

THE NAVAJO NATION
LEGISLATIVE BRANCH
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LEGISLATION NO: _0263-21_

SPONSOR: Amber Kanazbah Crotty

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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LEGISLATIVE SUMMARY SHEET
Tracking No. 0263-21

DATE: December 16, 2021

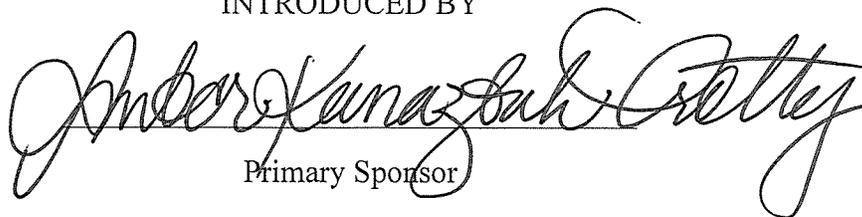
TITLE OF RESOLUTION: AN ACTION RELATING TO AN EMERGENCY AND THE NAVAJO NATION COUNCIL; ALLOCATING \$207,000,000 OF NAVAJO NATION FISCAL RECOVERY FUNDS; APPROVING THE NAVAJO NATION FISCAL RECOVERY FUND HARDSHIP ASSISTANCE EXPENDITURE PLAN

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


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).

1 **SECTION TWO. FINDINGS**

- 2 A. The World Health Organization (“WHO”) declared a Public Health Emergency of
3 International Concern related to the Coronavirus (“COVID-19”), a highly contagious and
4 sometimes fatal respiratory virus, on January 30, 2020; the U.S. Department of Health and
5 Human Services declared a Public Health Emergency related to the COVID-19 outbreak
6 on January 31, 2020; and the WHO declared a global pandemic due to COVID-19 on
7 March 11, 2020.
- 8 B. The Navajo Nation Commission on Emergency Management, with the concurrence of
9 Navajo Nation President Jonathan Nez, declared a Public Health State of Emergency on
10 the Navajo Nation on March 11, 2020, due to the COVID-19 outbreak. *See* Resolution No.
11 CEM 20-03-11, incorporated herein by reference. The Navajo Nation Department of
12 Health has subsequently issued numerous Public Health Emergency Orders. Public Health
13 Orders 2020-001 through 2021-020 are incorporated herein by reference. These Public
14 Health Emergency Orders are available at www.ndoh.navajo-nsn.gov.
- 15 C. The coronavirus pandemic of 2019 has caused large scale infections and loss of life
16 throughout the world, the United States, and the Navajo Nation. As of December 16, 2021,
17 the Navajo Nation Health Command Operations Center has confirmed 40,659 COVID-19
18 cases and 1,570 COVID-related deaths on the Navajo Nation. COVID-19 variants have
19 recently emerged that threaten to increase these numbers and continue the pandemic’s
20 assault on the Navajo People.
- 21 D. The devastating effects of COVID-19 continue throughout the Navajo Nation and extend
22 beyond the health and life devastation to wide scale negative financial effects, such as
23 employment losses, business closures, food and housing insecurity, and other economic
24 disruptions.
- 25 E. In response to the pandemic, on March 11, 2021, Unites States President Joseph Biden
26 signed the American Rescue Plan Act (“ARPA”) into law. Section 9901 of ARPA
27 amended Title VI of the Social Security Act to add section 602, which established the
28 Coronavirus State Fiscal Recovery Fund, and section 603, which established the
29 Coronavirus Local Fiscal Recovery Fund (together the “Fiscal Recovery Funds” or “FRF”)
30 and provided \$362 billion for state, local, and tribal governments, including \$20 billion

1 specifically designated for tribal governments.

2 F. As of November 1, 2021, the United States Department of Treasury has allocated two
3 billion seventy-nine million four hundred sixty-one thousand four hundred sixty-four
4 dollars (\$2,079,461,464) to the Navajo Nation under the Fiscal Recovery Funds provisions
5 of ARPA. The Fiscal Recovery Funds are designed to build on and expand the relief
6 provided in the 2020 Coronavirus Aid, Relief, and Economic Security Act (CARES Act),
7 Public Law 116–136, 134 Stat. 281 (2020), and are intended to mitigate and contain the
8 spread of COVID-19, as well as to respond to the health, social and economic impacts of
9 COVID-19 suffered by residents and businesses.

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

- 12 1. respond to the COVID-19 public health emergency and its negative economic
13 impacts, including assistance to households, small businesses, and non-profits;
14 and/or aid to impacted industries such as tourism, travel, and hospitality;
- 15 2. respond to workers performing essential work during the COVID-19 public
16 health emergency by providing premium pay to eligible workers;
- 17 3. provide government services to the extent of the reduction in Navajo Nation
18 revenue due to the COVID-19 public health emergency, relative to revenues
19 collected in the most recent full fiscal year prior to the COVID-19 public health
20 emergency; and
- 21 4. make necessary investments in water, sewer, and/or broadband infrastructure.

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

28 I. Pursuant to ARPA:

- 29 1. Fiscal Recovery Fund costs must be incurred by December 31, 2024, meaning
30 that the Navajo Nation must obligate FRF funds by that date. Treasury’s

1 Interim Final Rule provides that “incurred” shall have the same meaning given
2 to “financial obligation” under the Uniform Guidance at 2 CFR 200.1:
3 “*Financial obligations*, when referencing a recipient's or sub-recipient's use
4 of funds under a Federal award, means orders placed for property and
5 services, contracts and sub-awards made, and similar transactions that
6 require payment.”; and

- 7 2. The Fiscal Recovery Fund period of performance runs from March 3, 2021
8 until December 31, 2026, meaning that all FRF-funded projects must be
9 completed and funds must be fully expended by December 31, 2026.
- 10 3. Costs incurred by the Navajo Nation prior to March 3, 2021 are not eligible.
- 11 4. Any funds not obligated or expended for eligible uses by the dates above in
12 sections I (1) and (2) must be returned to Treasury, including any unobligated
13 or unexpended funds that have been provided to sub-recipients and contractors
14 as part of the award closeout process.

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

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

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

30 M. To ensure the Navajo Nation’s compliance with ARPA, Section Four of CJY-41-21 also

1 directed the Navajo Nation Department of Justice (“DOJ”) to perform “an initial
2 determination of whether a NNFRF funding request satisfies the legal requirements of the
3 Fiscal Recovery Funds provisions of ARPA and applicable Navajo Nation laws,
4 regulations, and policies and procedures.” Resolution No. BFS-31-21 incorporated DOJ’s
5 initial determination into the mandatory NNFRF application procedures, forms, and an
6 expenditure plan template, which requires, among other things, identification of the entity
7 with administrative oversight over the Funding Recipient. Administrative oversight means
8 having the authority to monitor the implementation of an approved FRF Expenditure Plan
9 and the expenditure of awarded funds. The duties of the entity with administrative
10 oversight are set forth in Section Seven of the FRF Procedures in exhibits 1 through 5 of
11 BFS-31-21.

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

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

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

29 Q. It that it is in the best interest of the Navajo People to enact the NNFRF Hardship
30 Assistance Expenditure Plan in the total amount of two hundred million dollars

1 (\$207,000,000), as set forth in **Exhibit C**, as an emergency legislation to counteract limited
2 access to direct services necessary to recover from the devastation caused by the COVID-
3 19 pandemic and mitigate exposure to future variants.

4
5 **SECTION THREE. APPROVAL OF NAVAJO NATION FISCAL RECOVERY FUND**
6 **HARDSHIP ASSISTANCE EXPENDITURE PLAN**

- 7 A. The Navajo Nation hereby approves and adopts the Navajo Nation Fiscal Recovery Fund
8 Hardship Assistance Expenditure Plan set forth in **Exhibit C**.
- 9 B. The Navajo Nation hereby approves total funding for the NNFRF Hardship Assistance
10 Expenditure Plan from the Navajo Nation Fiscal Recovery Fund in the total amount of two
11 hundred seven million dollars (\$207,000,000) and allocates the funding as follows:
- 12 1. Two hundred seven million dollars (\$207,000,000) to the Office of the Controller
13 for Household Assistance – Cash Transfers (Expenditure Eligibility Category 2.3),
14 as set forth in **Exhibit C**, with administrative oversight by the Office of the
15 President and Vice-President and legislative oversight by the Budget and Finance
16 Committee.

17
18 **SECTION FOUR. ADMINISTRATION OF HARDSHIP ASSISTANCE EXPENDITURE**
19 **PLAN**

- 20 A. All entities receiving Navajo Nation Fiscal Recovery Funds, whether through an
21 immediate allocation under CJY-41-21 or subsequently approved NNFRF Expenditure
22 Plan, shall comply with all Navajo Nation laws, policies, regulations, rules, and
23 procedures, specifically including, but not limited to, those governing the NNFRF and
24 the expenditure of such funds, and any additional terms set forth in a grant, sub-
25 recipient, or similar agreement.
- 26 B. Fiscal Recovery Fund costs must be incurred by December 31, 2024, meaning that the
27 Navajo Nation must obligate FRF funds by that date. For internal Navajo Nation purposes,
28 the term “obligated” is defined in BFS-31-21, Section Three on page 3 of Exhibits 1
29 through 5.
- 30 C. Projects and/or services funded with Navajo Nation Fiscal Recovery Funds must be

1 completed and all NNFRF funds fully spent by December 31, 2026.

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

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

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

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

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

27
28 **SECTION FIVE. FUTURE ALLOCATION OF UNALLOCATED NAVAJO NATION**
29 **FISCAL RECOVERY FUNDS TO HARDSHIP ASSISTANCE EXPENDITURE PLAN**

30 A. Section Four of CJY-41-21 also mandates that “[u]ntil the third quarter of 2024, NNFRF

1 Expenditure Plans for direct financial assistance to enrolled Navajo Nation members, not
2 including business economic relief or similar programs, shall be limited to ten percent
3 (10%) of the total Fiscal Recovery Funds received by the Navajo Nation. After the
4 second quarter of 2024, unallocated or unexpended NNFRF funds can be allocated for
5 direct financial assistance to enrolled members through resolution of the Navajo Nation
6 Council and approval of the President pursuant to 2 N.N.C. § 164 (A) and 2 N.N.C. §§
7 1005 (C) (10), (11) and (12).”

- 8 B. All Navajo Nation Fiscal Recovery Funds that have not been allocated to a NNFRF
9 Expenditure Plan through a Navajo Nation Council resolution enacted pursuant to CJY-
10 41-21 by the end of the second quarter of Fiscal Year 2024 may be re-allocated to the
11 NNFRF Hardship Assistance Expenditure Plan through Navajo Nation Council resolution
12 enacted pursuant to 2 N.N.C. § 164 (A)(17) and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).
- 13 C. The allocation of unallocated NNFRF funds to the NNFRF Hardship Assistance
14 Expenditure Plan shall require a separate or revised expenditure plan be submitted to the
15 Navajo Nation Department of Justice for an eligibility determination.

16
17 **SECTION SIX. REPORTING**

- 18 A. All entities receiving Navajo Nation Fiscal Recovery Funds shall keep and maintain
19 accurate and complete financial data and records sufficient to demonstrate that the
20 Fiscal Recovery Funds appropriated by the U.S. Congress to the Navajo Nation have
21 been used by the reporting entity in accordance with the provisions of ARPA and timely
22 relay such reports and records to the administrative oversight, Office of Controller,
23 Office of Management and Budget, FRF Office, and legislative oversight as directed
24 in the grant or sub-recipient agreements if any, and when requested. Such reports and
25 records shall be maintained for at least seven (7) years after the project and/or service
26 has been completed. The Office of the Controller shall be responsible for compiling
27 and providing any and all records and financial reports required by the U.S. Treasury.
- 28 B. All entities receiving Navajo Nation Fiscal Recovery Funds through an approved
29 Expenditure Plan shall report the status of their NNFRF allocations to their respective
30 oversight committees at the end of each Fiscal Year quarter. The entity with

1 administrative oversight over the Expenditure Plan shall review the quarterly report
2 prior to its presentation and shall participate in the presentation to the oversight
3 committee(s).

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

8
9 **SECTION SEVEN. EFFECTIVE DATE**

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

12
13 **SECTION EIGHT. AMENDMENTS**

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

17
18 **SECTION NINE. SAVING CLAUSE**

19 If any provision of this legislation is determined invalid by the Navajo Nation Supreme Court,
20 or by a Navajo Nation District Court without appeal to the Navajo Nation Supreme Court,
21 those provisions of this legislation not determined invalid shall remain the law of the Navajo
22 Nation.

23
24 **SECTION TEN. DIRECTIVES**

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