

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0101-22_

SPONSOR: Eugene Tso

TITLE: An Action Relating to an Emergency and the Navajo Nation Council; Allocating \$120,000,000 of the Navajo Nation Fiscal Recovery Funds; Approving Additional Funding to the Navajo Nation Fiscal Recovery Fund Hardship Assistance Expenditure Plan Enacted by CD-62-21

Date posted: June 09, 2022 at 3:49PM

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

**Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586**

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

LEGISLATIVE SUMMARY SHEET
Tracking No. 0101-22

DATE: June 9, 2022

TITLE OF RESOLUTION: AN ACTION RELATING TO AN EMERGENCY AND THE NAVAJO NATION COUNCIL; ALLOCATING \$120,000,000 OF NAVAJO NATION FISCAL RECOVERY FUNDS; APPROVING ADDITIONAL FUNDING TO THE NAVAJO NATION FISCAL RECOVERY FUND HARDSHIP ASSISTANCE EXPENDITURE PLAN ENACTED BY CD-62-21

PURPOSE: This resolution, if approved, will allocate an additional \$120 million to FRF Hardship Assistance Expenditure Plan.

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 — Fourth Year, 2022

INTRODUCED BY



Primary Sponsor



TRACKING NO. 0101-22

AN ACTION

**RELATING TO AN EMERGENCY AND THE NAVAJO NATION COUNCIL;
ALLOCATING \$120,000,000 OF NAVAJO NATION FISCAL RECOVERY
FUNDS; APPROVING ADDITIONAL FUNDING TO THE NAVAJO NATION
FISCAL RECOVERY FUND HARDSHIP ASSISTANCE EXPENDITURE PLAN
ENACTED BY CD-62-21**

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. The Navajo Nation Council is authorized to approve emergency legislation to address, among other urgent matters, an emergency problem that threatens the provision of direct services as an entitlement under Navajo Nation or Federal law. 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. *See* 2 N.N.C. §164(A)(16).
- C. Navajo Nation Council Resolution No. CJY-41-21, incorporated herein by reference, 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

1 by the President of the Navajo Nation pursuant to 2 N.N.C. § 164 (A) and 2 N.N.C. §§ 1005
2 (C) (10), (11), and (12).
3

4 **SECTION TWO. FINDINGS**

- 5 A. The World Health Organization ("WHO") declared a Public Health Emergency of
6 International Concern related to the Coronavirus ("COVID-19"), a highly contagious and
7 sometimes fatal respiratory virus, on January 30, 2020; the U.S. Department of Health and
8 Human Services declared a Public Health Emergency related to the COVID-19 outbreak on
9 January 31, 2020; and the WHO declared a global pandemic due to COVID-19 on March 11,
10 2020.
- 11 B. The Navajo Nation Commission on Emergency Management, with the concurrence of Navajo
12 Nation President Jonathan Nez, declared a Public Health State of Emergency on the Navajo
13 Nation on March 11, 2020, due to the COVID-19 outbreak. *See* Resolution No. CEM 20-03-
14 11 which is incorporated herein by reference. The Navajo Nation Department of Health has
15 subsequently issued numerous Public Health Emergency Orders. Public Health Orders 2020-
16 001 through 2022-006 are incorporated herein by reference. These Public Health Emergency
17 Orders are available at www.ndoh.navajo-nsn.gov.
- 18 C. The coronavirus pandemic of 2019 has caused large scale infections and loss of life throughout
19 the world, the United States, and the Navajo Nation. As of June 3, 2022, the Navajo Nation
20 Health Command Operations Center has confirmed 54,417 COVID-19 cases and 1,793
21 COVID-related deaths on the Navajo Nation. COVID-19 variants have recently emerged that
22 threaten to increase these numbers and continue the pandemic's assault on the Navajo People.
- 23 D. The devastating effects of COVID-19 continue throughout the Navajo Nation and extend
24 beyond life and health devastation to wide scale negative financial impacts, such as
25 employment losses, business closures, food and housing insecurity, and other economic
26 disruptions.
- 27 E. In response to the pandemic, United States President Joseph Biden signed the American
28 Rescue Plan Act ("ARPA") into law on March 11, 2021. Section 9901 of ARPA amended
29 Title VI of the Social Security Act to add section 602, which established the Coronavirus State
30 Fiscal Recovery Fund, and section 603, which established the Coronavirus Local Fiscal

1 Recovery Fund (together the "Fiscal Recovery Funds" or "FRF") and provided \$362 billion
2 for state, local, and tribal governments, including \$20 billion specifically designated for tribal
3 governments.

4 F. As of April 12, 2022, the United States Department of Treasury has allocated two billion
5 seventy-nine million four hundred sixty-one thousand four hundred sixty-four dollars
6 (\$2,079,461,464) to the Navajo Nation under the Fiscal Recovery Funds provisions of ARPA.
7 The Fiscal Recovery Funds are designed to build on and expand the relief provided in the
8 2020 Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-
9 136, 134 Stat. 281 (2020), and are intended to mitigate and contain the spread of COVID-19,
10 as well as to respond to the health, social and economic impacts of COVID-19 suffered by
11 residents and businesses.

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

- 13 1. respond to the COVID-19 public health emergency and its negative economic
14 impacts, including assistance to households, small businesses, and non-profits; and/or
15 aid to impacted industries such as tourism, travel, and hospitality;
- 16 2. respond to workers performing essential work during the COVID-19 public health
17 emergency by providing premium pay to eligible workers;
- 18 3. provide government services to the extent of the reduction in Navajo Nation revenue
19 due to the COVID-19 public health emergency, relative to revenues collected in the
20 most recent full fiscal year prior to the COVID-19 public health 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 expenditure
23 of Fiscal Recovery Funds must fall under one of the four categories above and that funding
24 recipients must report each expenditure under one of the eighty-three (83) "Expenditure
25 Categories" set forth in Appendix 1 to the U.S. Department of Treasury's Compliance and
26 Reporting Guidance for State and Local Fiscal Recovery Funds.

27 I. Pursuant to ARPA:

- 28 1. Fiscal Recovery Fund costs must be incurred by December 31, 2024, meaning that
29 the Navajo Nation must obligate FRF funds by that date. Treasury's Final Rule
30 provides that "incurred" shall have the same meaning given to "financial obligation"

1 under the Uniform Guidance at 2 CFR 200.1: "Financial obligations, when
2 referencing a recipient's or sub-recipient's use of funds under a Federal award, means
3 orders placed for property and services, contracts and sub-awards made, and similar
4 transactions that require payment"; and

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

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

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

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

17 K. On July 23, 2021, the Navajo Nation Council adopted Resolution No. CJY-41-21 establishing
18 the Navajo Nation Fiscal Recovery Fund ("NNFRF") into which the Navajo Nation's
19 allocation of \$2,079,461,464 has been deposited. Resolution CJY-41-21 also adopted an
20 expenditure authorization and approval process for the allocation of funds from the NNFRF.

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

27 M. To ensure the Navajo Nation's compliance with ARPA, Section Four of Resolution CJY-41-
28 21 directed the Navajo Nation Department of Justice ("NNDOJ") to perform "an initial
29 determination of whether a NNFRF funding request satisfies the legal requirements of the
30 Fiscal Recovery Funds provisions of ARPA and applicable Navajo Nation laws, regulations,

1 and policies and procedures." Resolution BFS-31-21 incorporated NNDOJ's initial
2 determination into the mandatory NNFRF application procedures, forms, and an expenditure
3 plan template, which requires, among other things, identification of the entity with
4 administrative oversight over the Funding Recipient. Administrative oversight means having
5 the authority and responsibility to monitor the implementation of an approved FRF
6 Expenditure Plan and the expenditure of awarded funds. The duties of the entity with
7 administrative oversight are set forth in Section Seven of the FRF Procedures in Exhibits 1
8 through 5 of Resolution BFS-31-21.

- 9 N. The Office of the President and Vice-President, in coordination with the Division of
10 Community Development ("DCD"), presented ARPA and Fiscal Recovery Fund information
11 at each of the five (5) Agency Council Meetings to hear from the Navajo People through their
12 elected Chapter representatives concerning their needs and priorities for projects and/or
13 services funded through the NNFRF. In addition, DCD has met with Navajo Nation Chapters,
14 individually and collectively, on more than fifty (50) occasions to discuss NNFRF matters.
- 15 O. The Navajo Nation Council hosted twenty-six (26) Naabik'íyáti' Committee Work Sessions,
16 all open to the public, to hear from the regional and Agency leadership concerning their needs
17 and priorities for projects and/or services funded through the Navajo Nation Fiscal Recovery
18 Fund. In addition, Standing Committees of the Navajo Nation Council held more than forty
19 (40) committee meetings, all open to the public, that have included NNFRF reports and
20 infrastructure specific discussions.
- 21 P. The health and financial devastation visited on the Navajo People by the COVID-19 pandemic
22 has risen to emergency levels and continues to increase. To lessen the financial devastation
23 caused by the COVID-19 pandemic, the Navajo Nation Council adopted Resolution No. CD-
24 62-21 providing \$557,000,000 in Hardship Assistance for Navajo members. The President
25 signed CD-62-21 into law on January 4, 2022. CD-62-21 is attached herein as **Exhibit 1**.
- 26 Q. Since the enactment of CD-62-21, the projection for Navajo members eligible for Hardship
27 Assistance has increased substantially by 48,000 adults and 40,000 minors not being included
28 in the original enrollment projection. The \$557,000,000 originally allocated in CD-62-21 is
29 no longer sufficient to provide Hardship Assistance to all eligible Navajo members.
30

- 1 R. The Navajo Nation Council and Office of the President and Vice-President concur that, based
2 on their respective public consultation efforts, it is in the best interest of the Navajo people
3 and Navajo communities to provide additional funding to the NNFRF Hardship Assistance
4 Expenditure Plan in the amount of one hundred twenty million dollars (\$120,000,000) as set
5 forth in **Exhibit 2**.
- 6 S. Providing additional funding for the NNFRF Hardship Assistance Expenditure Plan to address
7 the funding deficiency caused by the revised enrollment figures meets the requirements for
8 emergency legislation set forth at 2 N.N.C. § 164 (A)(16) as there is a pressing public need to
9 assure the Navajo public that there are sufficient funds available for all eligible Navajo
10 members entitled to receive Hardship Assistance under Navajo Nation law, most specifically
11 under CD-62-21.
- 12 D. The Navajo Nation Council is authorized to approve emergency legislation to address, among
13 other urgent matters, an emergency problem that threatens the provision of direct services as
14 an entitlement under Navajo Nation or Federal law. Such an emergency matter must arise due
15 to the pressing public need for such resolution(s) and must be a matter requiring final action
16 by the Council. *See* 2 N.N.C. §164(A)(16).

17
18 **SECTION THREE. APPROVAL OF ALLOCATION OF ADDITIONAL FUNDS TO THE**
19 **HARDSHIP ASSISTANCE EXPENDITURE PLAN**

- 20 A. Through Council Resolution CD-62-21, the Navajo Nation approved and adopted the Navajo
21 Nation Fiscal Recovery Fund Hardship Assistance Expenditure Plan, set forth in **Exhibit 1-**
22 **C**, which included an allocation of five hundred fifty-seven million dollars (\$557,000,000).
- 23 B. The Navajo Nation hereby approves an allocation of additional funding for the NNFRF
24 Hardship Assistance Expenditure Plan from the Navajo Nation Fiscal Recovery Fund in the
25 total amount of one hundred twenty million dollars (\$120,000,000) to the Office of the
26 Controller, for Household Assistance – Cash Transfers (Expenditure Category 2.3), as set
27 forth in **Exhibit 2**, with administrative oversight by the Office of the President and Vice
28 President and legislative oversight by the Budget and Finance Committee.
- 29
30

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

SECTION FOUR. EFFECTIVE DATE

This legislation shall be effective upon its approval pursuant to 2 N.N.C. § 221(B), 2 N.N.C. § 164 (A)(17), and 2 N.N.C. §§ 1005 (C) (10), (11), and (12).

SECTION FIVE. 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 SIX. 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.