

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0028-22\_

SPONSOR: Mark A. Freeland

**TITLE: An Act Relating to the Resources and Development, and Budget and Finance Committees; Establishing the Abandoned Coal Mine Lands Reclamation Enterprise Fund (“AML Enterprise Fund”); Approving the Related Fund Management Plan; and Allocating \$2,586,548 from the NAML Coal Fee Enterprise Fund as the Initial Amount to be Deposited into the New AML Enterprise Fund**

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## LEGISLATION SUMMARY

Tracking No. 0028-22

Date: February 3, 2022

Re: **AN ACT RELATING TO THE RESOURCES AND DEVELOPMENT, AND BUDGET AND FINANCE COMMITTEES; ESTABLISHING THE ABANDONED COAL MINE LANDS RECLAMATION ENTERPRISE FUND (“AML ENTERPRISE FUND”); APPROVING THE RELATED FUND MANAGEMENT PLAN; AND ALLOCATING \$2,586,548 FROM THE NAML COAL FEE ENTERPRISE FUND AS THE INITIAL AMOUNT TO BE DEPOSITED INTO THE NEW AML ENTERPRISE FUND**

Purpose: to establish a new AML Enterprise Fund and approve the related Fund Management Plan; the new Fund will consist of revenues from a ten cents per ton charge on coal mined by the Navajo Transitional Energy Company; allocating \$2,586,548 from the NAML Coal Fee Enterprise Fund as the initial amount for the new AML Enterprise Fund.

OLC No. 21-490-1

5-DAY BILL HOLD PERIOD: aplusan  
Website Posting Time/Date: \_\_\_\_\_  
Posting End Date: 02-16-22  
Eligible for Action: 02-17-22

Resources & Development Committee  
Thence  
Budget & Finance Committee

1 PROPOSED STANDING COMMITTEE RESOLUTION  
2 24<sup>th</sup> NAVAJO NATION COUNCIL - Fourth Year, 2022

3 Introduced by:

4   
5 \_\_\_\_\_

6 (Sponsor)

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8 Tracking No. 0028-22  
9

10 AN ACT

11 RELATING TO THE RESOURCES AND DEVELOPMENT, AND BUDGET AND  
12 FINANCE COMMITTEES; ESTABLISHING THE ABANDONED COAL MINE  
13 LANDS RECLAMATION ENTERPRISE FUND (“AML ENTERPRISE FUND”);  
14 APPROVING THE RELATED FUND MANAGEMENT PLAN; AND ALLOCATING  
15 \$2,586,548 FROM THE NAML COAL FEE ENTERPRISE FUND AS THE INITIAL  
16 AMOUNT TO BE DEPOSITED INTO THE NEW AML ENTERPRISE FUND  
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18 BE IT ENACTED:  
19

20 SECTION ONE. AUTHORITY

- 21 A. The Resources and Development Committee of the Navajo Nation Council has oversight  
22 responsibility and authority over the Division of Natural Resources. 2 N.N.C. §501(C)(1).  
23 The Navajo Abandoned Mine Lands Reclamation Department (“AML”) was established  
24 under the Division of Natural Resources. 18 N.N.C. §1611.
- 25 B. The Budget and Finance Committee of the Navajo Nation Council is empowered to approve  
26 fund management plans upon the recommendation of the appropriate oversight committee  
27 and the affected Navajo Nation government division or Branch. 2 N.N.C. §301(B)(14).
- 28 C. In May 2002 the Budget and Finance Committee approved certain procedures and eligibility  
29 criteria for Navajo Nation programs and departments to establish a Governmental Fund,  
30 Proprietary Fund, or Fiduciary Fund, with a related Fund Management Plan. **EXHIBIT A.**

1 **SECTION TWO. FINDINGS**

2 A. According to its Plan of Operation, AML’s responsibility is to conduct reclamation of  
3 abandoned coal mines and to mitigate the adverse impact of past mining activities on lands  
4 within the jurisdiction of the Navajo Nation. **EXHIBIT B.**

5 B. AML has responsibility over dozens of former coal mines and abandoned coal mine sites  
6 within the Navajo Nation, as shown on the map attached as **EXHIBIT C.**

7 C. AML proposes to establish an Enterprise Fund to allow for the collection of revenue from  
8 the business operations of the Navajo Transitional Energy Company (“NTEC”) by assessing  
9 a fee of ten cents per ton on NTEC’s coal production activities, currently ongoing at mines  
10 in Wyoming and Montana. **EXHIBIT D.**

11 D. AML has prepared a report, attached as **EXHIBIT E**, justifying its proposed revenue-  
12 generating efforts, citing the recent decline in AML’s traditional revenue sources for its  
13 extensive reclamation activities, which decline has been caused by:

- 14 1. the closure of the Kayenta coal mine;
- 15 2. the widescale shift to non-carbon energy sources and phasing out of the coal industry;
- 16 3. COVID-19-related shelter-in-place orders that have resulted in lower demand for  
17 electricity from coal-fired power plants;
- 18 4. the September 30, 2021 expiration of the Surface Mining Control and Reclamation Act.

19 E. AML has developed its proposed “Abandoned Coal Mine Lands Reclamation Enterprise  
20 Fund” (“AML Enterprise Fund”) and related Fund Management Plan. **EXHIBIT F.** In the  
21 proposed Plan, on page 3, Section V(G) has two blanks - the Office of the Controller shall  
22 insert the appropriate information when this legislation is up for consideration by the  
23 appropriate Committees.

24 F. AML has prepared several detailed budget forms, proposing \$2,586,548 as the initial amount  
25 of funds for the AML Enterprise Fund, with the source of the funds coming from the “NAML  
26 Coal Fee Enterprise Fund.” Budget Forms 1, 2, 4, and 6 are attached as **EXHIBIT G.**

27 G. The proposed Fund Management Plan for the AML Enterprise Fund has been vetted through  
28 the Navajo Nation’s 2 N.N.C. §164 administrative review process, and has been approved  
29 by the Division of Natural Resources, the Office of Management and Budget, the Office of  
30 the Controller, and the Department of Justice. **EXHIBIT H.**

1 **SECTION THREE. ESTABLISHING THE ABANDONED COAL MINE LANDS**  
2 **RECLAMATION ENTERPRISE FUND AND APPROVING THE**  
3 **RELATED FUND MANAGEMENT PLAN; ALLOCATING**  
4 **INITIAL FUNDS FOR THE AML ENTERPRISE FUND**

5 A. The Navajo Nation hereby establishes the Abandoned Coal Mine Lands Reclamation  
6 Enterprise Fund (“AML Enterprise Fund”) and approves the Fund Management Plan for the  
7 AML Enterprise Fund, as shown in the attached **EXHIBIT F**.

8 B. The Navajo Nation hereby allocates \$2,586,548 out of the “NAML Coal Fee Enterprise  
9 Fund” account as the initial amount to be deposited into the AML Enterprise Fund. This  
10 \$2,586,548 shall be expended by AML in compliance with the line-item expenditures shown  
11 in AML’s Budget Forms 1, 2, 4, and 6, attached as **EXHIBIT G**.

12 C. The Navajo Nation approves the deposit into the AML Enterprise Fund whatever additional  
13 funds that may become available prospectively, in accordance with Section V of the Fund  
14 Management Plan (EXHIBIT F), and as approved by the Controller.

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16 **SECTION FOUR. DIRECTIVES**

17 A. No later than twenty (20) business days after the effective date of this legislation, the  
18 Controller shall:

- 19 1. insert the appropriate account information and dollar figures into Section V(G) of the  
20 approved Fund Management Plan (EXHIBIT F); AML shall then prepare a final version  
21 of the Fund Management Plan document, with the Controller’s inserts, and shall submit a  
22 copy of this final version to the Resources and Development Committee, the Budget and  
23 Finance Committee, the Controller, the Division of Natural Resources, and other  
24 appropriate parties;
- 25 2. set up a new Navajo Nation financial account titled: “Abandoned Coal Mine Lands  
26 Reclamation Enterprise Fund” and immediately transfer \$2,586,548 out of the “NAML  
27 Coal Fee Enterprise Fund” account into the new AML Enterprise Fund account;
- 28 3. allow AML to access the funds in this account for its use in accordance with its Budget  
29 Forms 1, 2, 4, and 6 (EXHIBIT G), in compliance with the Controller’s usual drawdown  
30 and payment procedures.

1 B. On a prospective and ongoing basis, the Controller shall review whatever additional funds  
2 that become available, as described in Section V of the Fund Management Plan, and shall  
3 ensure that said funds are deposited into the new AML Enterprise Fund account and are made  
4 available for AML's appropriate use.

5 C. The Controller shall consult with the Office of Management and Budget, the Division of  
6 Natural Resources, and/or the Department of Justice, if any question arises regarding the  
7 propriety or legal sufficiency of any such deposit of additional funds into the new AML  
8 Enterprise Fund account.

9 D. By the end of the Third Quarter of each Fiscal Year, the AML shall provide a verbal and  
10 written report to the Resources and Development Committee and the Budget and Finance  
11 Committee, explaining its activities and expenditures related to the \$2,586,548 approved  
12 herein and its implementation of, and compliance with, the Fund Management Plan.

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14 **SECTION FIVE. EFFECTIVE DATE**

15 This legislation shall become effective in accordance with 2 N.N.C. §301(B)(14).  
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17 **SECTION SIX. SAVING CLAUSE**

18 If any provision of this legislation is determined invalid by the Supreme Court of the Navajo  
19 Nation, or by a Navajo Nation District Court without appeal to the Navajo Nation Supreme  
20 Court, the remainder of this legislation shall be the law of the Navajo Nation.  
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