TITLE: An Action Relating to an Emergency and the Navajo Nation Council; Allocating $207,000,000 of Navajo Nation Fiscal Recovery Funds; Approving the Navajo Nation Fiscal Recovery Fund Hardship Assistance Expenditure Plan

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DATE: December 16, 2021

TITLE OF RESOLUTION: AN ACTION RELATING TO AN EMERGENCY AND THE NAVAJO NATION COUNCIL; ALLOCATING $207,000,000 OF NAVAJO NATION FISCAL RECOVERY FUNDS; APPROVING THE NAVAJO NATION FISCAL RECOVERY FUND HARDSHIP ASSISTANCE EXPENDITURE PLAN

PURPOSE: This resolution, if approved, will allocate $207,000,000 from the Navajo Nation Fiscal Recovery Funds for Hardship Assistance.

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

[Signature]
Primary Sponsor

TRACKING NO. 0263-21

AN ACTION
RELATING TO AN EMERGENCY AND THE NAVAJO NATION COUNCIL;
ALLOCATING $207,000,000 OF NAVAJO NATION FISCAL RECOVERY FUNDS;
APPROVING THE NAVAJO NATION FISCAL RECOVERY FUND HARDSHIP
ASSISTANCE EXPENDITURE PLAN

BE IT ENACTED:

SECTION ONE. AUTHORITY
A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §102(A).
B. Navajo Nation Council Resolution No. CJY-41-21, attached as Exhibit A, mandates that Navajo Nation Fiscal Recovery Fund (“NNFRF”) Expenditure Plans be duly adopted by a two-thirds (2/3) vote of all members of the Navajo Nation Council and approved by the President of the Navajo Nation pursuant to 2 N.N.C. § 164 (A) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).
C. The Navajo Nation Code provides that “[m]atters constituting an emergency shall be limited to the cessation of law enforcement services, and disaster relief services, fire protection services or other direct services required as an entitlement under Navajo Nation or Federal law, or which directly threaten the sovereignty of the Navajo Nation. Such an emergency matter must arise due to the pressing public need for such resolution(s) and must be a matter requiring final action by the Council. 2 N.N.C. § 164(16).
SECTION TWO. FINDINGS


C. The coronavirus pandemic of 2019 has caused large scale infections and loss of life throughout the world, the United States, and the Navajo Nation. As of December 16, 2021, the Navajo Nation Health Command Operations Center has confirmed 40,659 COVID-19 cases and 1,570 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 extend beyond the health and life devastation to wide scale 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, United States President Joseph Biden signed the American Rescue Plan Act ("ARPA") into law. Section 9901 of ARPA amended Title VI of the Social Security Act to add section 602, which established the Coronavirus State Fiscal Recovery Fund, and section 603, which established the Coronavirus Local Fiscal Recovery Fund (together the "Fiscal Recovery Funds" or "FRF") and provided $362 billion for state, local, and tribal governments, including $20 billion
specifically designated for tribal governments.

F. As of November 1, 2021, the United States Department of Treasury has allocated two billion seventy-nine million four hundred sixty-one thousand four hundred sixty-four dollars ($2,079,461,464) to the Navajo Nation under the Fiscal Recovery Funds provisions of ARPA. The Fiscal Recovery Funds are designed to build on and expand the relief provided in the 2020 Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281 (2020), and are intended 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.

G. Pursuant to Section 9001 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;
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 COVID-19 public health emergency; and
4. make necessary investments in water, sewer, and/or broadband infrastructure.

H. The U.S. Department of Treasury has issued guidance requiring that the use and expenditure of Fiscal Recovery Funds must fall under one of the four categories above and that funding recipients must report each expenditure under one of the sixty-six (66) “Expenditure Eligibility Categories” set forth in Appendix 1 to the U.S. Department of Treasury’s Compliance and Reporting Guidance for State and Local Fiscal Recovery Funds, attached herein as Exhibit B.

I. Pursuant to ARPA:

1. Fiscal Recovery Fund costs must be incurred by December 31, 2024, meaning that the Navajo Nation must obligate FRF funds by that date. Treasury’s
Interim Final Rule provides that “incurred” shall have the same meaning given to “financial obligation” under the Uniform Guidance at 2 CFR 200.1: “Financial obligations, when referencing a recipient's or sub-recipient's use of funds under a Federal award, means orders placed for property and services, contracts and sub-awards made, and similar transactions that require payment.”; and

2. The Fiscal Recovery Fund period of performance runs from March 3, 2021 until December 31, 2026, meaning that all FRF-funded projects must be completed and funds must be fully expended by December 31, 2026.

3. Costs incurred by the Navajo Nation prior to March 3, 2021 are not eligible.

4. Any funds not obligated or expended for eligible uses by the dates above in sections I (1) and (2) must be returned to Treasury, including any unobligated or unexpended funds that have been provided to sub-recipients and contractors as part of the award closeout process.

J. While its acceptance of 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 sovereignty in allocating and disbursing Fiscal Recovery Funds.

K. On July 23, 2021, the Navajo Nation Council adopted Resolution No. CJY-41-21, attached as Exhibit A, establishing the Navajo Nation Fiscal Recovery Fund (“NNFRF”) into which the Navajo Nation’s allocation of $2,079,461,464 has been deposited. CJY-41-21 also adopted an expenditure authorization and approval process for the allocation of funds from the NNFRF.

L. In Section Four of CJY-41-21, the Navajo Nation Council mandated the Budget and Finance Committee to adopt application and review procedures, as well as an expenditure plan template, to be used by entities requesting Navajo Nation Fiscal Recovery Funds. The Budget and Finance Committee approved Resolution No. BFS-31-21 which established mandatory Navajo Nation Fiscal Recovery Fund application procedures, forms, and an expenditure plan template. BFS-31-21 is incorporated herein by reference.

M. To ensure the Navajo Nation’s compliance with ARPA, Section Four of CJY-41-21 also
directed the Navajo Nation Department of Justice ("DOJ") to perform "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." Resolution No. BFS-31-21 incorporated DOJ’s initial determination into the mandatory NNFRF application procedures, forms, and an expenditure plan template, which requires, among other things, identification of the entity with administrative oversight over the Funding Recipient. Administrative oversight means having the authority to monitor the implementation of an approved FRF Expenditure Plan and the expenditure of awarded funds. The duties of the entity with administrative oversight are set forth in Section Seven of the FRF Procedures in exhibits 1 through 5 of BFS-31-21.

N. The Office of the President and Vice-President, in coordination with the Division of Community Development ("DCD"), presented ARPA and Fiscal Recovery Fund information at each of the five (5) Agency Council Meetings to hear from the Navajo People, through their elected officials, concerning their needs and priorities for projects and/or services funded through the NNFRF. In addition, DCD has met with Navajo Nation Chapters, individually and collectively, on more than fifty (50) occasions to discuss NNFRF matters.

O. The Navajo Nation Council hosted twenty-six (26) Naabik’íyáti’ Committee Work Sessions, all open to the public, to discuss the needs of the Navajo People and priorities for projects and/or services funded through the Navajo Nation Fiscal Recovery Fund. In addition, Standing Committees of the Navajo Nation Council held more than twenty (20) committee meetings, all open to the public, that have included NNFRF reports and infrastructure specific discussions.

P. The financial devastation visited on the Navajo People by the COVID-19 pandemic has risen to emergency levels, particularly with winter weather looming, and the Navajo Nation Council has determined that it is vital that the Navajo People be provided immediate financial assistance

Q. It that it is in the best interest of the Navajo People to enact the NNFRF Hardship Assistance Expenditure Plan in the total amount of two hundred million dollars
($207,000,000), as set forth in Exhibit C, as an emergency legislation to counteract limited access to direct services necessary to recover from the devastation caused by the COVID-19 pandemic and mitigate exposure to future variants.

SECTION THREE. APPROVAL OF NAVAJO NATION FISCAL RECOVERY FUND HARDSHIP ASSISTANCE EXPENDITURE PLAN

A. The Navajo Nation hereby approves and adopts the Navajo Nation Fiscal Recovery Fund Hardship Assistance Expenditure Plan set forth in Exhibit C.

B. The Navajo Nation hereby approves total funding for the NNFRF Hardship Assistance Expenditure Plan from the Navajo Nation Fiscal Recovery Fund in the total amount of two hundred seven million dollars ($207,000,000) and allocates the funding as follows:

1. Two hundred seven million dollars ($207,000,000) to the Office of the Controller for Household Assistance – Cash Transfers (Expenditure Eligibility Category 2.3), as set forth in Exhibit C, with administrative oversight by the Office of the President and Vice-President and legislative oversight by the Budget and Finance Committee.

SECTION FOUR. ADMINISTRATION OF HARDSHIP ASSISTANCE EXPENDITURE PLAN

A. All entities receiving Navajo Nation Fiscal Recovery Funds, whether through an immediate allocation under CJY-41-21 or subsequently approved NNFRF Expenditure Plan, shall comply with all Navajo Nation laws, policies, regulations, rules, and procedures, specifically including, but not limited to, those governing the NNFRF and the expenditure of such funds, and any additional terms set forth in a grant, sub-recipient, or similar agreement.

B. Fiscal Recovery Fund costs must be incurred by December 31, 2024, meaning that the Navajo Nation must obligate FRF funds by that date. For internal Navajo Nation purposes, the term “obligated” is defined in BFS-31-21, Section Three on page 3 of Exhibits 1 through 5.

C. Projects and/or services funded with Navajo Nation Fiscal Recovery Funds must be
completed and all NNFRF funds fully spent by December 31, 2026.

D. Navajo Nation Fiscal Recovery Fund Expenditure Plan funds shall be available for use by a funding recipient that is a branch, division, department, or other unit of the Navajo Nation central government as soon as a detailed budget has been administratively approved and the Office of Management and Budget has entered such budget into the Financial Management Information System.

E. Awarded Navajo Nation Fiscal Recovery Funds shall only be obligated and expended on projects and/or services, including need-based projects and services, that were included as an immediate allocation under CJY-41-21 or are included in a NNFRF Expenditure Plan approved and adopted by a Navajo Nation Council resolution enacted pursuant to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).

F. Awarded Navajo Nation Fiscal Recovery Funds, including cost savings, cannot be moved between Expenditure Plans without approval by a Navajo Nation Council resolution enacted pursuant to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).

G. All entities receiving Navajo Nation Fiscal Recovery Funds shall follow and apply Generally Accepted Accounting Principles (GAAP), as established by the Governmental Accounting Standards Board (GASB) for governmental entities and by the Financial Accounting Standards Board (FASB) for public and private companies and non-profits, in reporting, recording, and accounting for such Funds.

H. Fraud, misuse of funds, violation of applicable Navajo Nation or federal laws and regulations, non-compliance with FRF agreements governing grants or sub-awards, and false statements or claims by any individual or entity receiving or administering Navajo Nation Fiscal Recovery Funds may result in administrative, civil, or criminal sanctions and penalties, debarment and suspension, ineligibility for future Navajo Nation awards or business opportunities, and the Navajo Nation may pursue any other legal action or remedy available by law.

SECTION FIVE. FUTURE ALLOCATION OF UNALLOCATED NAVAJO NATION FISCAL RECOVERY FUNDS TO HARDSHIP ASSISTANCE EXPENDITURE PLAN

A. Section Four of CJY-41-21 also mandates that “[u]ntil the third quarter of 2024, NNFRF
Expenditure Plans for direct financial assistance to enrolled Navajo Nation members, not including business economic relief or similar programs, shall be limited to ten percent (10%) of the total Fiscal Recovery Funds received by the Navajo Nation. After the second quarter of 2024, unallocated or unexpended NNFRF funds can be allocated for direct financial assistance to enrolled members through resolution of the Navajo Nation Council and approval of the President pursuant to 2 N.N.C. § 164 (A) and 2 N.N.C. §§ 1005 (C) (10), (11) and (12).”

B. All Navajo Nation Fiscal Recovery Funds that have not been allocated to a NNFRF Expenditure Plan through a Navajo Nation Council resolution enacted pursuant to CJY-41-21 by the end of the second quarter of Fiscal Year 2024 may be re-allocated to the NNFRF Hardship Assistance Expenditure Plan through Navajo Nation Council resolution enacted pursuant to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).

C. The allocation of unallocated NNFRF funds to the NNFRF Hardship Assistance Expenditure Plan shall require a separate or revised expenditure plan be submitted to the Navajo Nation Department of Justice for an eligibility determination.

SECTION SIX. REPORTING

A. All entities receiving Navajo Nation Fiscal Recovery Funds shall keep and maintain accurate and complete financial data and records sufficient to demonstrate that the Fiscal Recovery Funds appropriated by the U.S. Congress to the Navajo Nation have been used by the reporting entity in accordance with the provisions of ARPA and timely relay such reports and records to the administrative oversight, Office of Controller, Office of Management and Budget, FRF Office, and legislative oversight as directed in the grant or sub-recipient agreements if any, and when requested. Such reports and records shall be maintained for at least seven (7) years after the project and/or service has been completed. The Office of the Controller shall be responsible for compiling and providing any and all records and financial reports required by the U.S. Treasury.

B. All entities receiving Navajo Nation Fiscal Recovery Funds through an approved Expenditure Plan shall report the status of their NNFRF allocations to their respective oversight committees at the end of each Fiscal Year quarter. The entity with
administrative oversight over the Expenditure Plan shall review the quarterly report prior to its presentation and shall participate in the presentation to the oversight committee(s).

C. The Office of the Controller, with the assistance of the Executive Director of the NNFRF Office, shall report the status of the NNFRF Hardship Assistance Expenditure Plan to the Budget and Finance and Naabik’íyáti’ Committees at the end of each Fiscal Year quarter.

SECTION SEVEN. EFFECTIVE DATE
This legislation shall be effective upon its approval pursuant to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).

SECTION EIGHT. AMENDMENTS
Amendments to this legislation shall only be adopted by a two-thirds (2/3) vote of all members of the Navajo Nation Council and approval of the President of the Navajo Nation pursuant to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).

SECTION NINE. 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.

SECTION TEN. DIRECTIVES
All Navajo Nation government programs, offices, and divisions, as well as Navajo Nation owned entities, specifically including those programs, offices, divisions, and Navajo Nation owned entities receiving Navajo Nation Fiscal Recovery Funds, shall prioritize the implementation and completion of NNFRF projects and/or services.