

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0007-22_

SPONSOR: Wilson C. Stewart, Jr.

TITLE: An Act Relating to Resources and Development, Budget and Finance, Law and Order, and Naabik'iyáti' Committees, and the Navajo Nation Council; Allocating \$900,000 from the Navajo Nation Tourism Fund (24 N.N.C § 741) to the Division of Economic Development/Tourism Department to Cover the Tourism Department's Personnel and Operating Expenses for the Remainder of FY2022; Amending 24 N.N.C. § 741(B) to Allow All Revenue in the Tourism Fund to be Used y any and All Navajo Nation Programs for Tourism-Related Purposes

Date posted: January 12, 2022 at 9:45 PM

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LEGISLATION SUMMARY

Tracking No. 0007-22

Date: January 12, 2022

Title of

Legislation: **AN ACT RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, LAW AND ORDER, AND NAA'BIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; ALLOCATING \$900,000 FROM THE NAVAJO NATION TOURISM FUND (24 N.N.C. §741) TO THE DIVISION OF ECONOMIC DEVELOPMENT/TOURISM DEPARTMENT TO COVER THE TOURISM DEPARTMENT'S PERSONNEL AND OPERATING EXPENSES FOR THE REMAINDER OF FY2022; AMENDING 24 N.N.C. §741(B) TO ALLOW ALL REVENUE IN THE TOURISM FUND TO BE USED BY ANY AND ALL NAVAJO NATION PROGRAMS FOR TOURISM-RELATED PURPOSES**

Purpose: to allocate \$900,000 out of the HOT/Tourism Fund to the Division of Economic Development/Tourism Department to cover the Department's personnel and operating costs for the remainder of FY2022; amending the Hotel Occupancy Tax statute to allow all HOT revenue to be used by all Navajo Nation programs for tourism-related purposes - the amendment removes the current statutory restriction that HOT revenue from Navajo Tribal Parks can only be used by the Navajo Parks and Recreation Department.

OLC No. 22-008-1

5-DAY BILL HOLD PERIOD: Johnson
Website Posting Time/Date: _____
Posting End Date: 01/17/22
Eligible for Action: 01/18/22

Resources & Development Committee
Thence
Budget & Finance Committee
Thence
Law & Order Committee
Thence
Naabik'íyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL - Fourth Year, 2022

Introduced by:


(Prime Sponsor)

Tracking No. 0007-21

AN ACT

**RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE,
LAW AND ORDER, AND NAA'BIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO
NATION COUNCIL; ALLOCATING \$900,000 FROM THE NAVAJO NATION
TOURISM FUND (24 N.N.C. §741) TO THE DIVISION OF ECONOMIC
DEVELOPMENT/TOURISM DEPARTMENT TO COVER THE TOURISM
DEPARTMENT'S PERSONNEL AND OPERATING EXPENSES FOR THE
REMAINDER OF FY2022; AMENDING 24 N.N.C. §741(B) TO ALLOW ALL
REVENUE IN THE TOURISM FUND TO BE USED BY ANY AND ALL
NAVAJO NATION PROGRAMS FOR TOURISM-RELATED PURPOSES**

BE IT ENACTED:

SECTION ONE. AUTHORITY

A. The Resources and Development Committee is a standing committee of the Navajo Nation Council with the authority to oversee the Division of Economic Development. 2 N.N.C. §501(C)(1). The Navajo Tourism Department is within the Division of Economic Development. ACAU-196-87, CO-50-87, GSCAP-12-07, and RDCO-055-19.

B. The Budget and Finance Committee is a standing committee of the Navajo Nation Council, empowered to review and recommend to the Navajo Nation Council the budgeting, appropriation, investment, and management of all funds. 2 N.N.C. §301(B)(2).

1 C. The Budget and Finance Committee is also in charge of the Fund Management Plan for
2 the Navajo Nation Tourism Fund, which Fund consists of revenue collected from the
3 Navajo Nation's Hotel Occupancy Tax. 24 N.N.C. §741(A) and §741(B), Resolution No.
4 BFO-56-93.

5 D. The Law and Order Committee is a standing committee of the Navajo Nation Council that
6 reviews and makes recommendations to the Navajo Nation Council regarding proposed
7 amendments to the Navajo Nation Code. 2 N.N.C. §601(B)(14).

8 E. The Naa'bik'iyáti' Committee is a standing committee of the Navajo Nation Council
9 responsible for reviewing proposed resolutions requiring final action by the Navajo Nation
10 Council. 2 N.N.C. §164(A)(9).

11 F. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C.
12 §102(A). As such, the Council has the authority to approve supplemental appropriations
13 out of available accounts that contain sufficient funds for such appropriations. "The
14 Navajo Nation Council may adopt and approve supplemental appropriations to the Annual
15 Comprehensive Budget during the fiscal year. Supplemental appropriations of General
16 Funds within the current fiscal year are permitted, if and when additional sources of
17 revenues above and beyond the initial or current revenue projections are projected and
18 which are also in excess of the reserve amount set forth at §820(J)." 12 N.N.C. §820(L).

19 G. The restrictions on supplemental appropriations include:

- 20 1. The Navajo Nation shall budget all recurring operating expenses, including capital
21 maintenance costs, from recurring revenues only; and long-term debt shall not be used
22 to finance recurring operating expenses. 12 N.N.C. §820(E). The Controller determines
23 which revenues are recurring and which are non-recurring. 12 N.N.C. §820(L).
- 24 2. All requests for supplemental funding shall be submitted to the Office of Management
25 and Budget ("OMB") for a budget impact analysis. 12 N.N.C. §820(M).

26
27 **SECTION TWO. FINDINGS**

28 A. On January 1, 1993 the Navajo Nation's Hotel Occupancy Tax ("HOT") came into effect;
29 the HOT is codified at 24 N.N.C. §§700 *et seq.* (as amended). Resolution No. CJY-27-92,
30 CJY-52-95, CJA-06-09. The HOT statute provides that HOT revenues go into a special

1 “Navajo Nation Tourism Fund” (“HOT/Tourism Fund”), and instructs that the Budget and
2 Finance Committee has responsibility for the “Navajo Nation Tourism Fund Management
3 Plan” (“FMP”). 24 N.N.C. §741.

4 B. On October 5, 1993 the Budget and Finance Committee approved the FMP. The Committee
5 Resolution No. BFO-56-93, with a copy of the FMP, is attached as **EXHIBIT A**.

6 C. In Navajo Nation Council Resolution No. CJA-06-09, signed into law on February 9, 2009,
7 the HOT was amended to mandate that HOT revenues collected from within Navajo Tribal
8 Parks can only be used by the Navajo Parks and Recreation Department for the maintenance
9 and improvement of facilities within Tribal Parks. 24 N.N.C. §741(B). **EXHIBIT B**.

10 D. The Division of Economic Development/Tourism Department is now requesting \$900,000
11 in supplemental funds out of the HOT/Tourism Fund to mitigate the negative effects of the
12 COVID-19 pandemic that resulted in the loss of an estimated \$115,500,000 of tourism-
13 related revenue since the Spring of 2020, which revenue is normally used to fund the
14 Tourism Department for the entire Fiscal Year. In the attached “Appendix K - Supplemental
15 Funding Proposal Summary” the Tourism Department explains that it needs the \$900,000
16 to cover its personnel and operating expenses for the remainder of FY2022. **EXHIBIT C**.

17 E. The Tourism Department has provided its required Budget Forms, including a “Program
18 Budget Summary” and a “Detailed Budget and Justification,” which pages are attached
19 hereto as **EXHIBIT D**.

20 F. The Tourism Department has also provided a detailed “Listing of Positions and
21 Assignments by Business Unit” and “Program Performance Criteria,” attached as
22 **EXHIBIT E**.

23 G. In accordance with 12 N.N.C. §820(L), the Controller has provided a memorandum
24 regarding this supplemental funding request, indicating that the HOT/Tourism Fund
25 contains an unaudited amount of \$4,217,157 as of August 31, 2021. **EXHIBIT F**. The
26 Controller may be requested to provide a revised memorandum or verbal statement
27 regarding this matter, when this legislation is considered by the Navajo Nation Council.

28 H. At the time of initial public posting of this legislation, the Office of Management and Budget
29 had not reviewed this supplemental funding request. Therefore, to comply with 12 N.N.C.
30 §820(M), OMB may be requested to provide a budget impact analysis by memorandum or

1 verbal statement, when this legislation is considered by the Navajo Nation Council.

2 I. Section 6 of the approved FMP generally governs the Tourism Department’s annual
3 budgeting and funding proposals for each fiscal year, whereby the Tourism Department
4 requests and receives a HOT/Tourism Fund appropriation in the context of the Navajo
5 Nation’s Comprehensive Budget process. FMP, Section 6. **EXHIBIT A.**

6 J. However, for FY2022 the Tourism Department submitted three proposed budgets, and only
7 one was approved; this has left the Department’s personnel and operating expenses
8 unfunded. **EXHIBIT C.** Therefore, the Tourism Department has needed to submit this
9 supplemental funding request for the \$900,000 amount from the HOT/Tourism Fund, in
10 order to remain open and continue its activities for the rest of FY2022. **EXHIBIT C.**

11 K. Because this funding request is for a supplemental appropriation, those subsections of 12
12 N.N.C. §820 pertaining to supplemental appropriations must be acknowledged and
13 followed. Thus, the explanations in SECTION 2(G) and SECTION 2(H) above are included
14 in this legislation.

15 L. Notably, the Controller has indicated in **EXHIBIT F**, and the Director of the Tourism
16 Department has confirmed, that all HOT revenues collected both from within Navajo Tribal
17 Parks and from locations outside the Tribal Parks, are deposited into the HOT/Tourism Fund
18 without regard to the source of such revenues - the funds are simply comingled.

19 M. Because of this comingling there is no way to distinguish which dollars in the HOT/Tourism
20 Fund are available for programs other than the Navajo Parks and Recreation Department.
21 Thus, approval of the Tourism Department’s funding request would appear to violate 24
22 N.N.C. §741(B), which states: “[a]ny tax imposed by this Chapter that is collected within
23 any duly established Navajo Tribal Park shall be retained within the Navajo Nation Tourism
24 Fund *for the exclusive use of the Navajo Parks and Recreation Department*”

25 N. The Navajo Nation finds that, in order to approve the Tourism Department’s supplemental
26 funding request, the above-cited wording in 24 N.N.C. §741(B) would need to be addressed.
27 Furthermore, the above-cited provision appears overly restrictive and may unfairly impede
28 the Tourism Department and other Navajo Nation programs from requesting and receiving
29 appropriations using the HOT/Tourism Fund, even if such appropriations would clearly be
30 used for tourism-related purposes.

1 O. The Navajo Nation finds it in the best interest of the Navajo Nation and the Navajo People
2 to approve the Tourism Department's HOT/Tourism funding request in the amount of
3 \$900,000, as described herein, and to amend Section 741(B) of the HOT to allow all revenue
4 in the HOT/Tourism Fund to be used by any and all Navajo Nation programs, so long as
5 such use is for legitimate tourism-related purposes and is consistent with the provisions set
6 forth in the FMP. Such amendment would not prevent the Navajo Parks and Recreation
7 Department from requesting appropriations out of the HOT/Tourism fund if needed, but
8 would simply allow the Tourism Department and other programs to request this money for
9 approved tourism-related activities and goals.

10
11 **SECTION THREE. ALLOCATING \$900,000 FROM THE HOT/TOURISM FUND TO**
12 **THE DIVISION OF ECONOMIC DEVELOPMENT/TOURISM DEPARTMENT TO**
13 **COVER THE TOURISM DEPARTMENT'S PERSONNEL AND OPERATING**
14 **EXPENSES FOR THE REMAINDER OF FY2022**

15 A. The Navajo Nation hereby allocates \$900,000 out of the HOT/Tourism Fund to the Division
16 of Economic Development/Tourism Department for the Tourism Department's personnel
17 and operating expenses for the remainder of FY2022, as shown in **EXHIBITS C, D, and E.**

18 B. Pursuant to 12 N.N.C. §820(N) this supplemental appropriation shall lapse on September
19 30, 2022 and all unused/unencumbered funds shall revert to the HOT/Tourism Fund, unless
20 the Navajo Nation Council determines otherwise by resolution.

21 C. Upon approval by a Navajo Nation Council resolution, the HOT/Tourism Fund may be
22 reimbursed up to the \$3,600,000 amount approved in this legislation, from prospective funds
23 available to the Navajo Nation from state or federal sources, including additional Congressional
24 appropriations, if any, under the American Rescue Plan Act of 2021, or from other COVID-19-
25 related relief.

26
27 **SECTION FOUR. AMENDING 24 N.N.C. §741(B) TO ALLOW ALL REVENUE IN**
28 **THE TOURISM FUND TO BE USED BY ANY AND ALL NAVAJO NATION**
29 **PROGRAMS FOR TOURISM-RELATED PURPOSES**

30 The Navajo Nation hereby amends 24 N.N.C. §741(B) in the Navajo Nation Code, as follows:

TITLE 24. TAXATION

* * * *

§ 741. Allocation

A. ~~Except as provided in Subsection B, the~~ The tax imposed by this Chapter is imposed for the purposes of generating revenue for Navajo Nation programs to use in promoting tourism and tourism development. To accomplish this end, this tax shall be retained in a special fund entitled the “Navajo Nation HOT/Tourism Fund” which shall be administered by the Navajo Tourism Department, and which shall, be used first to fund the Tourism Department’s annual fiscal year budget, before any supplemental appropriations out of the HOT/Tourism Fund are requested by the Tourism Department or any other Navajo Nation program.

B. ~~e~~Consistent with the laws of the Navajo Nation and utilizing the prudent person rule, the HOT/Tourism Fund shall be applied used for the advancement of local tourism promotion, and to develop tourism-related projects throughout the Navajo Nation.

C. The Division of Economic Development and the Navajo Tourism Department are hereby authorized to develop and recommend to the Budget and Finance Committee of the Navajo Nation Council the a Fund’s mManagement pPlan for the HOT/Tourism Fund, including any amendments thereto. The Budget and Finance Committee shall have the final authority to approve/adopt and amend the Fund Management Plan.

~~B. D. All budgeting, appropriations, and expenditures of any money in the HOT/Tourism Fund shall be Any tax imposed by this Chapter that is collected within any duly established Navajo Tribal Park shall be retained within the Navajo Nation Tourism Fund for the exclusive use of the Navajo Parks and Recreation Department for maintenance and improvement of facilities within Navajo Tribal Parks, in accordance with the fund Fund mManagement pPlan, for the Navajo Nation Tourism Fund, which shall be amended by the Budget and Finance Committee to accommodate this provision.~~

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SECTION FIVE. EFFECTIVE DATE

This Act shall become effective as provided in 2 N.N.C. §221(B) and 2 N.N.C. §164(A)(17).

1 **SECTION SIX. SAVING CLAUSE**

2 If any portion of this Act is determined invalid by the Navajo Nation Supreme Court, or by a
3 District Court of the Navajo Nation without appeal to the Navajo Nation Supreme Court, the
4 remainder of this Act shall be the law of the Navajo Nation.

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