

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0206-24_

SPONSOR: Shaandiin Parrish

TITLE: An Action Relating to an Emergency for the Navajo Nation Council; Approving a Continuing Resolution for the Navajo Nation for Part of Fiscal Year 2025, Beginning October 1, 2024 and not to Exceed March 31, 2025, to Ensure the Uninterrupted Operation of the Navajo Nation Government Waiving 12 N.N.C. §840

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SUMMARY OF PROPOSED LEGISLATION

Tracking No. 0206-24

DATE: September 12, 2024

RE: AN ACTION RELATING TO AN EMERGENCY FOR THE NAVAJO NATION COUNCIL; APPROVING A CONTINUING RESOLUTION FOR THE NAVAJO NATION FOR PART OF FISCAL YEAR 2025, BEGINNING OCTOBER 1, 2024 AND NOT TO EXCEED MARCH 31, 2025, TO ENSURE THE UNINTERRUPTED OPERATION OF THE NAVAJO NATION GOVERNMENT; WAIVING 12 N.N.C. §840

PURPOSE OF THIS LEGISLATION:

to approve a continuing resolution for an operating budget for the Navajo Nation for the first 6 months of FY2025.

FINAL AUTHORITY and VOTE REQUIREMENT:

The Navajo Nation Council has final authority. A simple majority vote is required.

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

25th NAVAJO NATION COUNCIL - Second Year, 2024

Introduced by:



(Primary Sponsor)

Tracking No. 0206-24

AN ACTION

**RELATING TO AN EMERGENCY FOR THE NAVAJO NATION COUNCIL;
APPROVING A CONTINUING RESOLUTION FOR THE NAVAJO NATION FOR
PART OF FISCAL YEAR 2025, BEGINNING OCTOBER 1, 2024 AND NOT TO
EXCEED MARCH 31, 2025, TO ENSURE THE UNINTERRUPTED OPERATION
OF THE NAVAJO NATION GOVERNMENT; WAIVING 12 N.N.C. §840**

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).

As such, the Council may consider proposed legislation regarding an emergency matter that requires immediate action. 2 N.N.C. §164(A)(16).

B. Emergency matters are limited to the potential shutdown of law enforcement, disaster relief, or fire protection services, or other direct services required as an entitlement under Navajo Nation or Federal law, or situations that directly threaten the sovereignty of the Navajo Nation. Addressing emergency matters must be a pressing public need and must require final action by the Council. 2 N.N.C. §164(A)(16).

C. The Navajo Nation Council finds that this Action constitutes an emergency matter as defined in 2 N.N.C. §164(A)(16), because the lack of an approved Comprehensive Budget for Fiscal Year 2025 (“FY2025”) would cause widespread interruption of critical government services

1 relied upon by the Navajo People, which services are indeed an “entitlement under Navajo
2 Nation law.”

3 D. The lack of an approved FY2025 Comprehensive Budget would “directly threaten the
4 sovereignty of the Navajo Nation” and could cause negative impacts throughout the Navajo
5 Nation.

6 E. Because of the fast-approaching end of Fiscal Year 2024 on September 30, 2024, there is a
7 “pressing public need” for immediate Council action to approve a continuing resolution as a
8 temporary stop-gap measure for FY2025.

9
10 **SECTION TWO. FINDINGS**

11 A. In the absence of specific Navajo Nation statutory laws, regulations, or Navajo fundamental
12 law on point, Navajo Nation courts may apply federal laws or regulations to determine and
13 resolve important legal matters. 7 N.N.C. §204(C). There is no specific Navajo Nation
14 statutory or regulatory provision that pertains to a continuing resolution for budget matters.
15 Therefore, like the courts, the Navajo Nation Council may look to federal laws or regulations
16 for guidance on the matter.

17 B. The federal government’s process for its annual budget appropriations includes a provision
18 for continuing resolutions. A “continuing resolution” is defined as “[a]n appropriation act
19 that provides budget authority for federal agencies, specific activities, or both to continue in
20 operation when Congress and the President have not completed action on regular
21 appropriation acts by the beginning of the fiscal year.” Principles of Federal Appropriations
22 Law, Third Edition, General Accounting Office, Jan. 2004, Chapter 8.

23 C. Federal continuing resolutions are often enacted with the expectation that the normal
24 comprehensive budget process will be completed, and appropriations approved, at a later
25 date. Likewise, a continuing resolution for the Navajo Nation should be approved as a stop-
26 gap measure in anticipation that the annual Comprehensive Budget for the Navajo Nation
27 will be approved in a few months.

28 D. Each year, the Navajo Nation’s comprehensive budget process normally takes several
29 months to complete. The process begins with the Controller’s issuance of projected revenues
30 the Navajo Nation expects to collect during the upcoming fiscal year. The projected revenues

1 are used to establish the budget base planning amounts for each of the three branches of the
2 Navajo Nation government (hereinafter “base planning amounts”). Pursuant to 12 N.N.C.
3 §830(C), the Controller issues the upcoming fiscal year revenue projections by March 31st
4 of each fiscal year.

5 E. On March 28, 2024 and March 29, 2024, the Controller issued two memoranda listing his
6 revenue projections for FY2025.

7 F. On May 16, 2024, the Budget and Finance Committee held a work session regarding
8 preparation of the FY2025 Budget Instructions Manual (“BIM”). The FY2025 BIM governs
9 the Navajo Nation’s process for the annual Comprehensive Budget and includes the base
10 planning amounts for all Navajo Nation divisions, departments, programs, agencies, offices,
11 etc. (hereinafter “Programs”) under the Navajo Nation’s Executive, Legislative, and Judicial
12 Branches. All Programs (including the 110 Chapters through the Division of Community
13 Development) normally use the base planning amounts in the current BIM to prepare their
14 budgets for the upcoming fiscal year.

15 G. On May 21, 2024, the Budget and Finance Committee held a regular meeting at which the
16 Controller presented the FY2025 revenue projections. The Budget and Finance Committee
17 considered the revenue projections in its deliberations on the base planning amounts for
18 FY2025.

19 H. On June 17, 2024, in response to a request from the Budget and Finance Committee, the
20 Office of Legislative Counsel (“OLC”) issued a memorandum regarding the annual “Three
21 Branch Chiefs’ Agreement” in which the three branch chiefs recommend their preferred base
22 planning amounts for each of their branches. OLC’s memorandum analyzed the relevant
23 provisions of the Appropriations Act, under Title 12 of the Navajo Nation Code, and
24 concluded that the Three Branch Chiefs’ Agreement is not a statutory prerequisite for
25 establishing the base planning amounts in the BIM.

26 I. On June 18, 2024 the Budget and Finance Committee approved Resolution No. BFJN-16-24
27 that established the base planning amounts for FY2025 and approved the FY2025 BIM.

28 J. The Budget and Finance Committee did not allocate the entire amount of the FY2025
29 projected revenues, for several compelling reasons: (1) there is expected to be a decline in
30 Navajo Nation revenues for FY2026 and FY2027; (2) a conservative approach is fiscally

1 responsible when appropriating public funds that consist of only anticipated revenues that do
2 not consist of funds actually collected; (3) according to information presented to the
3 Committee by the Office of the Controller at the May 16, 2024 work session and the May
4 21, 2024 regular meeting, most Programs had only spent 53% or less of their FY2024 budget
5 amounts by the end of the 3rd Quarter of FY2024. Ideally, all Program expenditures should
6 be on par with the remaining months in the fiscal year (Programs should use ½ of their budget
7 dollars by the end of 2nd Quarter of the fiscal year, ¾ of their budgets by the end of the 3rd
8 Quarter, and so forth).

9 K. When it originally approved the FY2025 BIM in BFJN-16-24, the Budget and Finance
10 Committee established base planning amounts matching the FY2024 appropriations in the
11 FY2024 Comprehensive Budget approved in Council Resolution No. CS-78-23.

12 L. On June 21, 2024 the Three Branch Chiefs' Agreement was signed and issued. This
13 Agreement, unlike the FY2025 BIM, recommends FY2025 appropriations that amount to
14 100% of the Controller's FY2025 projected revenues.

15 M. On July 16, 2024 the Attorney General issued a memorandum asserting that BFJN-16-24
16 was invalid. The Attorney General opined that the Budget and Finance Committee may not
17 establish base planning amounts in the BIM without receiving the Three Branch Chiefs'
18 recommendations.

19 N. Therefore, on July 23, 2024 the Budget and Finance Committee approved Resolution No.
20 BFJY-17-24 wherein the Committee rescinded BFJN-16-24 and approved a "Revised
21 FY2025 Budget Instructions Manual." In consideration of the Attorney General's July 16,
22 2024 memorandum, the Budget and Finance Committee carefully reviewed and considered
23 the June 21, 2024 Three Branch Chiefs' Agreement and the recommended base planning
24 amounts included therein. The Budget and Finance Committee adopted the Revised FY2025
25 BIM with the same base planning amounts originally approved in BFJN-16-24.

26 O. On August 7, 2024, the Attorney General issued a legal opinion claiming that the base
27 planning amounts established via BFJY-17-24 were invalid. OLC then immediately advised
28 the Budget and Finance Committee, as well as all standing committees, that all committee
29 budget meetings should be immediately put on hold, to give OLC time to review and analyze
30 the Attorney General's August 7, 2024 opinion.

1 P. Also on August 7, 2024, the Three Branch Chiefs, along with the Budget and Finance
2 Committee Chairperson and Vice-Chairperson, met in person at the Window Rock Veteran's
3 Park to address the shutdown of the Navajo Nation's budget process resulting from the
4 Attorney General's August 7, 2024 opinion. The Navajo Nation leaders at this meeting
5 agreed on the urgent need to approve a comprehensive budget for the Navajo Nation by
6 September 10, 2024 and the members of the Budget and Finance Committee presented
7 possible options to resolve the budget impasse. The overarching concern of Leadership at
8 this meeting was the goal to maintain all Navajo Nation Programs in continued operation as
9 of October 1, 2024, in order to avoid any interruption in essential services for the Navajo
10 Nation and the Navajo People.

11 Q. On August 8, 2024, the Three Branch Chiefs and members of the Budget and Finance
12 Committee again met to deliberate on potential solutions to the budget impasse resulting
13 from the Attorney General's August 7, 2024 opinion. Although it appeared that a proposed
14 solution was agreed upon; however, no agreement was formalized.

15 R. On August 11, 2024 another meeting was held between the Three Branch Chiefs and the
16 Budget and Finance Committee Chairperson regarding the budget impasse, but again no
17 agreement was completed.

18 S. Approving a continuing resolution for FY2025 will allow all Navajo Nation Programs to
19 continue their operations uninterrupted as of October 1, 2024, and will allow the Navajo
20 Nation government to continue providing essential services throughout the Navajo Nation.

21
22 **SECTION 3. RECOGNITION OF STATUTORY SET-ASIDES FOR FY2025.**

23 The Navajo Nation hereby recognizes the revenue deposits into certain statutory Funds for
24 FY2025 mandated by various Navajo Nation law provisions, as shown in the **EXHIBIT 1**
25 attached hereto prepared by the Office of the Controller, as follows:

- 26 1. 12% or **\$29,095,000** into the Navajo Nation Permanent Fund, pursuant to
27 12 N.N.C. §901.
- 28 2. 2% or **\$4,849,000** into the Navajo Nation Land Acquisition Trust Fund,
29 pursuant to 16 N.N.C. §201.
- 30 3. **\$12,400,000** into the Diné Higher Education Grant Fund, pursuant to 12

1 N.N.C. §2301 as amended by CJY-45-17.

2 4. **\$2,000,000** into the Capital Outlay Match Funding Special Revenue Fund,
3 pursuant to 12 N.N.C. §2001.

4 5. **\$2,000,000** into the Navajo Nation Water Rights Claims Fund, pursuant
5 to 12 N.N.C. §2101.

6 6. 4% or **\$9,698,000** into the Navajo Nation Veterans Trust Fund, pursuant
7 to 12 N.N.C. §1171.

8
9 **SECTION 4. APPROVING A CONTINUING RESOLUTION FOR PART OF FY2025.**

10 The Navajo Nation hereby approves appropriations for the first 6 months of FY2025, effective
11 October 1, 2024 to no later than March 31, 2025, as follows:

12 **A. Appropriations from FY2024, generally.** For all Navajo Nation Programs (and Chapters
13 through the Division of Community Development) except as provided in SECTIONS 4(B)
14 and 4(C), appropriations shall be 50% of each Program's FY2024 budget amount covered
15 by FY2024 appropriations (as approved in Navajo Nation Council Resolution No. CS-78-
16 23), as follows:

17 1. **50% of \$196,714,000** from the General Fund account which amount
18 includes the \$40,000,000 in Permanent Fund Interest Income mandated in
19 CAP-30-21 and \$27,918,565 for the Fixed Costs Programs listed in the
20 attached **EXHIBIT 2**, but which amount does not include any funds from
21 the Unreserved, Undesignated Fund Balance (NOTE: the amount in
22 EXHIBIT 2 shows the FY2024 General Fund appropriations after
23 subtracting \$1,983,220 for BU No. 118018 - Retirement Plan);

24 2. **50% of \$23,500,000** from the Indirect Costs account (consisting of
25 General Fund money) for those Programs that receive IDC funds;

26 3. **50% of \$4,500,000** from the General Fund for those Programs needing
27 External Funds Cash Match funds for FY2025.

28 The 50% sum of the total amounts listed above (after subtracting the \$1,938,220 amount for
29 Business Unit No. 118018 - Retirement Plan) is **\$111,387,890**, as shown in the attached
30 **EXHIBIT 3.**

1 **B. Special Funds Programs.** For all Programs listed in the attached **EXHIBIT 4** appropriations
2 shall be 50% of each Program's FY2024 budget amount, but not to exceed 50% of the
3 FY2025 budget amount for each Program as shown in the Column E of EXHIBIT 4.

4 **C. Other Programs.** For all programs listed below, appropriations shall be 100% of each
5 Program's requested FY2025 budget, as follows:

6 1. Navajo Nation Veterans Administration - pursuant to 12 N.N.C. §1171
7 (most recently amended by CJY-70-23), from the Navajo Nation Veterans
8 Trust Fund, **\$5,793,794** is appropriated for the 5 Veterans Administration
9 Agencies, and **\$4,849,100** is appropriated for the Veterans Administration
10 Housing Program; which amounts shall be expended in accordance with
11 the budget forms attached as **EXHIBIT 5**.

12 2. In accordance with 12 N.N.C. §2303(C) as amended by CJY-45-17,
13 **\$12,400,000** is appropriated from the Diné Higher Education Grant Fund
14 as follows:

15 a. Office of Navajo Nation Scholarship and Financial Assistance -
16 **\$3,500,000** for Business Unit No. 119020;

17 b. Diné College - **\$4,700,000** to the Department of Diné Education for
18 its annual grant to Diné College;

19 c. Navajo Technical University - **\$4,200,000** to the Department of Diné
20 Education for its annual grant to Navajo Technical University.

21 3. In accordance with the recommendations from the Office of Navajo
22 Nation Scholarship and Financial Assistance described in the attached
23 **EXHIBIT 6**, the following appropriations in a.-f. are approved:

24 a. **\$338,613** is appropriated from the General Fund for Business Unit
25 No. 109008 - Navajo Teacher Education; which amount shall be
26 expended in accordance with the budget form attached under
27 EXHIBIT 6.

28 b. **\$910,264** is appropriated from the Graduate Scholarship Trust Fund
29 for Business Unit No. 509002; which amount shall be expended in
30 accordance with the budget form attached under EXHIBIT 6.

- c. **\$65,418** is appropriated from the Tucson Gas & Electric Scholarship Fund for Business Unit No. 509004; which amount shall be expended in accordance with the budget form attached under EXHIBIT 6.
- d. **\$42,258** is appropriated from the NECA Scholarship Trust Fund for Business Unit No. 509009; which amount shall be expended in accordance with the budget form attached under EXHIBIT 6.
- e. **\$8,035,968** is appropriated from the Sales Tax Scholarship Fund for Business Unit No. 509010 - Chief Manuelito scholarship awards, needs-based student funding, part-time undergraduates, MOAs with the University of Arizona; which amount shall be expended in accordance with the budget form attached under EXHIBIT 6.
- f. **\$180,856** is appropriated from the Vocational Trust Fund for Business Unit No. N01171 - students enrolled in vocational programs; which amount shall be expended in accordance with the budget form attached under EXHIBIT 6.

4. Risk Management Program - **\$21,204,172** is appropriated from the Risk Management Proprietary/Internal Service Fund, which amount shall be expended in accordance with the budget forms attached as **EXHIBIT 7**.

D. Personnel Lapse Savings Fund. No appropriations from the Personnel Lapse Savings Fund are intended in this Action, except for the following:

- 1. **\$5,700,000** to cover 100% of the FY2025 cost for the Human Resource Management System.
- 2. **\$683,168** is appropriated for 50% of expected FY2025 Navajo Nation employee step increases, merit pay bonuses, and bonus payments.
- 3. 50% of the FY2024 General Wage Adjustment deficit is covered by the appropriations in SECTION 4(D)(6) herein.
- 4. **\$2,387,191** is appropriated to fund 50% of a 4% General Wage Adjustment for all eligible Navajo Nation employees for FY2025 (which amount shall be added to the dollars appropriated under SECTION 4(D)(6) herein).
- 5. For FY2025, 50% of the FY2024 amount of **\$653,692** is appropriated

1 from the Personnel Lapse Savings Fund for the two Fixed Costs Programs
2 listed in the attached **EXHIBIT 8**, which amount shall be allocated to the
3 Programs in accordance with EXHIBIT 8.

4 6. For FY2025, 50% of the **\$35,254,423** total amount of FY2024
5 appropriations from the Personnel Lapse Savings Fund, as shown in
6 EXHIBIT G-1 attached to CS-78-23, is appropriated and shall be
7 distributed according to the list of Programs and dollar amounts shown in
8 that EXHIBIT G-1 (see CS-78-23).

9 **E. Permanent Fund Interest Income (Excess).** For FY2025, 50% of the
10 **\$21,419,884** total amount of FY2024 appropriations from the Permanent
11 Fund Interest Income (Excess), as shown in EXHIBIT H-1 attached to CS-
12 78-23, is appropriated and shall be distributed according to the list of
13 Programs and dollar amounts shown in that EXHIBIT H-1 (see CS-78-
14 23).

15
16 **SECTION 5. WAIVING 12 N.N.C. §840.**

17 The Navajo Nation Council hereby waives 12 N.N.C. §840 to the extent necessary to approve
18 this Action. All such waivers shall terminate on the effective date of a Resolution approving a
19 Navajo Nation Comprehensive Budget for Fiscal Year 2025, or any portion thereof.

20
21 **SECTION 6. DIRECTIVES**

22 A. Programs receiving the 50% appropriations of their FY2024 budget amounts in this Action
23 shall use the FY2024 BIM in preparing their budget documents.

24 B. Programs receiving the 100% of their requested FY2025 budgets in this Action shall use the
25 Revised FY2025 BIM in preparing their budget documents.

26 C. As directed by the Office of Management and Budget, certain Programs shall submit budget
27 documents to the OMB no later than 5:00 p.m./MST on the next business day immediately
28 following the Speaker's certification of this Resolution.

29 D. The Office of Management and Budget and the Office of the Controller, with the advice of
30 other appropriate advisors, are authorized to address certain budget situations as necessary

1 and appropriate, to meet Program expenditure mandates under applicable statutes, contracts,
2 MOUs/MOAs, regulations, policies, or procedures. Such authority includes the power to take
3 lawful administrative action regarding unique budgetary matters such as: Navajo Nation
4 government liabilities and obligations, risk management and insurance, scholarships and
5 teacher pay, higher education MOUs/MOAs, school clothing, employee benefits, employee
6 salaries and layoffs, cash match requirements, and direct assistance payments.

7 E. The Office of the Controller is directed to provide monthly written reports to the Budget and
8 Finance Committee and to each of the Branch Chiefs, regarding each Program's actual
9 expenditures of its appropriations received in this Action. Such reports are intended to be a
10 means of monitoring all Programs' expenditures on a month-to-month basis.

11 F. As necessary and appropriate, Programs are directed to process budget revisions, budget
12 reallocations, budget modifications, and budget transfers, to avoid employee layoffs or other
13 negative personnel impacts that may result from this Action. All provisions in the FY2024
14 BIM and in the Revised FY2025 BIM that require Oversight Committee approval for the
15 above-described budget adjustments are hereby waived, to assist with the expeditious
16 processing of the necessary budget adjustments for the effective duration of this Action.

17
18 **SECTION 7. EFFECTIVE DATE**

19 This Action shall be effective upon its approval pursuant to 2 N.N.C. §221(B), 2 N.N.C.
20 §1005(C)(10), and 2 N.N.C. §164(A)(17).

21
22 **SECTION 8. SAVING CLAUSE**

23 If any portion of this Action is determined invalid by the Navajo Nation Supreme Court, or by
24 a District Court of the Navajo Nation without appeal to the Navajo Nation Supreme Court, the
25 remainder of this Action shall be the law of the Navajo Nation.