

**RESOLUTION OF THE
NAVAJO NATION COUNCIL**

21st NAVAJO NATION COUNCIL – Third Year, 2009

AN ACT

**RELATING TO FINANCE AND JUDICIARY; ENACTING THE BOND FINANCING
ACT AMENDMENTS OF 2009; AMENDING TITLE 12 OF THE NAVAJO NATION
CODE, 12 N.N.C. § 1300 ET SEQ.**

BE IT ENACTED:

Section One. Enactment of the Bond Financing Act Amendments of 2009.

The Navajo Nation Council hereby enacts the Bond Financing Act Amendments of 2009.

Section Two. Findings.

A. The Navajo Nation hereby finds that the current provisions of the Bond Financing Act do not adequately address the need for clarity relative to the issuance of bonds by the Navajo Nation and other governmental units.

B. The Navajo Nation further finds that the current provisions of the Bond Financing Act do not provide language that will enhance the ability of the Navajo Nation to attract potential bond purchasers to opportunities to invest in bonds issued by the Navajo Nation and other governmental units.

C. The Navajo Nation finds that the proposed amendments will clarify the processes associated with the issuance of bonds by the Navajo Nation and other governmental units, and enhance the ability of the Navajo Nation and other governmental units to attract potential bond purchasers.

D. The Navajo Nation determines that these amendments are in the best interests of the Navajo Nation and Navajo People.

Section Three. Amendment of Title 12 of the Navajo Nation Code

The Navajo Nation Council hereby amends Title 12 of the Navajo Nation Code, as follows:

NAVAJO NATION CODE ANNOTATED
TITLE 12. FISCAL MATTERS
CHAPTER 13. BOND FINANCING ACT

§ 1300. Purpose and Scope

The Act authorizes the issuance of bonds by the Navajo Nation to finance capital improvement projects ~~included in the Capital Improvement Plan~~ and authorizes other governmental units to issue bonds to finance capital improvements in a manner that is consistent with the policies and procedures set forth in the Act. Notwithstanding the Appropriations Act, or any overlap with other legislation, this Act takes precedence. To achieve this purpose, this Act has the following objectives:

A. To provide financing for capital improvement projects, infrastructure, and capital expenditures, as defined in 12 N.N.C. § 800 et seq.

B. To enhance economic development for the Navajo Nation and its peoples by prudent use of tax-exempt and taxable financing and to take advantage of the Indian Governmental Tax Status Act of 1982, as amended.

C. Authority granted by the Act is complete authority for the issuance of bonds to finance capital improvements by the Navajo Nation and other governmental units. Any restrictions, limitations, conditions or procedures provided by other statutes, including, but not limited to, the Appropriations Act do not apply to the issuance of bonds pursuant to the Act. However, nothing contained in the Act shall be construed as a restriction or limitation upon any powers that the Navajo Nation or another governmental authority might otherwise have under any other law.

D. The provisions of the Act shall not apply to lease purchase agreements incurred pursuant to 2 N.N.C. § 374(B)(15).

§ 1310. Definitions

For purposes of this Act and sections of this Act, the following definitions shall apply:

A. “Annual unrestricted recurring revenue” means, with respect to any fiscal year, the greater of, the following:

(i) an amount equal to the General Fund line item titled “Total Revenues” on the Statement of Revenues, Expenditures and Changes in Fund Balances per the Navajo Nation’s most recently issued audited financial statements, and

(ii) an amount equal to the revenues legally available to make payments of debt service (excluding projected annual project revenues), as determined in the reasonable judgment of the Controller. The definition of annual unrestricted recurring revenue specifically excludes income and principal of the Navajo Nation Permanent Fund.

B. "Balloon indebtedness" means long term debt, payments of 25% of more of the principal of which are due in a single year, which portion of the principal is not required by the documents pursuant to which such long-term debt is issued, to be amortized by payment or redemption prior to such date.

C. "Bond" means any evidence of indebtedness issued or entered into by a governmental unit, including any interest-bearing obligation of a governmental unit that obligates such governmental unit to pay the holder thereof a specified sum of money at specific intervals and to repay the principal amount of the obligation at maturity, together with any bond, note, obligation, loan agreement, financing lease, certificate of participation, bank loan, financing agreement or similar instrument or agreement issued or entered into by a governmental unit. As used in this Chapter, the term "bond" may refer to a general obligation bond, a revenue bond or a refunding bond related to either, as the context so requires.

D. ~~B.~~ "Bond fund" means any debt service fund, debt service reserve fund, sinking fund, rebate fund, reserve or replacement fund or other special fund or account established in connection with the issuance of any bond.

E. ~~C.~~ "Bond-related costs" mean:

1. The costs and expenses of issuing, administering and maintaining bonds, including paying bond debt service, paying the costs of credit enhancement devices, paying administrative costs and expenses, including costs of consultants, advisors or other professional service providers appointed, retained or approved by the Navajo Nation or other governmental unit;

2. The cost of funding any bond fund;

3. Capitalized interest on bonds;

4. Rebates, interest or penalties due to the United States in connection with any bond issued as a tax-exempt obligation; and

5. Any other costs or expenses that the Navajo Nation or other governmental unit determines is necessary or desirable in connection with the issuance of any bond.

F. ~~D.~~ Pursuant to ~~12 N.N.C. § 810(F), Appropriations Act,~~ "Capital Improvement" means a major project undertaken by the Navajo Nation or other governmental unit that is generally not recurring on an annual basis and which fits within one or more of the following categories:

1. All projects requiring debt obligation or borrowing.

2. Any acquisition or lease of land.

3. Purchase of equipment or vehicles, with a reasonably expected economic life of five years or more, valued in excess of fifty thousand dollars (\$50,000).

4. Major building improvements that are not routine maintenance expenses and that substantially enhance the value or extend the useful life of a structure.

5. ~~Construction or acquisition~~ Acquisition or construction of buildings or facilities including engineering, design, and other pre-construction costs with an estimated cost in excess of an amount to be determined by the Controller.

6. Acquisition, installation or rehabilitation of equipment or furnishings required to furnish buildings, improvements or other projects, the cost of which is above a certain amount to be established by the Controller.

7. Infrastructure Assets. Are long-lived capital assets that normally are stationary in nature and normally can be preserved for a significantly greater number of years than most capital assets. Examples of infrastructure assets include roads, bridges, tunnels, drainage systems, water and sewer systems, dams and lighting systems. Buildings, except those that are an ancillary part of a network of infrastructure assets, should not be considered.

G. "Commitment indebtedness" means an obligation or obligations to repay amounts disbursed pursuant to a commitment from a bank, insurance company or similar institutions to refinance when due other long-term debt or purchase when tendered for purchase by the holder or owner thereof in accordance with the terms of other long-term debt.

H. E. "Credit enhancement device" means a letter of credit, line of credit, liquidity facility, municipal bond insurance policy or other device or facility used to enhance the creditworthiness or marketability of bonds.

I. F. "Full faith and credit" means the full taxing power and borrowing power of a governmental unit, plus any other revenue pledged in payment of interest and repayment of principal of a bond issued by the governmental unit.

J. G. "General obligation bond" means a bond issued by a governmental unit that is backed by the full faith and credit of the governmental unit issuing the general obligation bond. General obligation bonds also may be secured by a pledge of revenues designated by the governmental unit.

K. H. "Governmental unit" means the Navajo Nation, any enterprise, authority, or commission, or board established by the Navajo Nation and any political subdivision of the Navajo Nation, including chapters or any other local units of government created pursuant to the Local Governance Act.

L. ~~I.~~ "Long-term debt" means the unmatured principal of debt instruments and other forms of noncurrent or long-term general obligation liabilities that were not specific liabilities of any proprietary or trust fund and were not current liabilities properly recorded in the governmental funds. Obligations under lease purchase agreements incurred pursuant to 2 N.N.C. § 374(B)(15) shall not be considered long-term debt within the meaning of this definition.

M. ~~J.~~ "Navajo Nation" means, for purposes of this Chapter, the Navajo Nation acting through ~~its~~ the Navajo Nation Council, the Budget and Finance Committee of the Navajo Nation Council and the duly authorized officers of ~~its~~ the Executive Branch. As used in this Chapter, Navajo Nation does not include any enterprise, authority or commission established by the Navajo Nation or any political subdivision of the Navajo Nation, including chapters and other local units of government.

N. ~~K.~~ "Refunding bond" means an advance refunding or current refunding bond issued by a governmental unit for the purpose of paying, defeasing, redeeming or retiring a previously issued bond.

O. ~~L.~~ "Revenues" mean all taxes, oil and gas, mining/minerals, land rentals, interest/dividends, gain on sale of securities and other revenue producing activities and all other income and receipts of whatever kind or character derived by or to which a governmental unit is entitled from the operation, sale or use of facilities, projects, utilities or systems owned or operated by the governmental unit and other revenues legally available to be pledged to secure a bond or to be designated as revenues from which a bond will be payable.

P. ~~M.~~ "Revenue bond" means a bond issued by a governmental unit, the payment of interest and repayment of principal of which is secured by the revenues pledged or designated to be payable for such purpose by a governmental unit.

Q. "Variable rate indebtedness" means all of any portion of long-term debt, the interest rate on which has not been established as a fixed or constant rate to maturity.

§ 1320. Long term debt policies

A. Per 12 N.N.C. § 820(H), Long-term debt limitation. Annual debt service for long-term debt shall not exceed the sum of (i) eight percent (8%) of annual unrestricted recurring revenue, and (ii) projected annual project revenue, as calculated by the Controller, and long-term debt shall not be authorized until the impact of annual debt service on the annual operating budget, including sinking fund contributions, has been analyzed and a determination has been made that debt service payments are in compliance with this Section. For purposes of this Section, "annual debt service" payments for long-term debt shall only include the payment of scheduled principal, interest, costs associated with any credit enhancement device and other bond-related costs reasonably estimated to be or become payable in connection with any long-term debt consisting of a general obligation bond of the Navajo Nation or any other bond backed by the full faith and credit of the Navajo Nation which is not subject to annual appropriation by

the Nation, except that (i) with respect to balloon indebtedness, the amount of debt service taken into account shall, at the option of the Controller, assume that such long-term debt is to be amortized over a 25 year period, beginning on the date of such calculation, on a level debt service basis and at a rate of interest (reasonably determined by the Controller as of the time of calculation) equal to the average rate at which a governmental unit could reasonably expect to borrow over a term of 25 years, (ii) the interest on variable rate indebtedness shall be calculated at a rate equal to an assumed fixed rate of interest equal to the rate set forth in The Bond Buyer Revenue Bond Index most recently published in The Bond Buyer, or if such index is no longer published, as set forth in such other comparable index reasonably determined by the Controller, and (iii) no debt service shall be included for any commitment indebtedness unless an unreimbursed draw has been made with respect to such commitment indebtedness. "Projected annual project revenue" shall refer to annual revenues generated by a capital improvement or other project financed with either general obligation bonds of the Navajo Nation or other bonds backed by the full faith and credit of the Navajo Nation, as certified to the Controller on an annual basis by a financial advisor, feasibility consultant, accountant or other appropriate professional service provider acceptable to the Controller.

B. Use of proceeds from long-term debt will be restricted to financing capital improvement projects and will not be used to finance current operations or normal repairs and maintenance.

C. The Navajo Nation normally will rely on internally generated funds and/or grants to finance its capital improvement needs. Bonds will be issued to finance a capital improvement project when it is an appropriate means to achieve a fair allocation of costs between current and future beneficiaries; and when it is determined that the project will be substantially completed within three years from issuance of bonds. Bonds shall not, in general, be issued to fund capital improvement projects solely because insufficient funds are budgeted at the time of acquisition or construction.

§ 1330. Financing of capital improvements and related projects

A. General Obligation Bonds. ~~A governmental unit may issue general obligation bonds upon the adoption of an authorizing resolution or the enactment of an ordinance by its governing body for the financing of specific capital improvements for such governmental unit. Additionally, the~~ 1. The Navajo Nation, through its Controller, may issue general obligation bonds for the financing of specific capital improvements for the Navajo Nation or any other governmental unit pursuant to an authorizing resolution or ordinance adopted or enacted by either its the Navajo Nation Council or, if the general obligation bond amount does not exceed \$15 million and does not require a waiver of sovereign immunity, the Budget and Finance Committee of the Navajo Nation Council, provided that such improvements are part of an approved Capital Improvement Plan. The Controller shall review a request from the Navajo Nation to issue all general obligation bonds. If approved by the Navajo Nation Council or the Budget and Finance Committee and, if the Controller can certify that funding is available to pay principal and interest within the limitations of the general revenues of the Navajo Nation and

~~other designated available revenues, the issuance of general obligation bonds by the Navajo Nation to fund the capital improvements may be presented to the full Council or to the Budget and Finance Committee for approval or rejection only. The Controller shall have the responsibility for issuing general obligation bonds on behalf of the Navajo Nation and thereafter shall identify the requirements for payment of interest and principal on such bonds as part of the annual budget planning and preparation process until such time as the bonds are retired. General obligation bonds issued by a governmental unit other than the Navajo Nation shall be subject to all budgetary, approval and other requirements applicable to the governmental unit issuing general obligation bonds. In addition, notwithstanding the provisions of any law applicable to an issuing governmental unit, including without limitation those granting borrowing and other financing authority and powers to the governmental unit, including 26 N.N.C. § 103 of the Local Governance Act, no governmental unit shall issue general obligation bonds unless such governmental unit has made application to the Controller and such application has been reviewed and approved by the Controller and, with respect to legal matters, approved by the Department of Justice. The Office of the Controller shall charge each governmental unit proposing to issue general obligation bonds an application fee in an amount sufficient to pay all costs associated with such review and approvals.~~

2. A governmental unit other than the Navajo Nation may issue general obligation bonds on its own behalf and not on behalf of the Navajo Nation if the following conditions exist:

a. The governmental unit adopts an authorizing resolution or enacts an ordinance for the financing of specific capital improvements for such governmental unit; and

b. The general obligation bonds issued by the governmental units meet all budgetary, approval and other requirements applicable to the governmental unit issuing such general obligation bonds; and

c. Notwithstanding the provisions of any law applicable to an issuing governmental unit, including, without limitation, those granting borrowing and other financing authority and powers to the governmental unit, including 26 N.N.C. § 103 of the Local Governance Act, (i) the Controller has reviewed all general obligation bonds approved by the governmental unit and approved the issuance of such general obligation bonds, and (ii) with respect to legal matters, the Office of the Attorney General has approved the issuance of such general obligation bonds.

3. The Office of the Controller shall charge each governmental unit proposing to issue general obligation bonds an application fee in an amount sufficient to pay all costs associated with such review and approvals. Navajo Nation Chapter governments shall not be subject to the above mentioned application fee.

4. The Controller may, in providing the certification or approval required by the foregoing paragraphs, retain the services of financial advisors, accountants, appraisers, feasibility consultants bond counsel and other appropriate professional service providers and reasonably rely on the opinions, findings, statements and conclusions provided by such persons. Fees and

costs associated with such services shall be paid by the Controller from application fees required to be paid to the Controller by the issuing governmental unit, as established by the Controller from time to time. All procurement of services must comply with applicable Navajo Nation laws, including the Navajo Preference in Employment Act, the Navajo Business and Procurement Opportunity Act, and the Navajo Nation Procurement Act (12 N.N.C. § 301 et seq.)

B. Revenue Bonds. ~~A governmental unit may issue revenue bonds upon the adoption of an authorizing resolution or the enactment of an ordinance by its governing body for the financing of specific capital improvements or for any other lawful public purpose identified by such governmental unit. Additionally, the~~ 1. The Navajo Nation, through its Controller, may issue revenue bonds for the financing of specific capital improvements, provided that such improvements are part of an approved Capital Improvement Plan, for the Navajo Nation or any governmental unit pursuant to an authorizing resolution or ordinance adopted or enacted by either its the Navajo Nation Council or, if the general obligation bond amount does not exceed \$15 million and does not require a waiver of sovereign immunity, the Budget and Finance Committee of the Navajo Nation Council, and provided further that the ~~The specific revenue stream upon which payment of principal and interest on the bonds will be made shall be identified and pledged to the payment of the bonds at the time the bonds are issued. The Controller shall review a request from the Navajo Nation to issue revenue bonds in light of guidelines~~ revenues available to pay such bonds in prevailing bond market conditions. ~~If the Controller can certify that funding within any applicable limitations are available from the identified revenue sources, the issuance of revenue bonds by the Navajo Nation to fund the proposed improvements may be presented to the full Council or to the Budget and Finance Committee for approval or rejection only. The Controller shall have the responsibility for issuing the revenue bonds on behalf of the Navajo Nation to fund the proposed improvements and thereafter shall identify the requirements for payment of interest and principal on such bonds as part of the annual budget planning and preparation process until such time as the bonds are retired. Revenue bonds issued by a governmental unit other than the Navajo Nation shall be subject to all budgetary, approval and other requirements applicable to the governmental unit issuing revenue bonds. In addition, notwithstanding the provisions of any law applicable to an issuing governmental unit, including without limitation those granting, borrowing and other financing authority and powers to the governmental unit, including 26 N.N.C. § 103 of the Local Governance Act, no governmental unit shall issue revenue bonds unless such governmental unit has made application to the Controller and such application has been reviewed and approved by the Controller and, with respect to legal matters, approved by the Department of Justice. The Office of the Controller shall charge each governmental unit proposing to issue revenue bonds an application fee in an amount sufficient to pay all costs associated with such review and approvals.~~

2. A governmental unit other than the Navajo Nation may issue revenue bonds on its own behalf and not on behalf of the Navajo Nation if:

a. The governmental unit adopts an authorizing resolution or enacts an ordinance for the financing of specific capital improvements or for any other lawful public purpose identified by such governmental unit; and

b. The revenue bonds issued by the governmental unit meet all budgetary, approval and other requirements applicable to the governmental unit issuing revenue bonds; and

c. Notwithstanding the provisions of any law applicable to an issuing governmental unit, including without limitation those granting, borrowing and other financing authority and powers to the governmental unit, including 26 N.N.C. § 103 of the Local Governance Act, (I) the Controller has reviewed all revenue bonds approved by the governmental unit and approved the issuance of such revenue bonds, and (II) with respect to legal matters, the Office of the Attorney General has approved the issuance of such revenue bonds.

3. The Office of the Controller shall charge each governmental unit proposing to issue revenue bonds an application fee in an amount sufficient to pay all costs associated with such review and approvals. Navajo Nation Chapter governments shall not be subject to the above mentioned application fee.

4. The Controller may, in providing the certification or approval required by the foregoing paragraphs, retain the services of financial advisors, accountants, appraisers, feasibility consultants, bond counsel and other appropriate professional service providers and reasonably rely on the opinions, findings, statements and conclusions provided by such persons. Fees and costs associated with such services shall be paid by the Controller from application fees required to be paid to the Controller by the issuing governmental unit, as established by the Controller from time to time. All procurement of services must comply with applicable Navajo Nation laws, including the Navajo Preference in Employment Act, the Navajo Nation Business and Procurement Opportunity Act, and the Navajo Nation Procurement Act (12 N.N.C. § 301 et seq.)

5. A governmental unit issuing a revenue bond may pledge to the payment of such bonds, or may make a revenue bond payable from, all or any portion of:

a. 1. The revenues of any revenue producing facility owned or operated by or providing services to such governmental unit or financed by the revenue bond;

b. 2. The revenues of a public utility or system, or an addition or extension to the public utility or system, where the improvements, projects or facilities financed by the revenue bond are a portion of the public utility or system;

c. 3. All or any portion of any other revenues of the governmental unit, regardless of whether such revenues are related to the improvements, projects or facilities financed by the revenue bond.

6. If a governmental unit determines that it is necessary to provide additional security for revenue bonds, the governmental unit may mortgage, grant security interests in or otherwise encumber facilities, projects, utilities or systems owned or operated by the governmental unit. Such security may be given in favor of the holders of revenue bonds, a trustee therefore or as security for its obligations arising under any credit enhancement device. A governmental unit may obtain a credit enhancement device for revenue bonds provided that such credit enhancement device shall be payable solely from revenues, the proceeds of revenue bonds, and the other additional security provided for in this Paragraph.

C. Pledge of Nation's Full Faith and Credit. Only a bond issued by the Navajo Nation as a general obligation bond of the Navajo Nation in compliance with all provisions and requirements of this Chapter shall be backed by the full faith and credit of the Navajo Nation. No bond issued by a governmental unit, other than a general obligation bond of the Navajo Nation, shall be backed by the full faith and credit of the Navajo Nation unless the full faith and credit of the Navajo Nation has been specifically pledged to the payment of such bond by the Navajo Nation Council, the Controller has consented to such pledge, and the bond has been issued in compliance with all provisions and requirements of this Chapter for the issuance of a general obligation bond by the Navajo Nation. The Navajo Nation, acting through its Controller, may condition the lending of the full faith and credit of the Navajo Nation to back bonds issued by another governmental unit upon the satisfaction of such terms and conditions and the payment of such fees and charges as the Controller may establish from time to time.

D. Bond Issuance. In issuing bonds, a governmental unit may:

1. Subject to the limitations contained in this Chapter, establish the maturity schedules, interest rates, including fixed, variable or adjustable interest rate terms, tender or redemption provisions, provisions for capitalized interest and other bond terms;
2. Appoint a bond trustee and bond counsel and retain the services of financial advisors, underwriters, paying agents, legal counsel and other professional service providers in connection with the issuance of bonds;
3. Execute and deliver any necessary or appropriate agreement or other document in connection with obtaining a credit enhancement device;
4. Enter into covenants for the benefit of bondholders and the provider of any credit enhancement device to improve the security of bondholders or the provider of a credit enhancement device, or to maintain the tax-exempt status of interest payable on bonds;
5. Establish such bond funds as may be necessary or desirable to pay debt service, to secure bonds and for any other purpose reasonably related thereto; and
6. To apply bond proceeds to pay bond related costs.

E. Validity of Liens to Secure Obligations

1. As used in this section, "property" means real or personal property, tangible or intangible, including without limitation contract rights, receivables or securities, whether owned when a pledge is made or a security interest granted or acquired subsequent to the time the pledge is made.

2. Neither the Navajo Uniform Commercial Code nor the Uniform Commercial Code of any state shall apply to the creation, perfection, priority, or enforcement of a lien of a pledge made by a governmental unit in revenues or other property in which a security interest is granted to secure obligations issued pursuant to the Bond Financing Act.

3. A governmental unit may pledge as security for payment of obligations all or part of the revenues or other property of the governmental unit if the governmental unit expressly authorizes such pledges. In the case of the Navajo Nation, such pledge may be expressly authorized by the Navajo Nation Council, or for obligations less than \$15 million in aggregate minimal amount, by the Budget and Finance Committee.

4. The lien created by a pledge of revenues or a security interest in other property is valid and binding from the time the pledge is made or the security interest granted. Pledged revenues or other property are subject immediately to the lien of the pledge or security interest without physical delivery, filing or any other act.

5. Except as otherwise expressly provided in an operative document, the lien of the pledge or security interest is superior to and had priority over all other claims and liens arising after the time the pledge is made or security interest granted.

6. When revenues or property subject to a pledge or security interest are acquired by a governmental unit after the pledge is made or security interest granted:

a. The revenues or property are subject to the lien upon acquisition by the governmental unit without physical delivery, filing or any other act.

b. The lien relates to the time the pledge was originally made or the security interest granted.

7. A governmental unit may reserve a right to pledge revenues or grant a security interest in property as security for bonds subsequently issued by the governmental unit. If the governmental unit reserves the right, subject to the terms of the operative document that created any previous pledge or security interest, the lien of the subsequent pledge or security interest may be on a parity or *pari passu* basis with the lien of the previous pledge or security interest or on a subordinate basis with the lien of the previous pledge or security interest, as specified in the operative document creating the subsequent pledge or security interest. The lien of the subsequent pledge or security interest:

a. Has the priority specified in the operative document creating the subsequent pledge or security interest; and

b. Is superior to and has priority over all other claims and liens except the lien of a pledge or security interest with which the lien of the subsequent pledge or security is on a parity or subordinate basis, as specified in the operative document.

8. A pledgee or secured party may commence an action in a court of competent jurisdiction to foreclose the lien of the pledge or security interest and exercise rights and remedies available to the pledgee or secured party under the operative document.

9. When pledged revenues or property consist of moneys or property that are in a fund or account for debt service or payments, a pledgee or secured party may foreclose the lien of the pledge or security interest by applying the moneys or property in the fund or account to the payment of the bonds subject to the terms, condition and limitations of the operative document.

F. E. Limitation on Bond Maturity. All long term debt issued will be repaid within a period not to exceed the expected useful lives of the capital improvement projects financed by the long term debt as certified to the Controller by a financial advisor, feasibility consultant, accountant or other appropriate professional service provider reasonably acceptable to the Controller. For purposes of this Section, the reasonably expected remaining economic life of a bond financed capital improvement shall be determined as of the date on which bonds are issued based on the expected remaining economic life of the equipment and other components of the bond financed improvement. Land shall not be taken into account in determining the economic life of a capital improvement, except that, in the event twenty-five percent (25%) or more of the proceeds of a bond issue financing such improvement are expended to acquire land, such land shall be treated as having an expected remaining economic life of 30 years, and shall be taken into account in determining the reasonably expected remaining economic life of the bond financed improvement.

G. F. Investment of Bond Proceeds and Funds. Prior to the expenditure of bond proceeds for the purposes authorized by this Chapter, including the payment of bond related costs, such proceeds and investment earnings thereon, together with all other amounts held in any bond fund. shall be invested at the direction of the issuing governmental unit in accordance with and subject to the limitations of the applicable laws and regulations of the Navajo Nation and the governmental unit and in compliance with the investment policies established by the Controller from time to time for such proceeds and funds.

H. G. Refunding Bonds. A governmental unit that is authorized to issue general obligation bonds or revenue bonds pursuant to § 1330(A) or § 1330(B) may from time to time in its discretion upon the adoption of an authorizing resolution or the enactment of an ordinance by its governing body issue refunding bonds for the purpose of paying, defeasing, redeeming or retiring bonds previously issued by such governmental unit. Refunding bonds may, however, be issued by a governmental unit, only after such governmental unit has complied fully with the

refunding rules applicable to such bonds issued by the Controller from time to time, including the payment of any fees required to be paid by the governmental unit to the Controller.

I. H. Manner of Sale. Bonds issued pursuant to this Chapter may be sold by a governmental unit pursuant to a public competitive bid or at a private negotiated sale, as determined by the governmental unit in accordance with prudent financial management practices. A governmental unit issuing bonds shall take all reasonable measures directed by the chief financial officer of the governmental unit to assure compliance by the governmental unit with the requirements of all applicable securities laws. In determining an appropriate manner of sale and in making recommendations to comply with applicable securities laws, a governmental unit and its chief financial officer may rely on the advice of its financial advisor or bond counsel, and may in its discretion retain the services of special counsel, financial advisors, investment bankers and other appropriate experts and reasonably rely on the advice and opinions provided by such persons.

J. I. Execution of Bonds. Bonds issued pursuant to this Chapter shall be signed by the chief executive and the chief financial officer of the governmental unit issuing bonds, by either manual or facsimile signature. For bonds issued by the Navajo Nation, the chief executive and the chief financial officer shall be the President and the Controller of the Navajo Nation, respectively. For bonds issued by a chapter, the chief executive and the chief financial officer shall be the chapter President and its Secretary/Treasurer, respectively. For bonds issued by a governmental unit other than the Navajo Nation or a Chapter, the chief executive and the chief financial officer shall be those persons designated as such for the governmental unit in the charter, legislation, plan of operation or other authority creating such unit. No person executing a bond on behalf of a governmental unit shall be liable personally on the bond by reason of the issuance thereof. In the event that a person whose signature appears on a bond as that of the chief executive or chief financial officer of the governmental unit ceases to hold such office prior to the delivery of a bond, the signature of such person shall, nevertheless, be valid and sufficient for all purposes, the same as if such person had remained in office until delivery.

K. J. Severability. If any provision of this Chapter, or its application to any governmental unit or circumstance is held invalid, the remainder of the provisions of this Chapter, and their application to any governmental unit or circumstance, shall not be affected.

K. Changes in Law, Non-Impairment. ~~No provision of law applicable to governmental unit issuing bonds hereunder that is enacted or adopted following the issuance of a bond, or any~~ Any law, ordinance, resolution, initiative, referendum or other action enacted, adopted or taken subsequent to the issuance of a bond shall be given any force or effect if to do so or execution and delivery of any bond and related agreement hereunder, including, without limitation, any amendment to this Act shall be given no force or effect by any governmental unit or the federal government or any state government or political subdivision of such state government or any Navajo Nation court or any federal or state court, if the application of such law, ordinance, resolution, initiative, referendum or other action would materially impair any

~~obligation or covenant made with the holder of such bond~~ , agreement or covenant applicable to a governmental unit issuing bonds hereunder, or any right or remedy or security granted to or for the benefit of the holders of such bonds or any beneficiary of any related agreement or the interest of the provider of any credit enhancement device supporting or securing such bonds.

§ 1340. Interim financing of capital improvements and related projects

A. Subject to any applicable limitations imposed by this Act, other applicable laws and regulations of the Navajo Nation or contained in any charter, ordinance or resolution applicable to such governmental unit, a governmental unit may borrow money by entering into a credit agreement, or issuing notes, warrants, short-term promissory notes, commercial paper or other obligations:

1. To provide interim financing for capital improvements to be undertaken by the governmental unit; or

2. To refund outstanding obligations incurred pursuant to this Section.

B. To secure obligations authorized under this Section, a governmental unit may:

1. Pledge its anticipated taxes, grants, other revenues, the proceeds of any bonds, or any combination thereof;

2. Segregate any pledged funds in separate accounts, which may be held by the governmental unit, the Controller or third parties;

3. Enter into contracts with third parties to obtain credit enhancement devices to provide additional security for obligations authorized by this Section;

4. Establish any reserves deemed necessary for the payment of the obligations; and/or

5. Adopt resolutions and enter into agreements containing covenants and provisions for protection and security of the owners of obligations, which shall constitute enforceable contracts with such owners.

C. Obligations authorized by this Section which are issued in anticipation of taxes or other revenues, and any obligations authorized by this Section which are issued to refund them, shall not be issued prior to the beginning of, and shall mature not later than, the end of the fiscal year of the governmental unit in which the taxes or other revenues are expected to be received. Obligations issued in anticipation of taxes or other revenues shall not be issued in an amount greater than eighty percent (80%) of the amount budgeted by the governmental unit to be received in the fiscal year in which the obligations are issued.

D. Obligations authorized by this Section, which are issued in anticipation of a grant, shall mature not later than one year after the date the grant is estimated to be received. Obligations issued to provide interim financing for capital assets shall mature not later than one year from the estimated completion or acquisition of the capital assets.

E. Refunding obligations issued pursuant to Subsection (A)(1) of this Section shall mature as soon as the issuing governmental unit deems practicable and no later than 18 months after the refunding obligations are issued.

F. Except as provided in this Section, obligations authorized by this Section may be in any form and contain any terms, including provisions for redemption at the option of the holder of the obligation and provisions for the varying of interest rates in accordance with any index, banker's loan rate or other standard.

G. The issuing governmental unit, in the ordinance or resolution authorizing the issuance of obligations under this Section, may delegate to the chief financial officer of the governmental unit or, in the case of the Navajo Nation, the Controller, the authority to determine maturity dates, principal amounts, redemption provisions, interest rates or the method for determining a variable or adjustable interest rate, denominations and other terms and conditions of such obligations which are not appropriately determined at the time of enactment or adoption of the authorizing ordinance or resolution, which delegated authority shall be exercised subject to applicable requirements of law and such limitations and criteria as may be set forth in such ordinance or resolution. Except to the extent of any such delegation, the ordinance or resolution of the governmental unit authorizing the issuance of obligations under this Section shall contain:

1. The maximum effective rate of interest the obligations shall bear;
2. The manner of sale;
3. The discount, if any, the governmental unit may allow;
4. The terms and conditions by which the obligations may be redeemed prior to maturity;
5. The maturities of the obligations;
6. The form and denominations of the notes or other obligations; and
7. All other material terms and conditions related to the sale of the obligations.

H. The governmental unit may contract with third parties to serve as issuing, paying and authenticating agents for any obligations authorized by this Section.

I. Obligations authorized by this Section may be sold by a governmental unit pursuant to a public competitive bid or at a private negotiated sale upon such terms as the governmental unit finds advantageous, with such disclosure or other measures to comply with the requirements of applicable securities laws as the governmental unit deems appropriate.

J. Notwithstanding the provisions of any law applicable to a governmental unit, including without limitation those granting, borrowing and other financing authority and powers to the governmental unit, including 26 N.N.C. § 103 of the Local Governance Act, no governmental unit shall borrow money for the purposes permitted by this Section unless such governmental unit has made application to the Controller and such application has been reviewed and approved by the Controller and, with respect to legal matters, approved by the Department of Justice. The Office of the Controller shall charge each governmental unit proposing to borrow money pursuant to this Section an application fee in an amount sufficient to pay all costs associated with such review and approvals.

§ 1350. Determination of Legality of Governmental Unit Actions Regarding Bond Issues

A. Any person including without limitation a governmental unit may commence a proceeding in the judicial district where the governmental unit has its headquarters for the purpose of having a judicial examination and judgment of the Court as to the validity and legality of:

1. The proceedings of the governmental unit providing for and authorizing the issue and sale of bonds of the governmental unit, whether the bonds or any of them have or have not been sold or disposed of in any manner.

2. Any order of the governmental unit levying a tax relative to the bond issue.

3. The authorization of any contract relative to the bond issue and as to the validity of the contract, whether or not it has been executed.

4. Any decision of the governmental unit relative to the bond issue that raises novel or important legal issues that would be efficiently and effectively resolved by a proceeding before the decision becomes effective, when the decision will:

a. Require a significant expenditure of public funds;

b. Significantly affect the lives or businesses of a significant number of persons within the jurisdiction of the governmental unit; or

c. Directly or indirectly impose a significant financial burden on the cost of conducting business within the boundaries of the governmental unit.

5. The authority of the governmental unit to enact any ordinance, resolution or regulation

relative to the bond issue.

CD-43-09

6. Any ordinance, resolution or regulation enacted or adopted by the governmental unit relative to the bond issue.

7. Any waiver of sovereign immunity by the governmental unit relative to the bond issue.

B. The filing of a proceeding under this section shall automatically stay any other action that raises the same or similar issues, including without limitation any issue raised in a notice of intent to sue or any other challenge to any action of the governmental unit with respect to bonds, any bond-related contracts or other financing instruments, and such stay shall remain in effect until the validity or legality of the matter brought against the governmental unit is resolved.

C. All proceedings of the governmental unit relative to the bond issue may be judicially examined and determined in one special proceeding, or any part thereof may be separately examined and determined by the Court.

D. If more than one action is pending concerning similar challenges which may be brought under this section, they shall be consolidated for trial.

E. For the purposes of this section, matters shall be deemed to be in existence upon their authorization and shall be deemed authorized as of the date of adoption or enactment of a resolution or ordinance authorizing the matter.

F. Jurisdiction of the governmental unit shall be obtained by the publication of notice directed to the governmental unit; and jurisdiction of the interested members of the Navajo Nation shall be obtained by publication of notice directed to "all members of the Navajo Nation interested in the matter of (specifying the matter)," without naming such persons individually. The notice shall require all interested members of the Navajo Nation to appear at a designated time and place and show why the complaint should not be granted and the matter validated. The notice shall be served on all members of the Navajo Nation in interest by publication thereof for at least once a week for two successive weeks in a newspaper of general circulation published within the Navajo Nation and shall include a copy of the complaint submitted by the governmental unit. Jurisdiction shall be complete 10 days after the date of completing publication of the notice as provided in this section and as so stated in the published notice. The notice shall be published by the governmental unit at its own expense.

G. Any member of the Navajo Nation interested may at any time before the expiration of the 10 days appear and contest the validity of the governmental unit proceeding relative to the bond issue. Jurisdiction shall be complete after the date specified in the published notice and no interested party may, later than the date specified in the published notice, appear and contest the legality or validity of the matter sought to be determined.

H. The complaint shall be directed to "all members of the Navajo Nation interested in the matter of (specifying the matter)" and shall provide a detailed summary of the matter the governmental unit seeks to validate, which summary shall at a minimum set out the governmental unit's authority for taking certain action relative to the bond issue; the resolution, ordinance or other proceeding authorizing the action relative to the bond issue; all other essential proceedings had or taken in connection therewith; and any amounts or interest rates so related.

I. At the hearing the Court shall determine all questions of law and fact and make such orders as will enable it to properly try and determine the action and render a final judgment with the least possible delay. Such proceeding shall be tried forthwith and judgment rendered as expeditiously as possible, declaring the matter so contested to be either valid or invalid.

J. Actions brought pursuant to this section shall be given preference over all other civil actions before the Court in the matter of setting the same for hearing or trial, and in hearing the same, to the end that such actions shall be speedily heard and determined.

K. The final judgment, if no appeal is taken, or if taken and the judgment is affirmed, shall, notwithstanding any other provision of law, thereupon become and thereafter be forever binding and conclusive, as to all matters therein adjudicated or which at that time could have been adjudicated, against the governmental unit and against all other persons, and the judgment shall permanently enjoin the institution by any person of any action or proceeding raising any issue as to which the judgment is binding and conclusive.

L. No challenge except as provided herein shall be made against the governmental unit for any action or proceeding relative to a bond issue, and any such challenge shall be made strictly within the time and in the manner herein specified. The availability to any governmental unit, or to its officers or agents, of the remedy provided by this chapter, shall not be construed to preclude the use by such governmental unit or its officers or agents, of mandamus or any other remedy to determine the validity of any thing or matter.

M. Any party to the action whether plaintiff, defendant, or intervenor, dissatisfied with the final judgment, may appeal to the Navajo Nation Supreme Court. No person or party may challenge the validity of any matter relative to any bond issue, or prevent the use of any public moneys derived from any action of the governmental unit after the matter or action has been validated by the Court except through this process.

N. Notwithstanding any other provision of law, including, without limitation, 7 N.N.C. § 801 and any rule of court, no appeal shall be allowed from any judgment entered pursuant to this chapter unless a notice of appeal is filed within 10 days after the notice of entry of the judgment, or within 10 days after the entry of the judgment if there is no answering party.

O. On appeal, the Navajo Nation Supreme Court, in inquiring into the regularity, legality, or propriety of any proceeding of the governmental unit relative to the bond issue shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties to the special proceeding, and may approve the proceedings in part and may disapprove and declare illegal or invalid in part other of subsequent proceedings.

P. Bonds, when validated under this section, shall have stamped or written thereon, by the governmental unit issuing them, a statement in substantially the following form: "This bond is one of a series of bonds which were validated by judgment of the District Court of the Navajo Nation, rendered on (specify date of judgment)."

Q. A certified copy of the judgment or decree shall be received as evidence in any court of the Navajo Nation.

R. Costs of the proceeding may be allowed and apportioned between the parties in the discretion of the Court.

S. Upon conclusion of a proceeding authorized by this section, including any appeal of a judgment, the judgment entered in the proceeding is binding upon the parties and all other persons. Claim preclusion and issue preclusion apply to all matters adjudicated in the proceeding. Except for an action to enforce a judgment, the courts of the Navajo Nation do not have jurisdiction over an action by or against the governmental unit named in the judgment if the purpose of the action is to seek judicial review or judicial examination, directly or indirectly, of a matter adjudicated in the proceeding.

§ 1360. RESERVED

§ 1370. Amendments

This Bond Financing Act may, subject to the limitations of Section 1330 (L) of this Act, be amended by a majority vote of the full membership of the Navajo Nation Council upon the recommendation of the Budget and Finance Committee of the Navajo Nation Council.

Section Four. Effective Date

The provisions of this Act shall become effective in accord with 2 N.N.C. § 221(B).

Section Five. Codification

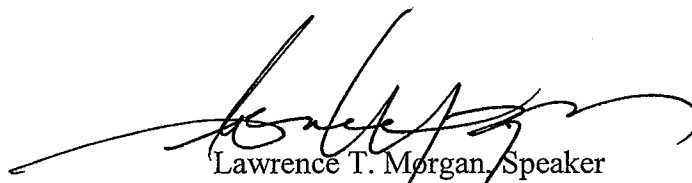

The provisions of this Act which amend sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel.

Section Six. Savings Clause

Should any provisions of this Act be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, or any other court of competent jurisdiction, those portions of this Act which are not determined invalid shall remain the law of the Navajo Nation.

CERTIFICATION

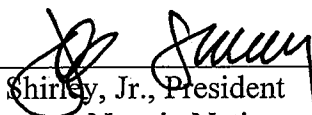
I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 52 in favor and 12 opposed, this 22nd day of December, 2009.


Lawrence T. Morgan, Speaker
Navajo Nation Council

Date

Motion: Willie Tracey
Second: Roy Laughter

ACTION BY THE NAVAJO NATION PRESIDENT:

- 1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), on this _____ day of JAN 14 2010 2009.



Dr. Joe Shirley, Jr., President
Navajo Nation

- 2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2009 for the reason(s) expressed in the attached letter to the Speaker.

Dr. Joe Shirley, Jr., President
Navajo Nation

**RESOLUTION OF THE
NAVAJO NATION COUNCIL**

21st NAVAJO NATION COUNCIL – Third Year, 2009

AN ACT

**RELATING TO FINANCE AND JUDICIARY; ENACTING THE BOND FINANCING
ACT AMENDMENTS OF 2009; AMENDING TITLE 12 OF THE NAVAJO NATION
CODE, 12 N.N.C. § 1300 ET SEQ.**

BE IT ENACTED:

Section One. Enactment of the Bond Financing Act Amendments of 2009.

The Navajo Nation Council hereby enacts the Bond Financing Act Amendments of 2009.

Section Two. Findings.

A. The Navajo Nation hereby finds that the current provisions of the Bond Financing Act do not adequately address the need for clarity relative to the issuance of bonds by the Navajo Nation and other governmental units.

B. The Navajo Nation further finds that the current provisions of the Bond Financing Act do not provide language that will enhance the ability of the Navajo Nation to attract potential bond purchasers to opportunities to invest in bonds issued by the Navajo Nation and other governmental units.

C. The Navajo Nation finds that the proposed amendments will clarify the processes associated with the issuance of bonds by the Navajo Nation and other governmental units, and enhance the ability of the Navajo Nation and other governmental units to attract potential bond purchasers.

D. The Navajo Nation determines that these amendments are in the best interests of the Navajo Nation and Navajo People.

Section Three. Amendment of Title 12 of the Navajo Nation Code

The Navajo Nation Council hereby amends Title 12 of the Navajo Nation Code, as follows:

**BUDGET AND FINANCE COMMITTEE
21ST NAVAJO NATION COUNCIL – Third Year 2009**

COMMITTEE REPORT

Honorable Speaker,

The **BUDGET AND FINANCE COMMITTEE OF THE NAVAJO NATION COUNCIL**, to whom has been assigned:

LEGISLATION NO. 0683-09

AN ACTION
RELATING TO FINANCE AND JUDICIARY; ENACTING THE BOND FINANCING ACT AMENDMENTS OF 2009; AMENDING TITLE 12 OF THE NAVAJO NATION CODE, 12 N.N.C. § 1300 ET SEQ.

Has had it under consideration and reports a recommendation of a **DO PASS** and **NO AMENDMENTS**.

And, therefore referred to the **JUDICIARY COMMITTEE** of the Navajo Nation Council.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Budget and Finance Committee of the Navajo Nation Council at a duly called meeting held at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was did not pass by a vote of 4 in favor, 0 opposed, this 17th day of November, 2009


Nelson Begaye, Pro-Temp Chairman
Budget and Finance Committee

Motion: Hoskie Kee
Second: Ralph Bennett, Jr.

21st Navajo Nation Council

Third Year 2009

Mr. Speaker,

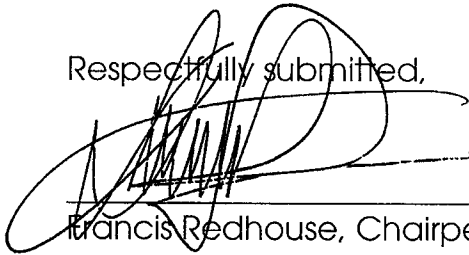
The **ETHIC AND RULES COMMITTEE**, to whom has been assigned

NAVAJO LEGISLATIVE BILL 0683-09

Has had it under consideration and reports the same with a **DO PASS** with **NO AMENDMENTS**.

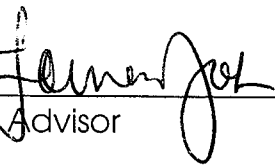
And therefore referred to the **21st NAVAJO NATION COUNCIL**.

Respectfully submitted,



Francis Redhouse, Chairperson

Adopted: _____


Advisor

Not Adopted: _____

Advisor

Date: **December 4, 2009**

The vote was 7 in favor and 0 opposed

Excused:

Absent:



JUDICIARY COMMITTEE
21ST NAVAJO NATION COUNCIL – Third Year, 2009

COMMITTEE REPORT

Mr. Speaker:

The Judiciary Committee, to whom has been referred,

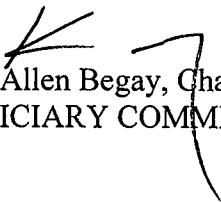
Navajo Legislation No. 0683-09
Introduced by Honorable GloJean Todacheene

AN ACT
RELATING TO JUDICARY; ENACTING THE BOND FINANCING ACT
AMENDMENTS OF 2009; AMENDING TITLE 12 OF THE NAVAJO NATION
CODE, 12 N.N.C. § 1300 ET SEQ

Had it under consideration and reports same with **TABLED** recommendation.

And thence referred to the **ETHICS AND RULES COMMITTEE**.

Respectfully Submitted,


Kee Allen Begay, Chairperson
JUDICIARY COMMITTEE

JC SUMMARY:

Date: December 3 2009

Motion: Ernest Yazzie/Lena Manheimer Vote: 6-0


Mike Martinez, Legislative Advisor