the project. Exhibit C.

D. In July of 2018 the NNGE and the Division of Economic Development (“DED”) entered into a Memorandum of Agreement (“MOA”) for cooperation on the Shiprock Project, and for the Navajo Nation/DED to provide to NNGE the approved $2,805,000 for the design, infrastructure, and development costs for the Shiprock Project. Exhibit D. The NNGE’s acceptance of the MOA and the $2,805,000 for the Shiprock Project was pre-approved by the NNGE Board of Directors in June of 2018. Exhibit E.

E. Since then, the NNGE has negotiated with the Navajo Nation Hospitality Enterprise (“NNHE”) to take over construction and management of the Shiprock Project. In May 2021, the NNHE Management Board passed a resolution accepting the transfer of the Shiprock Project. Exhibit F. In June 2021, the NNGE Board of Directors also passed a resolution approving the transfer of the Shiprock Project to the NNHE. Exhibit G.
F. 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 requested in this Legislation, the Shiprock Project still needs $11,400,000 for the Project to be completed. **Exhibit H and Exhibit I.**

G. The NNHE has provided a proposed Expenditure Plan detailing how all requested funds will be spent on the Shiprock Project. **Exhibit I.**

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

I. As shown in the attached Exhibit C, the Shiprock community and the Navajo Nation as a whole will greatly benefit from this major 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 $8,300,000 IN FUNDS FOR THE SHIPROCK HOTEL-RESTAURANT PROJECT TO THE NNHE; APPROVING REALLOCATION OF $2,805,000 IN FUNDS UNDER RDCJY-79-17 TO THE NNHE FOR THE SHIPROCK HOTEL-RESTAURANT PROJECT

A. The Navajo Nation hereby amends Exhibit A of CAP-19-16 (attached as Exhibit A) to transfer responsibility for the construction, completion, and operation of the Shiprock Hotel-Restaurant Project, from the Navajo Nation Gaming Enterprise to the Navajo Nation Hospitality Enterprise.

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

C. The Navajo Nation further approves the reallocation of the $2,805,000 approved in Resolution No. RDCJY-79-17 (Exhibit C), to the Navajo Nation Hospitality Enterprise for use in the planning and construction of the Shiprock Project.
SECTION FOUR. ALLOCATION OF $11,400,000 IN SIHASIN FUNDS TO THE NNHE FOR THE SHIPROCK HOTEL-RESTAURANT PROJECT

A. The Navajo Nation hereby allocates $11,400,000 in Sihasin Funds to the Navajo Nation Hospitality Enterprise for use in the planning and construction of the Shiprock Project.

B. The Sihasin Funds allocated for the Shiprock Project may be further leveraged by bond or loan financing pursuant to the Navajo Nation Bond Financing Act, at 12 N.N.C. §1300 et seq. as amended, using Sihasin 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 NNHE’S SHIPROCK HOTEL-RESTAURANT PROJECT EXPENDITURE PLAN AND ITS ADMINISTRATION

A. The Navajo Nation hereby approves the NNHE’s Shiprock Hotel-Restaurant Project Expenditure Plan as shown in Exhibit I.

B. The Navajo Nation hereby approves the administration of the Shiprock 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 Project shall be distributed to the Navajo Nation Hospitality Enterprise pursuant to a construction schedule or other payout schedule agreed to by the Office of the Controller.

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

4. The funds allocated for the Shiprock Project shall be used solely for the planning and construction of the Project, and for the purchase and installation 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 Project Expenditure Plan is completed.
6. The funds allocated for the Shiprock 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’íyáti’ Committee.

SECTION SIX. DIRECTIVES

A. Immediately upon the effective date of this Legislation, the NNGE shall return to the proper accounts all unspent funds, out of the $8,300,000 approved in CAP-19-16 and the $2,805,000 approved in RDCJY-79-17, that NNGE has taken out of the Permanent Trust Fund or the Sales Tax Fund for the Shiprock Hotel-Restaurant Project. The Controller shall then promptly close out the Fund Management Plans for each of the funding allocations to the NNGE for the Shiprock Project.

B. Within thirty (30) calendar days following the effective date of this Legislation, the NNGE, the NNHE, and the DED shall terminate the June 2018 MOA (attached as Exhibit C), and the NNHE and the DED shall enter into a new Memorandum of Agreement that provides for the NNHE to receive the $2,805,000 in Sales Tax Fund monies for NNHE’s use in the planning and construction of the Shiprock Project.

C. By the end of each Quarter of FY2022, the NNHE shall provide to the Naabik’íyáti’ Committee a written and verbal report on the status of its expenditures and progress with the Shiprock Project, which report shall include a copy of the new NNHE/DED Memorandum of Agreement for the Shiprock Project.

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.