

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0262-20\_\_

SPONSOR: Rickie Nez

**TITLE: An Action Relating To Budget And Finance, Health, Education And Human Services, Resources And Development, Naabik'iyáti' Committees, And The Navajo Nation Council; Supporting And Approving The Navajo Nation Gaming Enterprise Reopening Plan; Supporting And Approving Reopening Full Operations Of Gaming Enterprise Facilities At A Minimum 50% Capacity; Permitting Navajo Blue Travel Plaza To Operate At Full Capacity**

**Date posted: October 21, 2020 at 8:50 PM**

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**LEGISLATIVE SUMMARY SHEET**

Tracking No. 0262-20

**DATE:** October 21, 2020

**TITLE OF RESOLUTION:** AN ACTION RELATING TO BUDGET AND FINANCE, HEALTH, EDUCATION AND HUMAN SERVICES, RESOURCES AND DEVELOPMENT, NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; SUPPORTING AND APPROVING THE NAVAJO NATION GAMING ENTERPRISE REOPENING PLAN; SUPPORTING AND APPROVING REOPENING FULL OPERATIONS OF GAMING ENTERPRISE FACILITIES AT A MINIMUM 50% CAPACITY; PERMITTING NAVAJO BLUE TRAVEL PLAZA TO OPERATE AT FULL CAPACITY

**PURPOSE:** This legislation would approve the Navajo Nation Gaming Enterprise reopening plan; support and approve reopening full operations of gaming enterprise facilities at a minimum 50% capacity; and permit Navajo Blue Travel Plaza to operate at full capacity.

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: 10-26-20  
Eligible for Action: 10-27-20

Budget & Finance Committee  
Thence  
Health Education & Human Services Committee  
Thence  
Resources & Development Committee  
Thence  
Naabik'iyáti' Committee  
Thence  
Navajo Nation Council

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION  
2 24<sup>th</sup> NAVAJO NATION COUNCIL – Second Year, 2020

3 INTRODUCED BY

4 \_\_\_\_\_  
5  
6 (Prime Sponsor)

7  
8 TRACKING NO. 0262-20

9  
10 AN ACTION

11 RELATING TO BUDGET AND FINANCE, HEALTH, EDUCATION AND  
12 HUMAN SERVICES, RESOURCES AND DEVELOPMENT, NAABIK'ÍYÁTI'  
13 COMMITTEES, AND THE NAVAJO NATION COUNCIL; SUPPORTING AND  
14 APPROVING THE NAVAJO NATION GAMING ENTERPRISE REOPENING  
15 PLAN; SUPPORTING AND APPROVING REOPENING FULL OPERATIONS  
16 OF GAMING ENTERPRISE FACILITIES AT A MINIMUM 50% CAPACITY;  
17 PERMITTING NAVAJO BLUE TRAVEL PLAZA TO OPERATE AT FULL  
18 CAPACITY

19  
20 BE IT ENACTED:

21  
22 SECTION ONE. AUTHORITY

23 A. The Budget and Finance Committee is a standing committee of the Navajo Nation  
24 Council. 2 N.N.C. § 300(A). The committee, among other statutory powers,  
25 “coordinate[s] and review[s] all fiscal, financial and investment activities of the Navajo  
26 Nation and its enterprises, as well as other agencies, federal, state, regional and private,  
27 expending or seeking to expend funds within the Navajo Nation or for the benefit of the  
28 Navajo People.” 2 N.N.C. § 301(B)(5).

29 B. The Health, Education and Human Services committee is a standing committee of the  
30 Navajo Nation Council. 2 N.N.C. §400(A). The committee provides “legislative

1 oversight on matters involving health,” and oversees “Navajo Nation efforts in  
2 implementing and ensuring compliance with employment and labor laws and policies  
3 of the Navajo Nation.” 2 N.N.C. § 400 (C)(1) and § 400 (C)(3). Also, the committee  
4 has authority to review and recommend “[r]esolutions relating to ... health,  
5 environmental health, ... employment and labor.” 2 N.N.C. § 401(B)(6)(a).

6 C. The Resources and Development Committee is a standing committee of the Navajo  
7 Nation Council. 2 N.N.C. § 500(A). The committee has oversight authority over  
8 matters such as water, land, grazing, environmental protection, cultural resources,  
9 agriculture, economic and community development, commerce and trade, and gaming.  
10 See, 2 N.N.C. § 500 (C). Its statutory authority includes “review[ing] and mak[ing]  
11 recommendations to the Council for final approval [of] ... creation, reorganization,  
12 termination or ‘privatization’ of any enterprise.” 2 N.N.C. § 501(B)(4)(e).

13 D. The Naabik’iyáti’ Committee is a standing committee of the Navajo Nation Council. 2  
14 N.N.C. §700(A). The committee, among other responsibilities, has authority over  
15 proposed resolutions requiring “final action by the Navajo Nation Council.”  
16 2 N.N.C. § 164(A)(9).

17 E. Pursuant to 2 N.N.C. §102(A), the Navajo Nation Council is the “governing body of the  
18 Navajo Nation.” As a policy-making body, the Navajo Nation Council exercises  
19 oversight authority over the Navajo Nation Gaming Enterprise. See, 5 N.N.C. § 1748.

## 20 21 SECTION TWO. FINDINGS

22 A. Navajo Nation Gaming Enterprise (“NNGE”) was established as a tribal gaming  
23 enterprise and a legal entity wholly owned by the Navajo Nation.  
24 5 N.N.C. §§ 1701-1702. The enterprise was established to “generate gaming revenues  
25 and provide a fair return to the Navajo Nation in accordance with the Indian Gaming  
26 Regulatory Act, Navajo Gaming ordinance, and other applicable laws of the Navajo  
27 Nation.” 5 N.N.C. § 1703(B). The Navajo Nation Council determined that the  
28 enterprise would be “overseen exclusively” by a Board of Directors. 5 N.N.C. §  
29 1707(A).

- 1 B. The World Health Organization (WHO) declared a Public Health Emergency of  
2 International Concern related to the outbreak of coronavirus (COVID-19), a highly  
3 contagious and sometimes fatal respiratory virus on January 30, 2020; the U.S.  
4 Department of Health and Human Services declared a Public Health Emergency related  
5 to the COVID-19 outbreak on January 31, 2020; and the WHO declared a global  
6 pandemic due to COVID-19 on March 11, 2020.
- 7 C. The Navajo Nation Commission on Emergency Management, with the concurrence of  
8 Navajo Nation President Jonathan Nez, declared a Public Health State of Emergency on  
9 the Navajo Nation on March 11, 2020 due to COVID-19. Resolution No. CEM 20-  
10 03-11. The Navajo Nation Department of Health subsequently issued numerous Public  
11 Health Emergency Orders. Public Health Emergency Orders 2020-001 through 2020-  
12 024 ("Public Health Emergency Orders") are incorporated by Reference into this  
13 resolution.
- 14 D. On March 17, 2020, NNGE temporarily shut down operations of its four casinos for an  
15 initial three-week closure period in an effort to help flatten the curve of COVID-19 as  
16 part of the Navajo Nation's overall health protection program.
- 17 E. The U.S. Congress on March 27, 2020, enacted the Coronavirus Aid, Relief, and  
18 Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020) (the "CARES Act"),  
19 which, at Title V, §5001, entitled "Coronavirus Relief Fund" (codified at 42 U.S.C. §  
20 801) sets aside \$8 billion in emergency aid for Tribal governments for the COVID-19  
21 pandemic. 42 U.S.C. § 801(a)(2)(B).
- 22 F. The Navajo Nation received seven hundred fourteen million one hundred eighty-nine  
23 thousand six hundred thirty-one dollars and forty-seven cents (\$714,189,631.47) as the  
24 Nation's share of CARES Act assistance from the U.S. Treasury.
- 25 G. As the COVID-19 pandemic surged inside the Navajo Nation, threatening the health of  
26 the Diné, Elders, NNGE team members, and NNGE patrons, NNGE's Board of  
27 Directors, in a series of actions consistent with the Public Health Emergency Orders,  
28 extended the shutdown of casino operations through July 27, 2020.

1 H. NNGE Board of Directors' decision to shut down operations was consistent with the  
2 Office of the President, but has had a severe toll on the economic health and viability  
3 of the organization.

4 I. NNGE's mission is to enhance the quality of Diné lives by growing a successful  
5 gaming economy. Prior to the pandemic, NNGE was in a strong financial position, on  
6 track for early payoff of debt and able to fund new economic development projects that  
7 were projected to create approximately 640 new permanent jobs plus several thousand  
8 construction jobs and business development opportunities for Priority One and Priority  
9 Two vendors under the Navajo Nation Business Opportunity Act, 5 N.N.C. §§ 201 *et*  
10 *seq.*

11 J. NNGE does not receive federal or state funding for operations. It can generate revenues  
12 only if its gaming facilities are operational.

13 K. Throughout the approximately 17-week initial closure period, NNGE continued to pay  
14 and provide full benefits to its employees while they are on administrative leave;  
15 however, on July 28, 2020 NNGE was forced to implement temporary layoffs while it  
16 sought CARES Act funding relief. After receiving \$26.6M, the NNGE was able to  
17 place its employees back on administrative leave with benefits. However, NNGE's  
18 expenses during the closure period have been extensive and continue to increase.

19 L. During the 29-week closure (through October 5, 2020), NNGE has generated \$0 in  
20 revenues but has continued to pay:

- 21 1. Payroll costs (\$26.6M);
- 22 2. Fixed operating costs (\$11.9M); and
- 23 3. Debt service (\$11.7M).

24 As a result, NNGE had a shortfall of \$50.2M.

25 M. The federal Paycheck Protection Program (PPP) funds of \$11.2M and the CARES Act  
26 funds of \$24.6M have helped to cover 71% of the total shortfall, leaving NNGE with a  
27 \$14.4M shortfall balance remaining.

28 N. Further, the extended closure will continue to have a negative impact on reserves with  
29 the cash burn rate of \$6.8M per month. Even if additional monetary relief becomes  
30 available, NNGE must generate revenues and cash to survive as a cash-based industry.

1 If NNGE does not reopen by November 17, 2020, NNGE must prepare for permanent  
2 closure. Without the ability to reopen, NNGE will not be able to generate revenue,  
3 recover, and will be forced to make financial decisions that will have a lasting impact  
4 on the health of the Enterprise, its employees and ultimately the Navajo Nation's  
5 investment.

6 O. NNGE employs 1,180 people, and 82% of its employees are enrolled members of the  
7 Navajo Nation, representing 105 of the 110 Chapters. NNGE provides healthcare  
8 benefits to its employees and more than 2,880 family members of its employees.  
9 Operation of NNGE also provides employment opportunities for Navajo Nation  
10 Gaming Regulatory Office personnel, and business opportunities for the numerous  
11 Navajo-owned entities and contractors that service, supply, and support the work of  
12 NNGE.

13 P. The first and most severe impact of closure will be the permanent loss of jobs,  
14 employees' healthcare, and their means to support not only their immediate families,  
15 but their extended families and communities as well. Employees cannot wait until 2021  
16 or 2022 to see what happens with their jobs. Out of necessity, many and or most, will  
17 move on. This leaves some of them vulnerable to the virus as they lose their housing,  
18 relocate for new jobs, or move in with parents and grandparents.

19 Q. Permanent closure will also cause a long-term financial setback for the Navajo Nation  
20 and will adversely impact economic development if the gaming industry fails.  
21 Continued business closures due to the impact of the COVID-19 pandemic disaster  
22 poses an immediate threat to NNGE's business operations, assets, including but not  
23 limited to, the continued employment of NNGE's employees, which directly impacts  
24 Navajo families' livelihoods and healthcare insurance provided by NNGE.

25 R. By resolution NNGEOCT-001-20, the NNGE Board of Directors on October 7, 2020  
26 requested the reopening of Navajo casino facilities at a minimum of 50%. *See, Exhibit*  
27 **B.** Without permission by the Navajo Nation to safely reopen by November 17, 2020,  
28 the NNGE will be unable and denied the opportunity to implement its Reopening Plan,  
29 which provides best-in-class medical and safety precautions to protect all employees,  
30 guests and patrons during the COVID-19 pandemic. If NNGE is not allowed to reopen,

1 the NNGE will be forced to permanently close and layoff all employees by November  
2 30, 2020. And, without approval of a Reopening Plan to resume operations at all four  
3 casinos, NNGE will not be able to recover from the impacts of the COVID-19  
4 pandemic.

5 S. The Navajo Nation Gaming Enterprise Reopening Plan is attached as **Exhibit A**  
6 (“NNGE Reopening Plan”). The purpose of the NNGE Reopening Plan is to permit  
7 NNGE to reopen safely in order to continue its purpose to generate revenue, and to  
8 restore and protect its market interests, business operations, assets, employees, and the  
9 Navajo Nation’s interest and investments in its enterprise. The NNGE Reopening Plan  
10 complies with more stringent sanitary guidelines than those set by the CDC, OSHA, the  
11 White House, the Arizona Department of Health Services, and the Navajo Department  
12 of Health (NDOH). *See, Exhibit A.*

13 T. The NNGE Board of Directors is further requesting that Navajo Blue Travel Plaza, a  
14 new facility constructed along Interstate 40 on the Navajo Nation, be allowed to operate  
15 at full capacity with “uninterrupted business operations.” See NNGEOCT-001-20, 3<sup>rd</sup>  
16 resolved section. The travel plaza, next to Twin Arrows Casino (Arizona), will service  
17 all vehicles, particularly semi-trailer trucks, and is expected to employ 47 full-time  
18 employees. *See also, Reopening Plan attached hereto as Exhibit A.*

19  
20 **SECTION THREE. APPROVAL OF THE NNGE REOPENING PLAN**

21 A. The Navajo Nation Council hereby supports and approves the NNGE Reopening Plan  
22 (Exhibit A) as adequately providing for the safety and protection of NNGE  
23 employees, patrons and public health.

24 B. The Navajo Nation Council hereby supports and approves the reopening of NNGE  
25 facilities to resume full operations (twenty-four hours a day, seven days a week) at a  
26 minimum 50% capacity until such time as the Department of Health recommends and  
27 the NNGE Board of Directors deems it safe and reasonable to increase capacity.

28 C. The Navajo Nation Council further supports and approves Navajo Blue Travel Plaza  
29 to operate at full capacity (twenty-four hours a day, seven days a week) and with  
30 uninterrupted business operations.



1 D. The Navajo Nation Council's support and approval is contingent on NNGE's  
2 continuing compliance with the Reopening Plan.  
3

4 **SECTION FOUR. ADMINISTRATION OF THE NNGE REOPENING PLAN**

5 A. NNGE shall ensure that all safety measures implemented in the NNGE Reopening Plan  
6 approved herein are adhered to.

7 B. The Resources and Development Committee and the Health, Education and Human  
8 Services Committee of the Navajo Nation Council shall serve as oversight committees  
9 for the NNGE Reopening Plan.

10 C. The NNGE Reopening Plan shall be effective notwithstanding any other laws and  
11 regulations of the Navajo Nation concerning the COVID-19 pandemic.  
12

13 **SECTION FIVE. EFFECTIVE DATE**

14 This action of the Navajo Nation Council herein shall be effective pursuant to 2  
15 N.N.C. § 221(B) and 2 N.N.C. § 1005(C)(12).  
16

17 **SECTION SIX. SAVINGS CLAUSE**

18 Should any provision of this action be determined invalid by the Navajo Nation  
19 Supreme Court, or the District Courts of the Navajo Nation without appeal to the Navajo  
20 Nation Supreme Court, those provisions not determined invalid shall remain the law of  
21 the Nation.  
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