

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: 0009-26

SPONSOR: Shaandiin Parrish

TITLE: An Act Relating to the Law and Order, Resources and Development, Budget and Finance, and Naabik'iyáti' Committees, and the Navajo Nation Council; Retaining Navajo Nation Fiscal Recovery Fund Investment Earnings in the Revenue Replacement Reserve to Fund Delegate Region Project Plans; Amending Title 12 of the Navajo Nation Code to Enact the "Capital Development Financing Act" and Establish the "Capital Development Financing Fund"; Authorizing Limited Waivers of Sovereign Immunity for Purposes of Financing Transactions Entered into Under the Act; Amending Council Resolution CMY-28-24

Date posted: January 14, 2026 at 9:30PM

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0009-26

DATE: January 14, 2026

TITLE OF RESOLUTION: AN ACT RELATING TO THE LAW AND ORDER, RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; RETAINING NAVAJO NATION FISCAL RECOVERY FUND INVESTMENT EARNINGS IN THE REVENUE REPLACEMENT RESERVE TO FUND DELEGATE REGION PROJECT PLANS; AMENDING TITLE 12 OF THE NAVAJO NATION CODE TO ENACT THE "CAPITAL DEVELOPMENT FINANCING ACT" AND ESTABLISH THE "CAPITAL DEVELOPMENT FINANCING FUND"; AUTHORIZING LIMITED WAIVERS OF SOVEREIGN IMMUNITY FOR PURPOSES OF FINANCING TRANSACTIONS ENTERED INTO UNDER THE ACT; AMENDING COUNCIL RESOLUTION CMY-28-24

PURPOSE: The purpose of this proposed resolution is to enact the Navajo Nation's Capital Development and Financing Act to establish the Capital Development Financing Fund.

FINAL AUTHORITY: Navajo Nation Council

VOTE REQUIREMENT: 2/3 vote of the Navajo Nation Council

The Navajo Nation Code (2 N.N.C. § 223(C)) requires a 2/3 vote by the full membership of the Navajo Nation Council to waive and delegate the waiver of the Nation's sovereign immunity.

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: Johnson
Website Posting Time/Date: _____
Posting End Date: 01/19/26
Eligible for Action: 01/20/26

Law & Order Committee
Thence
Resources & Development Committee
Thence
Budget & Finance Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION
2 25th NAVAJO NATION COUNCIL – Fourth Year, 2026

3 Introduced by:
4



5 _____
6 (Prime Sponsor)
7

8
9 Tracking No. 0009-26

10
11 AN ACT

12 RELATING TO THE LAW AND ORDER, RESOURCES AND DEVELOPMENT,
13 BUDGET AND FINANCE, AND NABIK'ÍYÁTI' COMMITTEES, AND THE
14 NAVAJO NATION COUNCIL; RETAINING NAVAJO NATION FISCAL
15 RECOVERY FUND INVESTMENT EARNINGS IN THE REVENUE
16 REPLACEMENT RESERVE TO FUND DELEGATE REGION PROJECT
17 PLANS; AMENDING TITLE 12 OF THE NAVAJO NATION CODE TO ENACT
18 THE "CAPITAL DEVELOPMENT FINANCING ACT" AND ESTABLISH THE
19 "CAPITAL DEVELOPMENT FINANCING FUND"; AUTHORIZING LIMITED
20 WAIVERS OF SOVEREIGN IMMUNITY FOR PURPOSES OF FINANCING
21 TRANSACTIONS ENTERED INTO UNDER THE ACT; AMENDING COUNCIL

22 RESOLUTION CMY-28-24

23
24 BE IT ENACTED:

25
26 SECTION ONE. AUTHORITY

27 A. The Law and Order Committee is a standing committee of the Navajo Nation Council
28 with the enumerated power to review and make recommendations to the Navajo
29 Nation Council on proposed amendments to enactments to the Navajo Nation Code. 2
30 N.N.C. § 601 (B)(14).

1 B. The Resources and Development Committee is a standing committee of the Navajo
2 Nation Council with oversight authority over chapter activities, information
3 technology, and telecommunications, as well as the responsibility to promote, review,
4 coordinate, and approve projects to be financed by funds designated for capital
5 improvement. 2 N.N.C. §§ 500 (C) and (C)(5).

6 C. The Budget and Finance Committee is a standing committee of the Navajo Nation
7 Council with the enumerated powers to review and recommend to the Navajo Nation
8 Council the budgeting, appropriation, investment, and management of all funds and to
9 promulgate rules and regulations related to contracting and financial matters. 2
10 N.N.C. §§ 300 (B)(1) and (2).

11 D. The Naabik'iyáti' Committee is a standing committee of the Navajo Nation Council
12 with the responsibility to hear proposed resolution(s) that require final action by the
13 Navajo Nation Council. 2 N.N.C. § 164 (A)(9).

14 E. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §
15 102(A).

16

17 SECTION TWO. FINDINGS

18 A. The intent and purpose of this Act is to enact the “statutory trust fund” that the
19 Navajo Nation authorized in 2024 through Council Resolution CMY-28-24 (“CMY-
20 28-24”) which established the Revenue Replacement Reserve as a committed fund
21 balance within the Navajo Nation General Fund for the purpose of housing,
22 protecting, and reserving certain funds from the Navajo Nation Fiscal Recovery Fund
23 (“NNFRF”) until the Navajo Nation established the statutory trust fund. The statutory
24 trust fund, identified herein as the “Capital Development Financing Fund”, will be
25 used to leverage funding for long-term infrastructure development as provided in
26 CMY-28-24, §§ 5 (A) and (D).

27 B. In 2021, the Navajo Nation received \$2,079,461,464 of Fiscal Recovery Funds
28 (“FRF”) allocated under the American Rescue Plan Act (“ARPA”). In July of 2021,
29 the Navajo Nation enacted Council Resolution CJY-41-21 (“CJY-41-21”), which
30 established the NNFRF; adopted an expenditure authorization and approval process

1 for the allocation of funds from the NNFRF; and made immediate allocations from
2 the NNFRF in the amount of \$452,162,597 for completion of defunded CARES Act
3 projects, for reimbursement of the Síhasin Fund and the UUFB for NNFRF-eligible
4 expenditures, and for administrative cost funding for central support services and
5 regulatory offices.

6 C. In December of 2021, the Navajo Nation enacted Council Resolution CD-62-21,
7 which allocated \$557,000,000 from the NNFRF to the Hardship Assistance
8 Expenditure Plan.

9 D. In July of 2022, the Navajo Nation enacted Council Resolution CJN-29-22 (“CJN-29-
10 22”), which allocated \$1,070,298,867 from the NNFRF to Chapter and Regional
11 Projects; Public Safety Emergency Communication, E911, and Rural Addressing
12 Projects; Cyber Security; Public Health Projects; Economic Development Projects;
13 the Hardship Assistance Program; Water and Wastewater Projects; Home Electricity
14 Connection and Electric Capacity Projects; Housing Projects and Housing
15 Manufacturing Facilities; Bathroom Addition Projects; and Construction Contingency
16 Funding.

17 E. The Navajo Nation, through CJN-29-22, also approved an allocation of \$211,256,148
18 from the NNFRF for the Chapter and Regional Projects Expenditure Plan. These
19 funds were divided equally among the 24 Delegate Regions in the amount of
20 \$8,802,340 per Delegate Region. Council delegates selected projects within their
21 Delegate Region to be included in a Delegate Region Projects Plan to be legislatively
22 approved. The Division of Community Development (“DCD”) and other Navajo
23 Nation divisions and departments managed and administered funds and Delegate
24 Region Projects on behalf of non-Local Governance Act-certified (“non-LGA-
25 certified”) chapters. The Navajo Nation awarded funds from the NNFRF to some
26 Local Governance Act-certified (“LGA-certified”) chapters through subrecipient
27 agreements to allow such chapters to implement and manage projects directly.

28 F. The Navajo Nation was faced with federally imposed deadlines of December 31,
29 2024, for the obligation of FRF and December 31, 2026, for the expenditure of FRF,
30 failure to meet the deadlines would have required the Navajo Nation to return the

1 funds to the U.S. Treasury. The Navajo Nation enacted CMY-28-24 to responsibly
2 manage the federal funds in order to ensure the Navajo Nation could optimize the use
3 of the federal FRF to expand necessary governmental services and build vital
4 infrastructure for the Navajo People. The Navajo Nation, through Section 3 of CMY-
5 28-24, recaptured approximately \$737,520,438 from the NNFRF previously allocated
6 to projects and programs that the Navajo leadership determined were unlikely to meet
7 the federal deadlines. The Navajo Nation reallocated \$737,158,551 of the recaptured
8 FRF for wastewater infrastructure, housing, administrative costs, and reimbursement
9 to the Navajo Nation of revenue expended in providing governmental services.
10 CMY-28-24, §4.

11 G. The Navajo Nation established the Revenue Replacement Reserve as a committed
12 fund balance in the General Fund to house, protect, and reserve certain FRF funding
13 until a statutory trust fund was established to govern the use of the trust fund for
14 governmental services and long-term infrastructure development, and the Navajo
15 Nation transferred \$521,857,353 of unobligated and unspent NNFRF funding to the
16 Revenue Replacement Reserve. CMY-28-24, §5.

17 H. The intent of CMY-28-24 was that once the statutory trust fund was created, the
18 balance of the Revenue Replacement Reserve funds housed in the General Fund in
19 the amount of \$521,857,353, plus all current and future realized investment income
20 generated from investment of funds in the NNFRF would be transferred and allocated
21 to the statutory trust fund that is identified herein as the Capital Development
22 Financing Fund.

23 I. This Capital Development Financing Act (the “Act”) establishes the Capital
24 Development Financing Fund as the statutory trust fund authorized through CMY-28-
25 24. Under the Act, the Capital Development Financing Fund is to be pledged as the
26 sole source of security and repayment for financing the acquisition, development and
27 construction of Capital Projects, as those projects are defined in the Act.

28 J. The Fund Principal and the Fund Income of the Capital Development Financing Fund
29 shall only be used for the purposes set forth in the Act and shall be protected and
30 preserved to provide for future generations.

1 K. The Navajo Nation Council hereby finds that the financing transactions contemplated
2 by the Act will require that the Navajo Nation grant limited waivers of its sovereign
3 immunity to allow the parties to such transactions to enforce their rights against the
4 Navajo Nation and the Capital Development Financing Fund if and when necessary.
5 Without such limited waivers of sovereign immunity, the Navajo Nation will not be
6 able to access financing on commercially reasonable terms.

7 L. The Navajo Nation Council additionally finds that the efficient, timely and effective
8 implementation of the Act will be best achieved by preauthorizing the parameters of
9 such limited waivers of sovereign immunity and delegating to the Budget and Finance
10 Committee the authority to approve all financing transactions entered into by the
11 Navajo Nation under the authority of the Act, to approve all financing agreements
12 required for such financing transactions, and to approve the final forms of any
13 waivers of sovereign immunity contained in such documents.

14 M. The Navajo Nation Council also finds that the limited waivers of sovereign immunity,
15 consent to arbitration, jurisdiction, governing law and suit as granted and
16 preauthorized by this Act and included in any financing agreements entered into
17 under this Act is necessary for the Navajo Nation to secure favorable credit ratings
18 and to secure financing on reasonable market terms and at commercially reasonable
19 rates.

20 N. These findings are in adherence to the directions to Navajo Nation leadership in the
21 Diné Traditional Law to “enact policies and laws to address the immediate and future
22 needs” of the Navajo People and in the Diné Common Law to provide for “the
23 establishment and maintenance of decent standards of living.” 1 N.N.C. §§ 203 (D)
24 and 206 (B).

25

26 **SECTION THREE. AMENDING COUNCIL RESOLUTION CMY-28-24; AND**
27 **RETAINING FUNDS IN THE REVENUE REPLACEMENT RESERVE FOR**
28 **DELEGATE REGION PROJECT PLANS.**

29 A. Navajo Nation Council Resolution No. CJN-29-22, incorporated herein by reference,
30 allocated \$8,802,340 of Navajo Nation Fiscal Recovery Funds (“NNFRF”) to each of

1 the twenty-four (24) Delegate Regions totaling \$211,256,148. In order to ensure
2 compliance with Treasury Guidelines concerning expenditure deadlines, CMY-28-24,
3 incorporated herein by reference, reallocated \$521,857,353 of NNFRF to the Revenue
4 Replacement Reserve General Fund Committed Fund Balance. The \$521,857,353 of
5 Revenue Replacement Reserve funds included approximately \$166,758,663 of the
6 \$211,256,148 for the Delegate Region Projects Expenditure Plan under Section 3 of
7 CJN-29-22. Whereas, approximately \$43,566,357 of the \$211,256,148 remained
8 funded through the NNFRF. The distribution of the \$211,256,148 between funds is
9 set forth in **Exhibit A**.

10 B. As set forth in CMY-28-24 at Section Five (B) and (J), realized earnings from the
11 investment of the NNFRF were allocated to the Revenue Replacement Reserve.
12 According to the Office of the Controller, as of January 14, 2026, the realized
13 earnings from investment of the NNFRF total approximately \$167 million, and the
14 total balance of the Revenue Replacement Reserve is approximately \$688 million.

15 C. Council Resolution CMY-28-24 Sections Five (E), Six (A), Six (D), Six (E), and Six
16 (F) refer to the reallocation of NNFRF to the Revenue Replacement Reserve to fund
17 Delegate Region Project Plans. These sections together reflect Council's intent to
18 appropriate \$150,075,413 for previously legislatively approved Delegate Region
19 Projects. Council Resolution CMY-28-24 Section Six (C) when read in harmony with
20 the sections above reflects Council's intent that funds would also be included in the
21 Revenue Replacement Reserve to fund Delegate Region Project Plans that would be
22 legislatively approved in the future.

23 D. The Navajo Nation maintains its intent to fund \$150,075,413 of previously
24 legislatively approved Delegate Region Projects using funds from the Revenue
25 Replacement Reserve as opposed to appropriating funds from a new funding source
26 such as principal or income from the Capital Development Financing Fund, Financing
27 Proceeds secured by the Fund, or funds from the Unreserved, Undesignated Fund
28 Balance ("UUFB"). Therefore, since the Delegate Region Projects totaling
29 \$150,075,413 that were funded through the Revenue Replacement Reserve will
30 continue to be funded through the Revenue Replacement Reserve despite the

1 establishment of this Fund, CMY-28-24 Section Five (E), is hereby amended as
2 follows:

3 “Until such time as the statutory Trust Fund described above is
4 established, there shall be no direct appropriations from the Revenue
5 Replacement Reserve. ~~Once~~After the statutory Trust Fund is fully
6 established, the unobligated and unspent funds for Delegate Region
7 Projects converted from the NNFRF in the amount of \$150,075,413
8 shall continue to be funded by the Revenue Replacement Reserve and
9 shall not be included in the first allocation of Trust Fund funding. The
10 second allocation of Trust Fund funding shall be for ~~the unobligated~~
11 ~~and unspent portions of CJN 29-22's B~~broadband infrastructure
12 ~~P~~rojects Expenditure Plan qualifying under the criteria of the Trust
13 Fund as Eligible Capital Projects eligible to be included in the Capital
14 Development Strategic Plan and a Financing Project Listing as set
15 forth in the Capital Development Financing Act in an amount up to
16 \$77,888,986;”

17 E. Council Resolution CMY-28-24 Section Five (F) provided that, “[u]ntil the statutory
18 Trust Fund is established, the Controller is authorized to use the Unreserved
19 Undesignated Fund Balance ('UUFB') to temporarily fund any immediate
20 encumbrances for approved Delegate Region Projects that were previously funded
21 through NNFRF. ...Once established, the statutory Trust Fund shall reimburse the
22 UUFB or line of credit, if utilized.”

23 F. The Navajo Nation determines it is more efficient to utilize funds from the Revenue
24 Replacement Reserve rather than the Fund to reimburse the UUFB for all
25 expenditures of UUFB funds as of the effective date of this Act that were authorized
26 by the Controller pursuant to CMY-28-24 Section Five (F). Therefore, CMY-28-24
27 Section Five (F) is amended as follows:

28 “Until the statutory Trust Fund is established, the Controller is
29 authorized to use the Unreserved Undesignated Fund Balance
30 ('UUFB') to temporarily fund any immediate encumbrances for

1 approved Delegate Region Projects that were previously funded
2 through NNFRF. If more fiscally prudent, the Controller may establish
3 and use a revolving line of credit, instead of the UUFB, with Budget
4 and Finance Committee approval if the amount is fifteen million
5 dollars or less and does not require a waiver of sovereign immunity.
6 Any line of credit that is over fifteen million dollars, or requires
7 waiver of sovereign immunity, must be approved by the Navajo
8 Nation Council. Once the statutory Trust Fund is established, ~~the~~
9 ~~statutory Trust Fund~~ ~~the Revenue Replacement Reserve~~ shall
10 reimburse the UUFB or line of credit, if utilized.”

11 G. According to the Fiscal Recovery Fund Office within the Office of the Controller, a
12 total of approximately \$16,683,250 of the \$211,256,148 allocated for the Delegate
13 Region Projects Expenditure Plan in Section 3 of CJN-29-22 remains to be
14 appropriated for several Delegate Regions that did not yet receive legislative approval
15 for Delegate Region Project Plans for their full \$8,802,340.

16 H. The Navajo Nation determines it is more efficient to utilize funds from the Revenue
17 Replacement Reserve as opposed to appropriating funds from a new funding source
18 such as principal or income from the Capital Development Financing Fund, Financing
19 Proceeds secured by the Fund, or funds from the UUFB.

20 I. The Navajo Nation hereby appropriates approximately \$16,683,250 from the
21 Revenue Replacement Reserve, to fund Delegate Region Projects that had not yet
22 been legislatively approved as of the effective date of CMY-28-24. The Office of the
23 Controller shall have the authority to adjust the dollar amount to ensure accuracy of
24 accounting and to comport with legislative intent.

25 J. The \$150,075,413 of Revenue Replacement Reserve funds that were already
26 appropriated through CMY-28-24, plus the approximately \$16,683,250 of Revenue
27 Replacement Reserve funds that are being appropriated through this Act total
28 approximately \$166,758,663. The approximately \$166,758,663 of Revenue
29 Replacement Reserve funds shall remain in the Revenue Replacement Reserve to
30 expend on costs of Delegate Region Projects once legislatively approved.

1 K. When fiscally prudent, and with the approval of the Budget and Finance Committee,
2 the Controller is authorized to leverage the Revenue Replacement Reserve as
3 collateral for financing or to establish a line of credit that does not require a waiver of
4 sovereign immunity. Navajo Nation Council approval shall be required for any
5 financing or line of credit supported by the Revenue Replacement Reserve that
6 requires a waiver of sovereign immunity.

7 L. The approximately \$166,758,663 that will remain in the Revenue Replacement
8 Reserve shall only be expended for the implementation of Delegate Region Projects
9 that have been or will be legislatively approved and comply with the purposes set
10 forth in CMY-28-24, Section Six (E).

11 M. Any new projects added to Delegate Region Project Plans that are funded through the
12 Revenue Replacement Reserve shall be approved by the Budget and Finance
13 Committee when recommended by the Resources and Development Committee, as
14 long as such new projects comply with the purposes set forth in CMY-28-24, Section
15 Six (E).

16 N. Modifications to legislatively approved Delegate Region Project Plans funded
17 through the Revenue Replacement Reserve shall follow the administrative process set
18 forth in CMY-28-24, Section Nine.

19 O. Notwithstanding CMY-28-24 Section Five (I), the Office of the Controller shall
20 invest the Revenue Replacement Reserve with the General Fund pursuant to the
21 investment policy for the General Fund to support unfettered release of project
22 funding. Any Revenue Replacement Reserve realized investment earnings shall be
23 deposited in the Navajo Nation General Fund.

24 P. The Budget and Finance Committee shall review the status of the Revenue
25 Replacement Reserve and expenditures thereunder at the end of each Fiscal Year
26 quarter.

27 Q. All funds in the Revenue Replacement Reserve as of the effective date of this Act that
28 are in excess of the approximately \$166,758,663 for Delegate Region Projects shall
29 be transferred to the Capital Development Financing Fund to become Fund Principal.
30 The Office of the Controller shall have the authority to adjust the dollar amounts that

1 remain in the Revenue Replacement Reserve and that are transferred to the Capital
2 Development Financing Fund to ensure accuracy of accounting and to comport with
3 legislative intent.

4

5 **SECTION FOUR. ENACTING THE “CAPITAL DEVELOPMENT FINANCING**
6 **ACT” TO ESTABLISH THE “CAPITAL DEVELOPMENT FINANCING FUND”**

7 The Navajo Nation hereby amends Title 12 of the Navajo Nation Code, 12 N.N.C. §§ 1 *et*
8 *seq.*, as follows:

9

10 ****

11

12 **TITLE 12. FISCAL MATTERS**
CHAPTER 32. CAPITAL DEVELOPMENT FINANCING ACT

13

14 **§3201. Short Title**

15 This Act shall be titled the “Capital Development Financing Act” (hereinafter “Act”).

16

17 **§3202. Establishment**

18 There is established the “Capital Development Financing Fund” (hereinafter “Fund”).

19 A. The Navajo Nation allocates the balance of the Revenue Replacement Reserve funds
20 to this Fund, minus the amount set forth in Section 3 of this Act, which shall remain
21 in the Revenue Replacement Reserve to fund Delegate Region Projects.

22 B. The Navajo Nation may make additional appropriations to the Fund from any other
23 sources of revenue that become available to the Nation.

24 C. Any monies deposited into or appropriated to the Fund, regardless of source, shall be
25 used only as provided in this Chapter.

26 D. Proceeds of loans, bonds, or other financings secured by the Fund and transferred to
27 the Nation and not held by a bond trustee or banking institution as may be required by
28 documents governing such financings, shall not be deposited into the Fund. Instead,
29 such proceeds shall be deposited into a separate Navajo Nation account (“Finance
30 Proceeds Account”) administered by the Office of the Controller and used solely for

1 paying the costs of projects financed with such proceeds. Any proceeds not
2 immediately expended to pay project costs shall be invested in investments permitted
3 by the financing documents and in accordance with the Navajo Nation Master
4 Investment Policy.

5 E. The Fund and the Finance Proceeds Account are not subject to 12 N.N.C. § 820(N)
6 and shall be continuing accounts that do not lapse or revert at the end of the fiscal
7 year.

8

9 **§3203. Purpose**

10 The Fund is established for the purpose of providing a dedicated source of security and
11 repayment for transactions entered into for financing the acquisition, development and
12 construction of Capital Projects in order to improve the quality of life for the Navajo
13 People for generations to come.

14

15 **§3204. Definitions**

16 All capitalized terms used in this Act shall have the particular meaning set forth below,
17 unless specifically explained otherwise. Terms that are not capitalized shall have their
18 ordinary and plain meaning, unless otherwise explained herein.

19 A. “Capital Development Strategic Plan and Database” shall mean a multi-year plan and
20 comprehensive database that identifies and responds to the current and future capital
21 development needs of the Navajo People and the Navajo Nation, as well as the
22 Nation’s short-term and long-term priorities for capital development. The Capital
23 Development Strategic Plan and Database shall catalogue and track all Navajo Nation
24 Capital Projects, regardless of funding source or responsible entity, that are already
25 funded and are planned or in-progress, and shall also include a listing of proposed
26 Eligible Capital Projects that qualify to be funded in the future with financing secured
27 through this Fund. The database may also incorporate and include projects in need of
28 funding from other Navajo Nation multi-year infrastructure and/or Capital Project
29 plans, such as the Capital Improvement Plan, Judicial-Public Safety Facilities Fund,
30 Síhasin Fund, Permanent Fund, etc. The database shall segregate Capital Projects

between those that qualify for financing through the Fund and those that do not qualify.

The Capital Development Strategic Plan and Database shall be developed as follows:

1. The Office of the Controller, with support from the Division of Community Development and other internal experts, shall be responsible for developing and maintaining the Capital Development Strategic Plan and Database and evaluating Capital Projects for inclusion in the Strategic Plan and Database. The Office of the Controller may engage external experts to assist in this process, if funding is available.
2. The Office of the Controller shall review and evaluate proposed Capital Projects which have been recommended by the President, Vice-President, Council Delegates, and/or Navajo Nation governmental entities, and determine whether such projects qualify for inclusion in the Strategic Plan and Database and whether such projects are Eligible Capital Projects that qualify for financing through the Fund;
3. The Office of the Controller shall provide a written report to the Resources and Development Committee semi-annually, at the end of the second and fourth quarter of each Navajo Nation Fiscal Year, regarding the Strategic Plan and Database.
4. While all Capital Projects included on a Financing Project Listing shall have been listed in the Strategic Plan and Database, the inclusion of a Capital Project in the Strategic Plan and Database does not guarantee that the project will be funded or included on a Financing Project Listing.

B. “Capital Projects” for the purposes of this Act are long-term assets with a cost greater than the current Navajo Nation capitalization and useful life thresholds in the following categories:

1. public works such as roads, bridges, dams, waterways, railways, airports, fire stations and similar facilities, as well as repairs, upgrades, renovations and expansions of existing public works;

1 2. public utilities and related infrastructure for power transmission and
2 distribution, natural gas, water and wastewater, and
3 telecommunications and repairs, renovations and expansions of
4 existing public utilities; schools, parks and community facilities,
5 hospitals and health clinics, waste disposal plants, judicial and public
6 safety buildings, and government buildings, as well as repairs,
7 upgrades, renovations and expansions of existing facilities; and
8 3. any other physical asset, building, or equipment that is designed to
9 provide long-term benefits to the public and that improves the quality
10 of life of the Navajo People.

11 C. “Costs of Issuance” shall mean all expenses related to the issuance and ongoing
12 administration of any financing transaction, including but not limited to, costs
13 incurred for bond trustees, bond and other legal counsel, financial advisers, banks,
14 underwriters, placement agents and broker dealers, rating agencies, accountants,
15 attorneys’ fees, and other professional services needed in connection with any
16 proposed and/or consummated financing.

17 D. “Eligible Capital Projects” shall mean the acquisition, planning, design, architecture,
18 engineering, development, and construction of Capital Projects which satisfy all
19 criteria set forth below in order to be eligible to be financed with the proceeds of
20 financing transactions secured by the Fund. The criteria for Capital Projects to be
21 considered Eligible Capital Projects for inclusion on Financing Project Listings
22 include:

23 1. The Capital Project falls under one or more of the Nation’s “Capital
24 Development Priorities,” which are priorities based on the critical needs of
25 the Navajo Nation and the Navajo People for the acquisition, planning,
26 design, architecture, engineering, development, and construction, of
27 various types or categories of Capital Projects and shall guide and inform
28 the development of Financing Project Listings. The Nation’s Capital
29 Development Priorities (in no particular order) include:

30 a. broadband infrastructure projects;

- b. water and wastewater projects;
- c. road projects;
- d. energy and utility infrastructure development projects;
- e. affordable housing development projects;
- f. government buildings and facilities;
- g. Local Capital Projects by or on behalf of Chapters; and
- h. other types of Regional Capital Projects or Navajo Nation-wide Capital Projects that benefit the Nation as a whole; and

2. the useful life of the Capital Project, as determined by the Controller or designee, shall be a minimum of ten (10) years and shall be no less than the length of the term of the financing transaction; and

3. the Capital Project shall have minimum project costs of at least \$10 million; and

4. the Capital Project is confirmed to be ready to commence project work within six (6) months of the closing of any financing transaction secured by the Fund; and

5. the project site has no land restriction problems; and

6. required clearances and permitting have been completed; and

7. the Capital Project is logically feasible and viable; and

8. the funding requested is sufficient to complete the Capital Project, or other funding sources for shortfall are already secured; and

9. the Controller, in consultation with necessary advisors and consultants, has determined in writing that the Capital Project is capable of being completed within the term of the financing or within an industry-standard time period, which time term or time periods may vary based on the specific project type, location, scope, complexity, and other project and industry factors.

E. “Financing Project Listing” shall mean the list of Eligible Capital Projects established under § 3209 of this Chapter.

1 F. “Fund Income” shall consist of all investment earnings (from interest, dividends,
2 earnings from sales, etc.) generated and realized through the investment of the Fund
3 Principal.

4 G. “Fund Principal” shall consist of all deposits made to the Fund pursuant to § 3202 of
5 this Chapter and any other amounts deposited into the Fund and designated as Fund
6 Principal by the Controller.

7 H. “Local Capital Projects” shall mean Capital Projects to be performed in a Navajo
8 Nation Chapter or Township that solely or primarily benefit residents of such Chapter
9 or Township, such as a Chapter house, a senior center, a Chapter warehouse, housing
10 and bathroom additions for Chapter members, etc.

11 I. “Navajo Nation-wide Capital Projects” shall mean large scale Capital Projects that
12 provide benefits and service to multiple Agencies or regions on the Nation, such as
13 water and wastewater, major roads, and broadband or other utility infrastructure that
14 cross multiple Chapter and Township boundaries and can be widely utilized by many
15 residents of and visitors to the Navajo Nation.

16 J. “Regional Capital Projects” shall mean Capital Projects that may be based in one or
17 more locations within the Navajo Nation that will have a public benefit for residents
18 in multiple Chapters and Townships within a Delegate’s District, or across multiple
19 Delegate Districts, or at a Navajo Nation Agency level.

20

21 **§3205. Investment of the Fund**

22 A. All monies deposited into the Fund shall be subject to the Nation’s Master Investment
23 Policy, as amended, and an investment sub-policy for the Fund recommended by the
24 Navajo Nation Investment Committee and approved by the Budget and Finance
25 Committee, and shall be invested as soon as practicable in accordance with the degree
26 of care exercised by reasonable and prudent managers of investments intended to
27 produce maximum growth of the investments with a high degree of safety necessary
28 to fulfill the purposes and objectives of the Fund.

1 B. Management of the investments may be delegated to third party Investment Managers
2 by written contracts recommended by the Investment Committee, approved by the
3 Budget and Finance Committee, and executed by the President.

5 **§3206. Securing Financing with the Fund**

6 A. The Controller of the Navajo Nation, in consultation with financial consultants, legal
7 counsel, and other advisors with requisite expertise, shall identify and evaluate
8 financing opportunities such as loans, bonds and other debt structures available for
9 financing transactions authorized by this Act. The Controller shall report to the
10 Budget and Finance Committee regarding the Controller's findings and
11 determinations regarding options to secure financing with the Fund.

12 B. The Controller is delegated the authority to negotiate the terms and conditions of any
13 financing transactions.

14 C. As authorized by 2 N.N.C. § 102(G), the Budget and Finance Committee is delegated
15 the authority to approve such financing transactions and transaction documents
16 recommended by the Controller, including those that require limited waivers of
17 Navajo Nation sovereign immunity as authorized in §3207 hereunder, as long as the
18 Attorney General has opined in writing that the language waiving sovereign
19 immunity is legally sufficient to protect the Nation's interests.

20 D. The Office of the Controller shall recommend and the Budget and Finance Committee
21 shall approve financing-specific project criteria, if any, for each financing transaction,
22 which may include project evaluation procedures, type and length of financing,
23 categories of Capital Projects, balance between Local, Regional, and Navajo Nation-
24 wide Capital Projects, parameters for distribution among Delegate Regions, etc.

25 E. While the Budget and Finance Committee shall have the delegated authority to
26 approve financing transactions, including financing-specific project criteria and
27 transaction documents recommended by the Controller, the Navajo Nation Council
28 shall approve the Financing Project Listing for each financing transaction subject to
29 final action by the Navajo Nation President pursuant to 2 N.N.C. § 221(B) and 2
30 N.N.C. § 1005 (C)(10)-(11).

1 F. The financing transactions authorized hereunder shall not be general obligations of
2 the Navajo Nation, nor shall such transactions include a pledge of the full faith and
3 credit of the Navajo Nation. The financing transactions authorized hereunder shall be
4 secured exclusively by the Fund Principal and/or Fund Income and no recourse shall
5 be had to any other assets of the Navajo Nation.

6 G. The President is authorized to execute and deliver any and all documents necessary
7 for any financing transaction after the Budget and Finance Committee enacts a
8 resolution approving such financing transaction and such documents.

9

10 **§3207. Limited Waiver(s) of Sovereign Immunity; Delegation to the Budget and**
11 **Finance Committee**

12 A. The Navajo Nation Council grants and authorizes limited waivers of sovereign
13 immunity and consents to the arbitration of disputes that are or may be required by,
14 and included in, any financing transaction entered into by the Nation under the terms
15 of this Act, subject to the limitations set forth herein, and delegates to the Budget and
16 Finance Committee the authority to finally approve and authorize the specific terms
17 and conditions of such limited waivers of sovereign immunity and consents to
18 arbitration.

19 B. The purpose of the grant and authorization of limited waivers of sovereign immunity
20 for the transactions authorized by this Act is to allow lending parties to such
21 transactions to enforce the transaction documents against the Navajo Nation when,
22 and if, necessary.

23 C. The Navajo Nation Council delegates authority to the Budget and Finance
24 Committee, with the advice of the Navajo Nation Department of Justice and bond
25 counsel, to approve the terms and conditions of any limited waiver of sovereign
26 immunity granted and authorized by this Act that is to be included in any financing
27 agreement in form and substance sufficient to permit the resolution of disputes, the
28 commencement of actions or proceedings, to permit the arbitration of disputes and to
29 make any financing agreements entered into under this Act the legally valid, binding

1 and enforceable agreements of the Navajo Nation, subject to the following
2 limitations:

- 3 1. The limited waiver of sovereign immunity shall apply only to the parties to
4 the financing agreements, their successors and assigns;
- 5 2. The limited waiver of sovereign immunity shall contain only those provisions
6 that are customarily required in commercial financing transactions with
7 federally recognized Indian tribes;
- 8 3. The limited waiver of sovereign immunity and dispute resolution provisions
9 shall specify the law applicable to the financing agreements, which may
10 include federal law where applicable and the law of Arizona, New Mexico,
11 Utah, or New York, as necessary or appropriate;
- 12 4. The limited waiver of sovereign immunity shall specify consent to jurisdiction
13 of the courts of the United States district courts located in the states of
14 Arizona, New Mexico, Utah or New York and all courts of appeal therefrom,
15 the state courts of Arizona, New Mexico, Utah, or New York and all courts of
16 appeal therefrom, and the courts of the Navajo Nation, as may be necessary or
17 appropriate for a particular financing transaction, and;
- 18 5. The limited waiver of sovereign immunity may also specify arbitration as a
19 dispute resolution process and shall provide the manner in which such
20 arbitration shall be conducted.

21 D. The grant, consent, authorization and direction for waivers of the Navajo Nation's
22 sovereign immunity in this Act are separate from and independent of the Navajo
23 Nation's Sovereign Immunity Act, the Navajo Nation's Arbitration Act and any other
24 law of the Navajo Nation that may be in conflict with the provisions of this Act and
25 the intent hereof, which conflicting laws are hereby deemed inapplicable to this Act
26 and any transaction entered into by the Navajo Nation under the authority granted by
27 this Act.

28 E. The final terms and conditions of any limited waiver of sovereign immunity
29 authorized and granted by this Act and approved by the Budget and Finance
30 Committee shall constitute the law of the Navajo Nation for purposes of the

1 interpretation, enforcement or performance of any financing agreements entered into
2 under this Act.

3 F. Any limited waiver of sovereign immunity granted under this Act shall limit the
4 liability of the Nation to the Fund. No other assets of the Nation shall be available to
5 pay any obligation secured by the Fund.

6

7 **§3208. Limited Application of Appropriation Act and Bond Financing Act**

8 A. Section 12 N.N.C. §§ 820(H) of the Appropriations Act, regarding long-term debt,
9 shall not apply to any obligation of the Nation that is secured by the Fund.
10 B. The Bond Financing Act at 12 N.N.C. §1300 *et seq.* shall not apply to this Act, the
11 Fund, financing transactions under this Act, nor Eligible Capital Projects financed in
12 accordance with this Act.

13

14 **§3209. Financing Project Listing**

15 Prior to consummating any financing transaction secured by the Fund, a Financing Project
16 Listing, consisting only of Eligible Capital Project(s) , shall be prepared, approved and
17 incorporated into the expenditure of the proceeds of such financing transaction.

18 A. The Financing Project Listing for each financing transaction shall be developed by
19 the Office of the Controller, with support from internal experts and external
20 consultants, and shall be recommended to the Resources and Development
21 Committee and Navajo Nation Council for approval subject to action by the President
22 pursuant to 2 N.N.C. § 221(B) and 2 N.N.C. § 1005 (C)(10)-(11). In determining
23 what Eligible Capital Projects to include in the proposed Financing Project Listing,
24 the Office of the Controller shall:

25 1. consider and evaluate only Eligible Capital Projects that are already
26 included in the Capital Development Strategic Plan and Database and for
27 which the financing can be repaid within the useful life of the Eligible Capital
28 Project;
29 2. hire or engage technical experts to assist in the evaluation of such Eligible
30 Capital Projects, and the costs of such experts may be paid with Fund Income;

1 3. recommend a Financing Project Listing to the Resources and
2 Development Committee and Navajo Nation Council;

3 B. Projects included on a Financing Project Listing shall not be changed or modified
4 once a financing has been consummated without the recommendation of the
5 Resources and Development Committee and the approval of the Budget and Finance
6 Committee.

7 C. Each Financing Project Listing shall establish a priority for the Eligible Capital
8 Projects on the list. The priority of the Eligible Capital Projects on the list will dictate
9 which Eligible Capital Projects will be funded in the event that the proceeds of any
10 financing transaction are insufficient to fund all of the Eligible Capital Projects on
11 any Financing Project Listing.

12

13

14 **§3210. Expenditure of Fund Principal**

15 A. Until the later of (i) fifteen (15) years after the date of this Act, or (ii) the date on
16 which any debt issued under this Act is no longer outstanding, the Fund Principal
17 shall only be used as follows:

18 1. to be invested pursuant to the Nation's Master Investment Policy and its
19 applicable sub-policies to generate investment income;

20 2. to be pledged to secure financings, the proceeds of which shall be used for
21 the purpose of funding Eligible Capital Projects on any Financing Project
22 Listing;

23 3. to pay debt secured by the Fund at maturity (unless such debt is
24 refinanced);

25 4. to repay debt secured by the Fund pursuant to any optional redemption
26 date, mandatory redemption date, optional prepayment date, mandatory
27 prepayment date, mandatory purchase date or other date upon which
28 payment of all or a portion of such debt (whether optional or mandatory)
29 is due or any date on which the making of a payment may be in the best

1 interests of the Navajo Nation to properly manage the Fund Principal and
2 the debt secured by the Fund Principal;

3. to pay all or a portion of any debt, or any fees or other payments required
4 by any documents governing any financing transactions secured by Fund
5 Principal upon the occurrence or continuance of an event of default,
6. to pay any other amounts due by virtue of the terms and conditions of any
7 documents governing any transaction secured by the Fund;
8. to the extent that Fund Income is insufficient to pay any and all scheduled
9 debt service payments due and payable on any financing transaction, to
10 pay such scheduled debt service; and
11. to the extent that Fund Income is insufficient therefore, to pay any and all
12 administration/management expenses of the Fund or expenses arising from
13 any proposed or consummated transactions secured by the Fund Principal.

14. B. Upon the later of (i) fifteen (15) years after the date of this Act, or (ii) the date on
15 which any debt issued under this Act is no longer outstanding, the Fund Principal
16 may be used for purposes other than those in § 3210(A) only if approved pursuant to
17 a resolution adopted by a seven-eighths (7/8) vote of the full membership of the
18 Navajo Nation Council, subject to action of the President of the Navajo Nation under
19 2 N.N.C. § 221 (B) and 2 N.N.C. § 1005 (C)(10)-(11). This provision is not subject
20 to amendment or waiver under Section 2710 of this Chapter.

22 **§3211. Expenditure of Fund Income**

23. A. Fund Income shall only be used, as needed, to:

24. 1. pay any and all debt service on transactions secured by the Fund,
25 including any fees required to be paid under any documents governing
26 such transactions;
27. 2. to pay expenses incurred for:
28 a. the solicitation, negotiation, documentation and consummation of
29 any transaction secured by the Fund;

- b. advisors or other consultants related to any financing transaction or the investment and management of the Fund Principal and the Fund Income;
- c. administrative or other management functions related to the Fund, or any transaction secured by the Fund; and/or
- d. experts to assist in the evaluation of whether Capital Projects satisfy the eligibility criteria set forth at § 3204(F).

B. To the extent that Fund Income exceeds the amount necessary to pay the debt service and costs authorized to be paid with Fund Income under this Section, such excess Fund Income shall be reinvested to earn additional income. The Controller may allocate Fund Income to Fund Principal to the extent that Fund Income exceeds the amount needed to pay scheduled debt service payments and other anticipated costs authorized by this Section for a minimum of five (5) years.

C. Until the later of (i)15 years after the date that the Fund is enacted, or (ii) the date on which no transactions secured by the Fund Principal remain outstanding, Fund Income shall not be allocated or expended for direct funding of Capital Projects or other purposes without approval by a seven eightths (7/8) vote of the full membership of the Navajo Nation Council subject to action of the President of the Navajo Nation under 2 N.N.C. § 221 (B) and 2 N.N.C. § 1005 (C)(10)-(11). This provision is not subject to amendment or waiver under § 3215 of this Chapter.

§3212. Expenditure of Financing Proceeds

A. Proceeds of any financing transactions secured by the Fund that are distributed directly to the Nation and are not held by a bond trustee or banking institution as may be required by the terms of such financings, shall not be comingled with, or invested together with, Fund Principal or Fund Income. Such proceeds shall be deposited into a separate Finance Proceeds Account administered by the Office of the Controller and shall be used to (i) pay the costs of the Capital Projects financed with such proceeds, and (ii) shall be invested in investments permitted by the financing documents.

1 B. Any earnings generated by the investment of the financing proceeds shall be
2 segregated and accounted for and shall be used only for the purposes allowed by the
3 terms of the financing to which the proceeds relate.

4 C. The proceeds of any financing transactions secured by the Fund shall only be used
5 for:

6 1. Costs of Issuance;
7 2. ongoing costs related to each financing; and
8 3. project costs, including the costs of acquisition, planning, design,
9 architecture, engineering, and construction of Eligible Capital Projects
10 authorized by a Financing Project Listing that complies with § 3209 of this
11 Chapter.

12 D. The proceeds of any financing transactions secured by the Fund shall not be
13 expended for any purpose other than those purposes specifically set forth in this
14 Chapter. This provision is not subject to amendment or waiver under § 3215 of
15 this Chapter.

16

17 **§3213. Annual Audit**

18 The Fund shall be subject to a detailed audit annually by the Nation's independent
19 auditors and audited financial statements shall be included in an annual report to the
20 Navajo Nation Council.

21

22 **§3214. Fund Expenses**

23 A. All expenses associated with the administration and management of the Fund shall be
24 paid first from realized Fund Income, if sufficient, and then from the Fund Principal.
25 Such expenses shall include investment advisory and management fees, financial
26 advisor fees, legal fees, audit costs, and other related expenses, including the cost of
27 technical experts to evaluate project eligibility and develop a comprehensive project
28 database, all pursuant to duly approved contracts for such services.

1 B. In order to protect Fund Principal from being unduly diminished by Fund expenses,
2 the Controller shall forecast an annual cap on Fund expenses to be approved by the
3 Budget and Finance Committee by the start of each Fiscal Year.

4 C. All expenses for debt service, financing fees, and other costs related to securing
5 financing with the Fund shall be paid first from realized Fund Income, if sufficient,
6 and then from Fund Principal.

7 D. The Controller shall have the authority to approve use of Fund Income, and Fund
8 Principal, when necessary, to pay debt service or other payments required pursuant to
9 duly approved and executed financing transaction documents. The Controller shall
10 also have the authority to approve use of the Finance Proceeds Account and Fund
11 Principal if the Fund Income is insufficient, to pay expenses associated with the
12 administration and management of the Fund.

13 -

14 **§3215. Non-impairment; Amendments and Waivers; Conflicts and Inconsistencies**

15 A. The Nation shall not pass or adopt any resolutions, ordinances or other laws of any
16 nature, including any waivers or amendments to this Act, that shall impair the
17 contractual rights of any party to any financing transaction authorized by and entered
18 into by the Nation under this Act, including any lender or any bondholder of any
19 financing transaction entered into under this Act.

20 B. So long as an amendment or waiver does not impair the contractual rights of any
21 party to any financing transaction, including any lender or any bondholder of any
22 financing transaction, this Act or provisions of this Act may be amended or waived
23 by a seven eighths (7/8) vote of the full membership of the Navajo Nation Council
24 subject to action of the President of the Navajo Nation under 2 N.N.C. § 221 (B).
25 Sections 3211 and 3212 shall not be subject to amendment or waiver.

26 C. Any laws or regulations of the Navajo Nation that are contrary to or inconsistent with
27 the provisions of this Act or with any financing agreements entered into under this
28 Act are inapplicable to this Act and any financing documents entered into under the
29 authority of this Act to the extent of any such conflict or inconsistency.

1 **§3216. Termination**

2 The Fund shall terminate when all Fund Principal, Fund Income, and financing secured
3 by the Fund, have been fully expended, provided, however, that the Fund shall not be
4 terminated while any financing is outstanding.

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9 **SECTION FIVE. AUTHORIZING FUNDS CURRENTLY HELD IN THE**
10 **GENERAL FUND REVENUE REPLACEMENT RESERVE TO BE**
11 **TRANSFERRED AND ALLOCATED TO THE CAPITAL DEVELOPMENT**
12 **FINANCING FUND**

13 The Navajo Nation authorizes the Controller to take all necessary action to transfer and
14 allocate to the Capital Development Financing Fund all funds that are currently held in
15 the General Fund Revenue Replacement Reserve except for the approximately
16 \$166,758,663 of Revenue Replacement Reserve funds that shall remain in the Revenue
17 Replacement Reserve in accordance with Section 3 of this Act. The Office of the
18 Controller shall have the authority to adjust the dollar amounts that remain in the
19 Revenue Replacement Reserve and that are transferred to the Capital Development
20 Financing Fund to ensure accuracy of accounting and to comport with legislative intent.

21
22 **SECTION SIX. DIRECTIVES**

23 A. The Office of the Controller shall monitor the expenditure progress of all financed
24 projects and present a progress report, oral and written, to the Resource and
25 Development Committee and Budget and Finance Committee at the end of each
26 quarter. Such reports shall be available to the public through the Office of the
27 Controller's website.

28 B. The administrative oversight entity of each project shall provide the Office of the
29 Controller with a written report outlining the construction progress and status of each
30 project under their oversight at the end of each quarter. The Office of the Controller

1 shall provide such reports to the Resource and Development Committee and Budget
2 and Finance Committee at the end of each quarter. Such reports shall be available to
3 the public through the Office of the Controller's website.

4

5 **SECTION SEVEN. EFFECTIVE DATE**

6 This Act is effective upon its approval pursuant to 2 N.N.C. § 221(B) and 2 N.N.C. §
7 1005 (C)(10)-(11).

8

9 **SECTION EIGHT. CODIFICATION**

10 The provisions of this Act which amends or adopts new sections of the Navajo Nation
11 Code shall be codified by the Office of Legislative Counsel. The Office of Legislative
12 Counsel shall incorporate such amended provisions in the next codification of the Navajo
13 Nation Code.

14

15 **SECTION NINE. SAVING CLAUSE**

16 Should any provision of this legislation or the Capital Development Financing Act be
17 determined invalid by the Navajo Nation Supreme Court, or a District Court of the
18 Navajo Nation without appeal to the Navajo Nation Supreme Court, those portions of the
19 legislation or Act which are not determined invalid shall remain the law of the Navajo
20 Nation.

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