

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0010-24_

SPONSOR: Shaandiin Parrish

TITLE: An Action Relating to the Budget and Finance Committee; Approving and Adopting the October 2023 Restructuring Term Sheet Prepared by Office of the Controller for Restructuring Gaming Loan to Navajo Nation Gaming Enterprise

Date posted: January 11, 2024 at 2:56PM

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0010-24

DATE: January 9, 2024

TITLE OF RESOLUTION: AN ACTION RELATING TO THE BUDGET AND FINANCE COMMITTEE; APPROVING AND ADOPTING THE OCTOBER 2023 RESTRUCTURING TERM SHEET PREPARED BY OFFICE OF THE CONTROLLER FOR RESTRUCTURING GAMING LOAN TO NAVAJO NATION GAMING ENTERPRISE

PURPOSE: The purpose of this proposed resolution is to approve an amended Term Sheet for the Navajo Nation Game Enterprise's loan with the Navajo Nation.

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 HOLD PERIOD
Website Posting Time/Date
Posting End Date: 01-16-24
Eligible for Action: 01-17-24

1 PROPOSED STANDING COMMITTEE RESOLUTION
2 25th NAVAJO NATION COUNCIL – Second Year, 2024

3 Introduced by:

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6 Primary Sponsor

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8 Tracking No. 0010-24

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10 AN ACTION

11 RELATING TO THE BUDGET AND FINANCE COMMITTEE; APPROVING AND
12 ADOPTING THE OCTOBER 2023 RESTRUCTURING TERM SHEET PREPARED BY
13 OFFICE OF THE CONTROLLER FOR RESTRUCTURING GAMING LOAN TO
14 NAVAJO NATION GAMING ENTERPRISE

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16 **BE IT ENACTED:**

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18 **SECTION ONE. AUTHORITY**

19 The Budget & Finance Committee is a standing committee of the Navajo Nation Council
20 that is authorized to review, and make recommendations concerning budgeting and
21 management of all Navajo Nation funds. 2 N.N.C. §§ 300 (A) and § 301(B)(2).

22
23 **SECTION TWO. FINDINGS**

- 24 A. The Budget and Finance Committee adopted the investment policies for all Navajo
25 Nation financial resources (the “Master Investment Policy”) pursuant to Resolution
26 BFO-61-90, as amended by Resolutions BFJY-114-03, BFJA-01-08, BFJN-17-15,
27 BFD-38-17, BFD-41-17, BFD-45-18, BFAP-08-21, BFO-33-22, and BFAU-22-23.
- 28 B. The Navajo Nation Investment Committee (the “Investment Committee”) is an advisory
29 committee to the Budget and Finance Committee in the management of the Navajo
30 Nation’s investment programs, pursuant to the Master Investment Policy at §4.3, and is

1 responsible for approving and recommending to the Budget and Finance Committee
2 adoption of actions related to the Navajo Nation's investments.

3 C. The Navajo Nation made a fixed-income security investment in the Navajo Nation
4 Gaming Enterprise ("NNGE" or "Enterprise") through an Amended, Restated and
5 Consolidated Loan Agreement dated April 3, 2012 (the "2012 Loan Agreement"), under
6 which 2012 Loan Agreement, the Nation and NNGE amended, restructured and
7 consolidated certain loans made to NNGE to finance the construction and other costs
8 relating to all the casinos owned and operated by NNGE (the "Initial Loans") and to
9 provide additional financing in the original principal amount of \$30,000,000.00 to NNGE
10 (the "2012 Additional Financing") for the expansion of a hotel located at Twin Arrows
11 Navajo Casino Resort (the Initial Loans and the 2012 Additional Financing are referred
12 to herein as the "Gaming Loan").

13 D. On November 21, 2017, the Budget and Finance Committee passed resolution No. BFN-
14 39-17, which approved a term sheet for the restructuring of the Gaming Loan, which was then
15 outstanding in the amount of \$208,759,393.00, and authorized the President of the Navajo
16 Nation to execute a Second Amended, Restated and Consolidated Loan Agreement between
17 the Navajo Nation and NNGE (the "Second Amended Loan Agreement"), which Second
18 Amended Loan Agreement was executed on May 18, 2018, but was effective as of
19 December 1, 2017.

20 E. On May 23, 2018, NNGE and the Nation entered into a Loan Agreement (Sihasin
21 Travel Center Project) (the "Travel Center Loan Agreement"), under which Travel Center
22 Loan Agreement, the Nation loaned NNGE \$4,000,000.00 from the Sihasin Fund (the
23 "Sihasin Loan") for the purpose of developing a Twin Arrows Travel Center. In addition to
24 the Sihasin Loan, the Nation provided an additional \$6,000,000.00 in direct funding from
25 the Sihasin Fund to NNGE for the development of the Travel Center.

26 F. On March 13, 2020, Navajo Nation Executive Order No. 001-20 declared a state of
27 emergency due to the confirmation of the COVID-19 virus in regional areas surrounding the
28 Navajo Nation, pursuant to which NNGE closed all four casino properties on March 17,
29 2020.

30 G. During the COVID-19 pandemic, the Enterprise was required to be closed or was under

1 occupancy restrictions and operational mandates for 1,039 days – approximately two years
2 and ten months - resulting in the loss of approximately \$229.5M in revenues, \$70.9M in
3 EBITDA profit, and the depletion of the Enterprise’s \$55.9M in cash reserves and set asides
4 to cover fixed operating costs, employee salaries and healthcare, subordinate debt, and other
5 Navajo Nation obligations (the “Pandemic Related Restrictions and Losses”).

6 H. As a consumer-facing cash business, these Pandemic Related Restrictions and Losses
7 adversely impacted the ability of the Enterprise to make debt service payments, leading the
8 Enterprise and the Navajo Nation to postpone debt service payments and to engage in good
9 faith discussions and negotiations for repayment under the Second Amended Loan
10 Agreement and to address potential amendments or to restructure the Second Amended Loan
11 Agreement.

12 I. The Controller and NNGE entered into a Limited Forbearance Agreement
13 (“Original Forbearance Agreement”) dated August 19, 2020 that provided, among other
14 things, that the Nation would forbear from enforcing its rights and remedies under the
15 Second Amended, Restated Loan Agreement as well as that certain Loan Agreement
16 (Sihasin Travel Center Project) dated May 23, 2018 (the “Travel Center Loan Agreement”)
17 for Specified Violations (as defined in the Original Forbearance Agreement) through
18 December 31, 2020.

19 J. Due to ongoing Pandemic Related Restrictions and Losses, NNGE requested that the
20 Controller extend the forbearance period to June 30, 2022. NNGE and the Controller
21 negotiated an Extended and Modified Forbearance Letter (the “Extended Forbearance”).

22 K. In light of continuing Pandemic Related Restrictions and Losses and ongoing discussions
23 between the parties, a total of six extended and modified limited forbearances were executed,
24 ultimately extending the period of forbearance to September 30, 2023 (the “Extensions”);
25 and Controller and NNGE have exchanged several term sheets to restructure the Gaming
26 Loan over the course of several months.

27 L. After consultation with the Investment Committee in such meetings and consultation
28 with Controller’s consultant Sovereign Finance, Controller prepared a revised term
29 sheet (“October 2023 Restructuring Term Sheet”), attached hereto as **Exhibit A**.

30 M. On October 26, 2023, the Investment Committee approved the October 2023

1 Restructuring Term Sheet pursuant to Resolution NNICAU-11-23, which is attached hereto
2 as **Exhibit B**, recommending that the Budget and Finance Committee approve and adopt the
3 October 2023 Restructuring Term Sheet upon its approval by NNGE’s Board of Directors.
4 N. On November 18, 2023, NNGE’s Board of Directors passed Resolution NNGENOV-
5 001-23 approving the October 2023 Restructuring Term Sheet, attached as **Exhibit C**.

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7 **SECTION 3. APPROVAL**

8 The Budget and Finance Committee hereby approves and adopts the October 2023 Restructuring
9 Term Sheet attached hereto as **Exhibit A**.

10 **SECTION 4. SAVING CLAUSE**

11 If any part of this Action is determined invalid by the Supreme Court of the Navajo Nation,
12 or by a Navajo Nation District Court without appeal to the Navajo Nation Supreme Court,
13 the remainder of this Action shall be the law of the Navajo Nation.
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