

THE NAVAJO NATION
LEGISLATIVE BRANCH
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LEGISLATION NO: _0006-22_

SPONSOR: Otto Tso

TITLE: An Action Relating to Budget and Finance and Naabik'iyáti' Committees, and the Navajo Nation Council; Establishing the Diné Relocatee Fund

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0006-22

DATE: January 12, 2022

TITLE OF RESOLUTION: AN ACTION RELATING TO BUDGET AND FINANCE AND NAABÍK'ÍYÁ'TI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; ESTABLISHING THE DINÉ RELOCATEE FUND

PURPOSE: This resolution, if approved, will establish the Diné Relocatee Fund under the administration of the Navajo Hopi Land Commission Office and legislative oversight by the Navajo Hopi Land Commission to provide assistance to Navajo families who resided on the Hopi-partitioned lands as of December 22, 1974.

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: Johnson
Website Posting Time/Date: _____
Posting End Date: 01-17-22
Eligible for Action: 01-18-22

Budget & Finance Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION
2 24th NAVAJO NATION COUNCIL – Fourth Year, 2022

3 INTRODUCED BY

4
5 _____
6 Primary Sponsor

7
8 TRACKING NO. 0006-22

9
10 AN ACTION
11 RELATING TO BUDGET AND FINANCE AND NAABÍK'ÍYÁ'TI'
12 COMMITTEES, AND THE NAVAJO NATION COUNCIL; ESTABLISHING
13 THE DINÉ RELOCATEE FUND
14

15 BE IT ENACTED:

16
17 SECTION ONE. AUTHORITY

- 18 A. The Navajo Nation Council is the governing body of the Navajo Nation and is
19 empowered to enact positive law of the Navajo Nation. 2 N.N.C. §§ 102(A) and 164
20 (A).
- 21 B. The Naabik'iyá'ti' Committee is a Standing Committee of the Navajo Nation Council
22 with the responsibility to hear proposed resolutions that require final action by the
23 Navajo Nation Council. 2 N.N.C. § 164(A)(9). The Naabik'iyá'ti' Committee has
24 authority to “review and make recommendations to the Navajo Nation Council on
25 proposed amendments and enactments to the Navajo Nation Code.” 2 N.N.C. §
26 601(B)(14). The Naabik'ya'ti' Committee is specifically empowered as the oversight
27 committee for commissions under the Legislative Branch of the Navajo Nation,
28 including the Navajo-Hopi Land Commission. 2 N.N.C. § 701(5).
- 29 C. The Budget and Finance Committee is a standing committee of the Navajo Nation
30 Council with the enumerated powers to review and recommend to the Navajo Nation

1 Council the budgeting, appropriation, investment and management of all funds and to
2 promulgate rules and regulations relative to contracting and financial matters. 2 N.N.C.
3 § 300(B)(1) and (2). The Budget and Finance Committee is empowered to approve a
4 fund management plan upon the recommendation of the appropriate oversight
5 committee and the affected division or branch. 2 N.N.C. § 301(B)(14).

6 D. The Navajo Hopi Land Commission (“NHLC”) is empowered to speak and act on
7 behalf of the Navajo Nation with respect to the land selection provisions of the 1980
8 Amendments to the Navajo-Hopi Settlement Act, Pub. L. 96-305, 94 Stat 929 (July 8,
9 1980). 2 N.N.C. § 853(B)(2).

10 E. The Navajo Hopi Land Commission shall utilize the Navajo-Hopi Land Commission
11 Office (“NHLCO”), which is under the direction of the President of the Navajo Nation,
12 to perform its assigned functions regarding management, administration and
13 expenditure of funds in the Fund Management Plan established for the Diné Relocatee
14 Fund. 2 N.N.C. § 856.

15
16 **SECTION TWO. FINDINGS**

17 A. Section 11(a) of the 1974 Navajo-Hopi Settlement Act, as amended by the 1980 Navajo
18 and Hopi Indian Relocation Amendments Act and the 1988 Navajo and Hopi Indian
19 Relocation Amendments (collectively, the “Relocation Act”), previously codified at 25
20 U.S.C. § 640d-10(a), provides that the Secretary of Interior “is authorized and directed
21 to –

22 (1) transfer not to exceed two hundred and fifty thousand acres of lands under the
23 jurisdiction of the Bureau of Land Management within the State of Arizona and
24 New Mexico to the Navajo Tribe . . .

25 (2) on behalf of the United States, accept title to not to exceed one hundred and fifty
26 thousand acres of private lands acquired by the Navajo Tribe. Title thereto shall
27 be taken in the name of the United States in trust for the benefit of the Navajo
28 Tribe as a part of the Navajo reservation.”

29 All such lands transferred to or acquired in trust for the Navajo Nation are commonly
30 known and hereinafter referred to as the “New Lands”.

1 B. Section 11(h) of the Relocation Act, previously codified at 25 U.S.C. § 640d-10(h),
2 provides:

3 (h) Administration of lands transferred and acquired

4 The lands transferred or acquired pursuant to this section shall be administered by
5 the Commissioner [of the U.S. Office of Navajo and Hopi Indian Relocation
6 (“ONHIR”)] until relocation under the [Navajo and Hopi Indian Relocation]
7 Commission’s plan is complete and such lands shall be used solely for the benefit
8 of Navajo families residing on the Hopi-partitioned lands as of December 22,
9 1974: *Provided*, That the sole authority for the final planning decisions regarding
10 the development of lands acquired pursuant to this subchapter shall rest with the
11 Commissioner until such time as the Commissioner has discharged his statutory
12 responsibility under this subchapter.

13 C. Section 32(a) of the Relocation Act, enacted in 1988, previously codified at 25 U.S.C.
14 § 640d-30(a), established the Navajo Rehabilitation Trust Fund (“NRTF”), which
15 consists of funds transferred under subsection (b), funds appropriated pursuant to
16 subsection (f), and any interest or investment income accrued on such funds. Also,
17 Section 32(b) of the Relocation Act, previously codified at 25 U.S.C. § 640d-30(b),
18 provides that “[a]ll of the net income derived by the Navajo Tribe from the surface and
19 mineral estates of lands located in New Mexico that are acquired for the benefit of the
20 Navajo Tribe under section 640d-10 of this title shall be deposited into the Navajo
21 Rehabilitation Trust Fund.” Subsection (c) provides that “the Secretary shall be the
22 trustee of the Navajo Rehabilitation Trust Fund and shall be responsible for investment
23 of the funds in such Trust Fund.”

24 D. Under Section 32(d) of the Relocation Act, previously codified at 25 U.S.C. § 640d-
25 30(d),

26 Funds in the Navajo Rehabilitation Trust Fund, including any interest or investment
27 accruing thereon, shall be available to the Navajo Tribe, with the approval of the
28 Secretary, solely for purposes which will contribute to the continuing rehabilitation
29 and improvement of the economic, educational, and social condition of families,
30 and Navajo communities, that have been affected by—

- (1) The decision in the Healing case, or related proceedings,
- (2) The provision[s] of this subchapter, or
- (3) The establishment by the Secretary of grazing district number 6 as land for the exclusive use of the Hopi Tribe.

E. In 1991, the Navajo Nation enacted legislation, BFMA-17-91, to accept funds appropriated by Congress for the NRTF and to direct the Navajo Division of Finance, now Office of the Controller, to receive those monies and develop management procedures to receive, withdraw, and expend those monies. BFMA-17-91 is incorporated herein by reference.

F. In 2004, the Navajo Nation enacted legislation, BFAU-45-04, approving the Statement of Investment Objectives, Guidelines, and Procedures of the NRTF. BFAU-45-04 is incorporated herein by reference.

G. Unlike net income generated by the New Mexico New Lands, which must be deposited in the NRTF and used to benefit all Navajo families and communities affected by the Relocation Act, the establishment of the Hopi Reservation, and related litigation, revenue from the Arizona New Lands must be used to benefit “Navajo families residing on the Hopi-partitioned lands as of December 22, 1974.”

H. Because the beneficiaries of the Arizona New Lands are restricted to Navajo families residing on the Hopi-partitioned lands as of December 22, 1974, a separate fund needs to be established to hold any and all revenue, income, and/or payments from the Arizona New Lands received by the Navajo Nation to be used solely for the benefit of Navajo families residing on the Hopi-partitioned lands as of December 22, 1974.

I. On January 10, 2019, the NHLC enacted NHLCJA-2-19 adopting the Diné Relocatee Fund Policy, attached herein as **Exhibit A**, and directed the NHLCO and the Navajo Nation departments and offices to implement and carry out the terms of the Diné Relocatee Fund Policy.

J. Any and all revenues generated and payments made by lessees and other land users of the Arizona New Lands, including without limitation, Navajo Nation government entities or enterprises, must be deposited into the Diné Relocatee Fund or a federally held trust fund specific to Arizona New Lands revenue, and such monies shall be used

1 solely for the benefit of Navajo families residing on the Hopi-partitioned lands as of
2 December 22, 1974.

3
4 **SECTION THREE. ESTABLISHING THE DINÉ RELOCATEE FUND**

5 The Navajo Nation hereby approves and establishes the Diné Relocatee Fund within the
6 Navajo Nation Code as follows:

7
8
9 **TITLE 12. FISCAL MATTERS**
10 **CHAPTER 26. DINÉ RELOCATEE FUND**

11
12 **§ 2601. Establishment**

13 There is established the “Navajo Nation Diné Relocatee Fund,” hereinafter referred to as
14 “Fund.”

15 A. The Navajo Nation Council hereby designates that the revenue, income, payments, and
16 proceeds generated from the Arizona New Lands acquired pursuant to the Navajo-Hopi
17 Settlement Act, as amended, shall be deposited into the Fund.

18 B. The net proceeds of all settlement or judgment awards stemming from litigation
19 brought by the Navajo Nation on behalf of Navajo families residing on the Hopi-
20 partitioned lands as of December 22, 1974 (hereinafter referred to as the “Relocation
21 Beneficiaries”) against the United States in the United States Court of Federal Claims
22 shall be deposited into the Fund.

23 C. The Navajo Nation Council may make additional appropriations to the Fund from any
24 other sources of revenue generated from the Arizona New Lands by either the Office
25 of Navajo and Hopi Indian Relocation or Navajo Nation government entities or
26 enterprises which are legally obligated to make payments for their uses of the Arizona
27 New Lands selected pursuant to the Navajo-Hopi Settlement Act, as amended.

28 D. Any money deposited in or appropriated to the Fund, regardless of source, including
29 earnings thereon, shall be used only as provided in this Chapter.
30

1 E. The Fund shall be a continuing account and shall not lapse on an annual basis pursuant
2 to 12 N.N.C. § 820(N).

3
4 **§ 2602. Purpose**

5 A. The purposes of this Fund are to provide financial support to Navajo families who
6 resided on the Hopi-partitioned lands as of December 22, 1974 through housing
7 assistance, infrastructure assistance, and education assistance, including:

8 1. Housing repair and rehabilitation, renovation; weatherization, roofing, and
9 emergencies such as burnouts; shelter assistance, and any matching fund
10 program that provides funds for such activities;

11 2. Infrastructure, including but not limited to water lines, telecommunications,
12 powerlines, septic system, solar system, and roads;

13 3. Education assistance, including scholarships;

14 4. Navajo Hopi Land Commission Office administration of the Fund; and

15 5. Investment, to be allocated to the Investments Committee of the Navajo Nation
16 under the investment policies of the Nation, and which may include, but are not
17 limited to, economic development, real estate, or other leverage/collateral
18 programs.

19 B. Expenditures from the Fund shall not be subject to or limited by 12 N.N.C. § 810(F) of
20 the Appropriations Act, 12 N.N.C. § 1310(F) of the Bond Financing Act, or the Capital
21 Improvement Project Guidelines, Policies and Procedures approved through TCDCJY-
22 77-89, incorporated herein by reference.

23
24 **§ 2703. Investment of the Fund**

25 Monies deposited in the Fund for the purpose of Investment as identified in § 02(A)(5)
26 shall be subject to the investment policies of the Nation and shall be invested as soon as
27 practical in accordance with the degree of care exercised by reasonable and prudent
28 managers of investments with a high degree of safety necessary to fulfill the purposes and
29 objectives of the Fund.

1 **§ 2704. Definition of Fund Principal and Income**

- 2 A. “Fund Principal” shall consist of all deposits made to the Fund pursuant to § 01 of this
3 Chapter.
- 4 B. “Fund Income” shall consist of all earnings (interest, dividends, etc.) generated and
5 realized through the investment of the Fund Principal. Realized Fund Income shall be
6 added to the Fund Principal after Fund management and administration expenses, as
7 set forth in this Chapter, have been deducted.

8

9 **§ 2705. Expenditure of the Fund**

10 A. Expenditure of Fund Income

- 11 1. Ninety percent (90%) of the Fund Income may be used for the Fund’s intended
12 purposes; provided that the expenditure is in accordance with the duly approved
13 Fund Management Plan and the Diné Relocatee Fund Policy; and provided that the
14 expenditure is pursuant to an annual budget approved by the Navajo Nation
15 Council.
- 16 2. Ten percent (10%) of the Fund Income shall be reinvested in the Fund to cover the
17 rate of inflation and to provide for reasonable Fund growth.

18 B. Expenditure of Fund Principal

19 Fund Principal shall not be expended except pursuant to a two-thirds (2/3) vote of the
20 full membership of the Navajo Nation Council.

21 C. The Fund Principal and Income shall be expended in a manner consistent with a Fund
22 Management Plan, subject to approval of the Budget and Finance Committee of the
23 Navajo Nation Council, which shall incorporate the priorities identified by the Navajo-
24 Hopi Land Commission in the Diné Relocatee Fund Policy, as may be amended by the
25 Commission consistent with governing federal and Navajo laws. The Fund shall be
26 used solely for the benefit of Navajo families residing on the Hopi-partitioned lands as
27 of December 22, 1974.

28 D. Any Fund amounts, whether Fund Principal or Fund Income, not included in an annual
29 budget, shall remain invested as set forth in this Chapter. Expenditures from the Fund
30 shall be budgeted for annually as part of the Navajo Nation comprehensive budget

1 process and in accordance with established Navajo Nation budget policies and
2 procedures.

3
4 **§ 2706. Annual Audit**

5 The Fund shall be audited annually by the Navajo Nation’s independent external auditor.
6 The auditor shall produce within 120 days of the end of each fiscal year an audit report
7 which shall be written in easily understandable language.

8
9 **§ 2707. Expenses**

10 All expenses directly associated with the administration and management of the Fund shall
11 be paid from the Fund Income. Such expenses shall include investment advisory and
12 management fees, audit costs, and other related expenses, all pursuant to duly approved
13 contracts for such services.

14
15 **§ 2708. Amendments**

16 Any section(s) of this Chapter may be amended by a two-thirds (2/3) majority vote of the
17 full membership of the Navajo Nation Council and subject to final action by the President
18 of the Navajo Nation.

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22 **SECTION FOUR. REQUIRED ACTIONS FOLLOWING ESTABLISHMENT OF**
23 **THE FUND**

- 24 A. Within 30 days following enactment of the Diné Relocatee Fund, the Navajo Hopi Land
25 Commission Office shall finalize a proposed Fund Management Plan (“FMP”) for
26 consideration by the Navajo Hopi Land Commission, which by resolution shall make
27 a recommendation to the Budget and Finance Committee for enactment pursuant to 2
28 N.N.C. § 301(B)(14).
- 29 B. A draft proposed Diné Relocatee Fund FMP is attached here as **Exhibit B** for
30 informational purposes only.

1 C. Following enactment of the FMP by the Budget and Finance Committee, the Office of
2 the Controller shall establish an account for the Fund in the Nation's Financial
3 Management Information System (FMIS).

4 D. The Navajo Hopi Land Commission and the Navajo Hopi Land Commission Office
5 shall develop and adopt a Diné Relocatee Fund Administrative Policies and Procedures
6 Manual, subject to the concurrence of the ONHIR, to guide the expenditure of funds
7 consistent with the approved FMP.
8

9 **SECTION FIVE. APPROVING REIMBURSEMENT OF LITIGATION COSTS**

10 A. The Navajo Nation Department of Justice expended Fixed Cost Litigation Account
11 funds to litigate *Navajo Nation v. United States* in the United States Court of Federal
12 Claims, CV-21-01746-ZNS. See **Exhibit C** [Marked as "confidential" by the Navajo
13 Nation Attorney General pursuant to 2 N.N.C. § 164 (A)(6)].

14 B. The Fixed Cost Litigation Account is to be reimbursed for the actual litigation costs
15 and expenses, as calculated and attested to by the Attorney General of the Navajo
16 Nation, expended on *Navajo Nation v. United States* in the United States Court of
17 Federal Claims, prior to any settlement or judgment awards being deposited into the
18 Diné Relocatee Fund. See **Exhibit C** [Marked as "confidential" by the Navajo Nation
19 Attorney General pursuant to 2 N.N.C. § 164 (A)(6)].

20 C. The Fixed Cost Litigation Fund is to be reimbursed for actual litigation costs and
21 expenses out of all future awards and settlements stemming from litigation on behalf
22 of the Navajo families residing on the Hopi-partitioned lands as of December 22, 1974.
23

24 **SECTION SIX. EFFECTIVE DATE**

25 This Action is effective upon its approval pursuant to 2 N.N.C. § 221(B).
26

27 **SECTION SEVEN. CODIFICATION**

28 The provisions of this Action which amend or adopt new sections of the Navajo Nation
29 Code shall be codified by the Office of Legislative Counsel. The Office of Legislative
30

1 Counsel shall incorporate such amended provisions in the next codification of the Navajo
2 Nation Code.

3
4 **SECTION EIGHT. SAVINGS CLAUSE**

5 Should any provision(s) of this Action be determined invalid by the Navajo Nation
6 Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo
7 Nation Supreme Court, the remainder of the Act shall remain the law of the Navajo Nation.
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