

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0116-22_

SPONSOR: Rickie Nez

TITLE: An Action Relating to an Emergency; Extending the Time for a Limited Waiver of Sovereign Immunity to Allow the Navajo Nation to be Sued in Federal District Court Regarding Compliance with the National Environmental Protection Act in Carrying Out the United States Department of Housing and Urban Development Grants and Authorizing the President of the Navajo Nation to be the Certifying Tribal Official to Execute Form 7015.15 through September 30, 2025

Date posted: July 18, 2022 at 11:05AM

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LEGISLATIVE SUMMARY SHEET
Tracking No. 0116-22

DATE: July 15, 2022

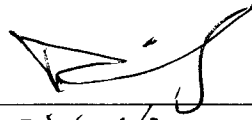
TITLE OF RESOLUTION: A PROPOSED NAVAJO NATION COUNCIL RESOLUTION; AN ACTION RELATING TO AN EMERGENCY; EXTENDING THE TIME FOR A LIMITED WAIVER OF SOVEREIGN IMMUNITY TO ALLOW THE NAVAJO NATION TO BE SUED IN FEDERAL DISTRICT COURT REGARDING COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL PROTECTION ACT IN CARRYING OUT THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT GRANTS AND AUTHORIZING THE PRESIDENT OF THE NAVAJO NATION TO BE THE CERTIFYING TRIBAL OFFICIAL TO EXECUTE FORM 7015.15 THROUGH SEPTEMBER 30, 2025

PURPOSE: This resolution, if approved, will approve the extension of a limited waiver of sovereign immunity to allow the Navajo Nation to be sued in Federal District Court regarding compliance with NEPA in carrying out HUD grants and also approve the Navajo Nation President to sign Form 7015.15 through September 30, 2025.

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



Rick Nelson
(Prime Sponsor)

TRACKING NO. 0116-22

AN ACTION

RELATING TO AN EMERGENCY; EXTENDING THE TIME FOR A LIMITED
WAIVER OF SOVEREIGN IMMUNITY TO ALLOW THE NAVAJO NATION TO BE
SUED IN FEDERAL DISTRICT COURT REGARDING COMPLIANCE WITH THE
NATIONAL ENVIRONMENTAL PROTECTION ACT IN CARRYING OUT THE
UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
GRANTS AND AUTHORIZING THE PRESIDENT OF THE NAVAJO NATION TO
BE THE CERTIFYING TRIBAL OFFICIAL TO EXECUTE FORM 7015.15
THROUGH SEPTEMBER 30, 2025

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Navajo Nation Council is the governing of body of the Navajo Nation. 2 N.N.C. § 102(A).
- B. Pursuant to 2 N.N.C. §164 (A)(16) “[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.”

1 C. Enactments of positive law must be reviewed and approved by resolution by the Navajo
2 Nation Council. 2 N.N.C. § 164(A).

3
4 **SECTION TWO. FINDINGS**

5 A. The Navajo Nation President issued Executive Order No. 001-20 declaring a state of
6 emergency due to the COVID-19 virus on March 13, 2020.

7 B. On March 11, 2020, the Navajo Nation Emergency Management Commission declared
8 a state of emergency due to the COVID-19 virus. Resolution No. CEM-20-03-11.

9 C. The coronavirus pandemic has caused large scale infections and loss of life throughout
10 the world, the United States and the Navajo Nation. As of July 14, 2022, the Navajo
11 Nation Health Command Operations Center has confirmed 58,637 positive cases of
12 COVID-19 and 1,836 COVID-related deaths on the Navajo Nation.
13 <https://www.ndoh.navajo-nsn.gov/COVID-19>

14 D. A report by the Brookings Institution, a nonprofit public policy organization based in
15 Washington, DC, states: “Even before the COVID-19 pandemic, millions of
16 Americans lacked stable, affordable housing. Now, the crisis has highlighted the social
17 and economic costs of this crucial gap in the safety net. People living in poor-quality,
18 overcrowded, or unstable housing—or without any home at all—cannot follow public
19 health directives to safely “shelter in place.” As a result, they are at far greater risk
20 of contracting the virus, along with other chronic illness.”
21 [https://www.brookings.edu/research/strategies-for-increasing-affordable-housing-](https://www.brookings.edu/research/strategies-for-increasing-affordable-housing-amid-the-covid-19-economic-crisis/)
22 [amid-the-covid-19-economic-crisis/](https://www.brookings.edu/research/strategies-for-increasing-affordable-housing-amid-the-covid-19-economic-crisis/)

23 E. The Navajo Housing Authority has applied for and been awarded grants to provide
24 houses for Navajo families. These grants require compliance with the National
25 Environmental Protection Act (NEPA).

26 F. The U.S. Department of Housing and Urban Development (HUD) Form 7015.15
27 (<https://www.hud.gov/sites/dfiles/OCHCO/documents/7015.15.pdf>) requires the
28 “certifying official of the responsible entity” to accept and agree to “the jurisdiction of
29 the Federal courts for the enforcement” of the responsibilities assumed under the
30

1 Environmental Certification form and process. *See* paragraphs 8 and 9 on page 2 of
2 Form 7015.15.

3 G. Pursuant to 24 CFR § 58.2 ([https://www.ecfr.gov/current/title-24/subtitle-A/part-](https://www.ecfr.gov/current/title-24/subtitle-A/part-58/subpart-A/section-58.2)
4 [58/subpart-A/section-58.2](https://www.ecfr.gov/current/title-24/subtitle-A/part-58/subpart-A/section-58.2)), the Responsible Entity means in this context the Indian
5 Tribe. *See* 24 CFR § 58.2(7)(ii). Further, under the Native American Housing
6 Assistance and Self-Determination Act of 1996 (“NAHASDA”), which is the federal
7 legislation controlling this funding for the Navajo Nation and the Navajo Housing
8 Authority, “the Indian Tribe is the responsible entity whether or not a Tribally
9 Designated Housing Entity is authorized to receive grant amounts on behalf of the
10 tribe.” 24 CFR § 58.2.

11 H. Navajo Nation Council Resolution CJA-13-00, approved a limited waiver of sovereign
12 immunity allowing the Navajo Nation to be sued in Federal District Court regarding
13 compliance with the National Environmental Protection Act in carrying out the United
14 States Housing and Urban Development grants and further authorized the Navajo
15 Nation President to sign Form 7015.15 for HUD funded projects through Fiscal Year
16 2004. The Board of Commissioners of the Navajo Housing Authority through
17 Resolution NHA-4970-2020, attached as **Exhibit 1**, requests approval of extension of
18 the limited waiver of sovereign immunity.

19 I. There have been four similar resolutions granting approval of the limited sovereign
20 immunity and authorizing the President of the Navajo Nation to sign Form 7015.15.
21 *See* CAP-21-05; CAP-15-10; CJA-03-14 and CO-57-17. CO-57-17 is attached as
22 **Exhibit 2**.

23 J. The Navajo Housing Authority’s construction of houses through U.S. Department of
24 Housing and Urban Development funding will assist the Navajo Nation to address the
25 COVID-19 crisis. Providing houses allows the Navajo homeowner or renter to follow
26 public health directives to safely “shelter in place,” and, thereby, lessen the risk of
27 contracting the Covid-19 virus. The Navajo Housing Authority’s construction of
28 homes meets a pressing public need. The waiver of sovereign immunity is a matter
29 requiring final action by the Council. Therefore, the Navajo Nation Council finds that
30

1 this legislation meets the requirements of an emergency within the meaning of 2 N.N.C.
2 §164 (A)(16).

3
4 **SECTION THREE. AUTHORIZING THE EXTENSION OF A LIMITED**
5 **WAIVER OF SOVEREIGN IMMUNITY AND THE PRESIDENT TO SIGN**
6 **FORM 7015.15 THROUGH SEPTEMBER 30, 2025**

7 The Navajo Nation hereby authorizes the extension of a limited waiver of sovereign
8 immunity to allow the Navajo Nation to be sued in Federal District Court regarding
9 compliance with NEPA in carrying out HUD grants and also authorizes the Navajo
10 Nation President to sign Form 7015.15 through September 30, 2025.