

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0213-22\_

SPONSOR: Daniel E. Tso

**TITLE An Action Relating to Resources and Development Committee and Naabik'iyáti' Committee; Requesting the United States Environmental Protection Agency, Council on Environmental Quality, Department of the Interior, Bureau of Land Management, and Bureau of Indian Affairs to Review and Amend its List of Categorical Exclusions and its Application Within the Navajo Nation for the Development and Construction of Right-of-Way for Waterlines, Wastewater Lines, Powerlines, Broadband, Roads Using ARPA and Other Infrastructure Funds for Navajo People**

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**LEGISLATIVE SUMMARY SHEET**  
**Tracking No. 0213-22**

**DATE:** October 31, 2022

**TITLE OF RESOLUTION:** PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE AND NAABIK'ÍYÁTI' COMMITTEE; REQUESTING THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, COUNCIL ON ENVIRONMENTAL QUALITY, DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, AND BUREAU OF INDIAN AFFAIRS TO REVIEW AND AMEND ITS LIST OF CATEGORICAL EXCLUSIONS AND ITS APPLICATION WITHIN THE NAVAJO NATION FOR THE DEVELOPMENT AND CONSTRUCTION OF RIGHTS-OF-WAY FOR WATERLINES, WASTEWATER LINES, POWERLINES, BROADBAND, ROADS USING ARPA AND OTHER INFRASTRUCTURE FUNDS FOR NAVAJO PEOPLE

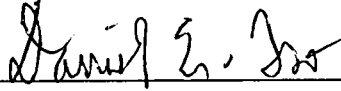
**PURPOSE:** The purpose of this legislation to request the United States Environmental Protection Agency, Council on Environmental Quality, Department of the Interior, Bureau of Land Management, and Bureau of Indian Affairs to review and amend its list of categorical exclusions and its application within the Navajo Nation for the development and construction of rights-of-way for waterlines, wastewater lines, powerlines, broadband, roads using ARPA and other infrastructure funds for Navajo people.

**This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.**

5-DAY BILL # OLD PERIOD: Johnson  
Website Posting Time/Date: \_\_\_\_\_  
Posting End Date: 11-07-22  
Eligible for Action: 11-08-22

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

3 INTRODUCED BY

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

6 Primary Sponsor

7  
8 TRACKING NO. 0213-22

9  
10 AN ACTION

11 RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE AND  
12 NAABIK'ÍYÁTI' COMMITTEE; REQUESTING THE UNITED STATES  
13 ENVIRONMENTAL PROTECTION AGENCY, COUNCIL ON ENVIRONMENTAL  
14 QUALITY, DEPARTMENT OF THE INTERIOR, BUREAU OF LAND  
15 MANAGEMENT, AND BUREAU OF INDIAN AFFAIRS TO REVIEW AND AMEND  
16 ITS LIST OF CATEGORICAL EXCLUSIONS AND ITS APPLICATION WITHIN THE  
17 NAVAJO NATION FOR THE DEVELOPMENT AND CONSTRUCTION OF RIGHTS-  
18 OF-WAY FOR WATERLINES, WASTEWATER LINES, POWERLINES,  
19 BROADBAND, ROADS USING ARPA AND OTHER INFRASTRUCTURE FUNDS  
20 FOR NAVAJO PEOPLE

21  
22 **BE IT RESOLVED:**

23  
24 **SECTION ONE. AUTHORITY**

25 A. The Resources and Development Committee is established as a standing committee of  
26 the Navajo Nation Council with oversight of land, environmental protection and cultural  
27 resources and authority to review and recommend resolutions to the Naabik'iyáti  
28 Committee and Navajo Nation Council to accomplish or impact the Resources and  
29 Development Committee purpose. 2 N.N.C. §§ 164 (A)(9), 500 (C), and 501 (B)(4)(a).  
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1 B. The Naabik'iyáti' Committee is established as a standing committee of the Navajo  
2 Nation Council with authority to review and continually monitor the programs and  
3 activities of federal and state departments and to assist development of such programs  
4 designed to serve the Navajo People and the Navajo Nation through intergovernmental  
5 relationships between the Navajo Nation and such departments. 2 N.N.C. §§ 164 (A)(9),  
6 700 (A), 701 (A)(7).

7  
8 **SECTION TWO. FINDINGS**

9 A. President Nixon signed the National Environmental Policy Act (NEPA) into law on  
10 January 1, 1970. Congress enacted NEPA to establish a national policy for the  
11 environment, provide for the establishment of the Council on Environmental Quality  
12 (CEQ), and for other purposes. NEPA was the first major environmental law in the  
13 United States and is often called the "Magna Carta" of Federal environmental laws.  
14 NEPA requires Federal agencies to assess the environmental effects of proposed major  
15 Federal actions prior to making decisions.

16  
17 Section 101 of NEPA sets forth a national policy "to use all practicable means and  
18 measures, including financial and technical assistance, in a manner calculated to foster  
19 and promote the general welfare, to create and maintain conditions under which man and  
20 nature can exist in productive harmony, and fulfill the social, economic, and other  
21 requirements of present and future generations of Americans." 42 U.S.C. 4331(a).  
22 Section 102 of NEPA establishes procedural requirements, applying that national policy  
23 to proposals for major Federal actions significantly affecting the quality of the human  
24 environment by requiring Federal agencies to prepare a detailed statement on: (1) the  
25 environmental impact of the proposed action; (2) any adverse effects that cannot be  
26 avoided; (3) alternatives to the proposed action; (4) the relationship between local short-  
27 term uses of man's environment and the maintenance and enhancement of long-term  
28 productivity; and (5) any irreversible and ir retrievable commitments of resources that  
29 would be involved in the proposed action. 42 U.S.C. 4332(2)(C).  
30

1 NEPA ensures agencies consider the significant environmental consequences of their  
2 proposed actions and inform the public about their decision making. Countries and non-  
3 governmental organizations all over the globe have created their own environmental  
4 impact assessment programs, modeled upon NEPA, making NEPA an international  
5 catalyst in the field of environmental protection. See <https://ceq.doe.gov/>.

6 B. NEPA established CEQ within the Executive Office of the U.S. President to ensure that  
7 Federal agencies meet their obligations under NEPA. CEQ oversees NEPA  
8 implementation, principally through issuing guidance and interpreting regulations that  
9 implement NEPA's procedural requirements. CEQ also reviews and approves Federal  
10 agency NEPA procedures, approves alternative arrangements for compliance with  
11 NEPA for emergencies, and helps to resolve disputes between Federal agencies and with  
12 other governmental entities and members of the public. One of CEQ's major  
13 responsibilities is also to develop and recommend national policies to the President that  
14 promote the improvement of environmental quality and meet the Nation's goals.

15 C. The Bureau of Indian Affairs (BIA) is primary federal entity responsible  
16 for NEPA compliance on Indian trust lands. There are five documents that BIA may  
17 prepare to comply with NEPA:

- 18 1. A Categorical Exclusion Exception Review (CEER) Checklist
- 19 2. An Environmental Assessment (EA)
- 20 3. A Finding of No Significant Impact (FONSI)
- 21 4. An Environmental Impact Statement (EIS)
- 22 5. A Record of Decision (ROD)

23 The assigned BIA official with decision-making authority must sign the appropriate  
24 documents. See <https://www.bia.gov/service/nepa-compliance/review-process>

25 D. On March 6, 2018, the BIA published a notice in the Federal Register requesting  
26 comments on its list of categorical exclusions (CATEXs) under the NEPA. 83 Fed. Reg.  
27 9535 is attached hereto as **Exhibit A**. A CATEX is a category of actions that a federal  
28 agency has determined do not individually or cumulatively have a significant effect on  
29 the human environment. For an action covered by a CATEX, NEPA compliance does  
30 not require an EIS or EA, unless an "extraordinary circumstance" exists. The notice

1 includes the current list of BIA CATEXs and requests comments on whether to revise  
2 or delete any existing CATEXs or to add any new ones. The deadline for submitting  
3 comments was May 7, 2018.

4 E. The World Health Organization (“WHO”) declared a Public Health Emergency of  
5 International Concern related to the outbreak of coronavirus (“COVID-19”), a highly  
6 contagious and sometimes fatal respiratory virus, on January 30, 2020; the U.S.  
7 Department of Health and Human Services declared a Public Health Emergency related  
8 to the COVID-19 outbreak on January 31, 2020; and the WHO declared a global  
9 pandemic due to COVID-19 on March 11, 2020.

10 F. The Navajo Nation Commission on Emergency Management, with the concurrence of  
11 Navajo Nation President Jonathan Nez, declared a Public Health State of Emergency  
12 on the Navajo Nation on March 11, 2020, due to the COVID-19 outbreak. *See*  
13 Resolution No. CEM 20-03-11 incorporated herein by reference. The Navajo Nation  
14 Department of Health has subsequently issued numerous Public Health Emergency  
15 Orders. Public Health Orders 2020-001 through 2022-08 are incorporated by reference.  
16 *See, <https://ndoh.navajo-nsn.gov/covid-19>*

17 G. The coronavirus pandemic of 2019 has caused large scale infections and loss of life  
18 throughout the world, the United States and the Navajo Nation. As of July 7, 2021, the  
19 Navajo Nation Health Command Operations Center has confirmed 31,043 COVID-19  
20 cases and 1,374 COVID-related deaths on the Navajo Nation. COVID-19 variants have  
21 emerged that threaten to increase these numbers and continue the pandemic’s assault  
22 on the Navajo People.

23 H. The devastating effects of COVID-19 continue throughout the Navajo Nation,  
24 including employment losses, business closures, food and housing insecurity, and other  
25 economic disruptions.

26 I. On March 11, 2021, President Biden signed the American Rescue Plan Act (“ARPA”)  
27 into law. Section 9901 of ARPA established the Coronavirus State Fiscal Recovery  
28 Fund and the Coronavirus Local Fiscal Recovery Fund (together the “Fiscal Recovery  
29 Funds”) by amending Title VI of the Social Security Act, which provided \$362 billion  
30

1 for state, local, and tribal governments, including \$20 billion designated for tribal  
2 governments.

3 J. As of May 29, 2021, the United States Department of Treasury (“U.S. Treasury”)  
4 allocated \$1,861,554,458.43 to the Navajo Nation under the Fiscal Recovery Funds  
5 provisions of ARPA. The Fiscal Recovery Funds are designed to build on and expand  
6 the relief provided in the Coronavirus Aid, Relief, and Economic Security Act or  
7 CARES Act.

8 K. The Fiscal Recovery Funds are intended to support governmental efforts to mitigate  
9 and contain the spread of COVID-19, as well as to respond to the health, social and  
10 economic impacts of COVID-19 suffered by residents and businesses.

11 L. Pursuant to Section 9901 of ARPA, the Fiscal Recovery Funds were specifically  
12 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;  
15 and/or 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 of the tribal government.  
18 Under this category, the Navajo Nation can provide premium pay to government  
19 workers performing essential work, and can provide grants to eligible employers  
20 that have eligible workers who perform essential work;
- 21 3. Provide government services to the extent of the reduction in Navajo Nation  
22 revenue due to the COVID-19 public health emergency, relative to revenues  
23 collected in the most recent full fiscal year prior to the emergency; and
- 24 4. Make necessary investments in water, sewer, or broadband infrastructure.

25 M. Pursuant to ARPA:

- 26 1. Fiscal Recovery Fund costs must be incurred by December 31, 2024, meaning  
27 the Navajo Nation must obligate funds by that date; and
- 28 2. The Fiscal Recovery Fund period of performance runs until December 31, 2026,  
29 meaning funded projects must be completed by that date.

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- 1 N. While its acceptance of the Fiscal Recovery Funds obligates the Navajo Nation to  
2 comply with ARPA and other federal laws and regulations, the Navajo Nation can and  
3 will fulfill these obligations while retaining and exercising its tribal sovereignty.
- 4 O. On July 2021, the Navajo Nation Council approved Resolution CJY-41-21 (An Action  
5 Relating to Budget and Finance and Naabik'iyáti' Committees, and Navajo Nation  
6 Council; Establishing the Navajo Nation Fiscal Recovery Fund and the Expenditure  
7 Authorization Process Thereunder; Waiving Certain Provisions of the Navajo Nation  
8 Appropriations Act; Amending 12 N.N.C. § 334 to Authorize Emergency Procurements;  
9 Authorizing Reimbursement of the Síhasin Fund and Undesignated Unreserved Fund  
10 Balance; Authorizing Central Support and Regulatory Cost Funding; Authorizing  
11 Funding to Complete Defunded Navajo Nation CARES Fund Expenditure Plans;  
12 Authorizing the Establishment of a Navajo Nation Fiscal Recovery Fund Office Within  
13 the Office of the President and Vice-President).
- 14 P. Resolution CJY-41021 established the Navajo Nation Fiscal Recovery Fund (NNFRF)  
15 and the application process thereunder; waiving application of certain provisions of the  
16 Appropriations Act to NNFRF funding; deem NNFRF procurements as emergency  
17 procurements to expedite the procurement process; authorize reimbursement of Síhasin  
18 Fund and UUFB allocations and appropriations; fund central support and regulatory  
19 costs upfront to establish the legal, financial and regulatory infrastructure necessary to  
20 support NNFRF Expenditure Plans; fund CARES Fund projects that were approved but  
21 not completed; and authorize the establishment of a NNFRF Office.
- 22 Q. The Navajo Nation desires to use the ARPA funds and other federal funds for the  
23 development and construction of rights-of-way for waterlines, wastewater lines,  
24 powerlines, broadband, roads and other infrastructure for Navajo people.
- 25 R. Although the Navajo Nation desires to use ARPA funds and other federal funds for the  
26 development and construction of rights-of-way for waterlines, wastewater lines,  
27 powerlines, broadband, roads and other infrastructure for Navajo people; the Navajo  
28 Nation is hindered by the application of the NEPA and federal action upon these  
29 projects.
- 30



1 S. The Navajo Nation and the Navajo people requests the United States Environmental  
2 Protection Agency, Council on Environmental Quality, Department of the Interior,  
3 Bureau of Land Management, and Bureau of Indian Affairs to review and amend its list  
4 of categorical exclusions and its application within the Navajo Nation for the  
5 development and construction of rights-of-way for waterlines, wastewater lines,  
6 powerlines, broadband, roads and other infrastructure for Navajo people.  
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8 **SECTION THREE. APPROVAL**

9 A. The Navajo Nation hereby requests the United States Environmental Protection Agency,  
10 Council on Environmental Quality, Department of the Interior, Bureau of Land  
11 Management, and Bureau of Indian Affairs to review and amend its list of categorical  
12 exclusions and its application within the Navajo Nation for the development and  
13 construction of rights-of-way for waterlines, wastewater lines, powerlines, broadband,  
14 roads using ARPA and other infrastructure funds for Navajo people.

15 B. The Navajo Nation hereby authorizes and directs the Navajo Nation President, the  
16 Speaker of the Navajo Nation Council, Navajo Nation Environmental Protection  
17 Agency, Attorney General and the Navajo Nation Department of Justice, Division of  
18 Natural Resources, and the Navajo Nation Washington Office to advocate the intent of  
19 this legislation.  
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