




August 8, 2017

MEMORANDUM

TO : Tom Platero, Executive Director
Office of Legislative Services

FROM: 
Levon B. Henry, Chief Legislative Counsel
Office of Legislative Counsel

RE : CJY-49-17 – No Action by Navajo Nation President

On July 19, 2017 the Navajo Nation Council considered and passed Resolution CJY-49-17, *Amending of 12 N.N.C. § 1330(A) and (B), of the Bond Financing Act*. The Speaker of the Navajo Nation Council certified the resolution on July 28, 2017. On that same day, the Office of the President and Vice-President received the resolution for the President's consideration. Ten days later on August 7, 2017, the Office of the President and Vice-President returned the resolution to the Office of Legislative Services. Neither the Navajo Nation President nor the Vice-President signed the resolution.

Pursuant to 2 N.N.C. § 221(B) "All resolutions that enact new Navajo law or amend existing Navajo law and are adopted by the Navajo Nation Council shall become effective on the day the President of the Navajo Nation signs it into law or the Navajo Nation Council takes action to override the President's veto..." Resolution CJY-49-17 specifically refers to 2 N.N.C. § 221(B). The President's powers include signing "legislation passed by the Navajo Nation Council into Navajo law within ten calendar days after the certification of the legislation by the Speaker..." 2 N.N.C. 1005(C)(10). "The President's authority to sign into law or veto legislation shall be deemed waived if not exercised within ten calendar days after certification of the legislation by the Speaker...and the legislation shall be deemed enacted and become effective pursuant to 2 N.N.C. § 221." 2 N.N.C. § 1005(C)(12).

The Speaker certified Resolution CJY-49-17 on July 28 and the President's office received the resolution on July 28. The ten-day period extended to August 7, 2017. The President had not signed the resolution within the ten-day period. Therefore, by law Resolution CJY-49-17 is deemed enacted and considered Navajo Nation law.

cc: Hon. LoRenzo C. Bates, Speaker, Navajo Nation Council
Hon. Seth Damon, Council Delegate
Pete Atcitty, Chief of Staff, Legislative Branch

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL -- Third Year, 2017

AN ACT

RELATING TO THE LAW AND ORDER COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE, AND THE NAVAJO NATION COUNCIL; AMENDING OF 12 N.N.C. § 1330 (A) AND (B), OF THE BOND FINANCING ACT

BE IT ENACTED:

Section One. Authority

- A. The Law and Order Committee of the Navajo Nation Council is empowered to review and make recommendations to the Navajo Nation Council on proposed amendments to and enactments to the Navajo Nation Code. 12 N.N.C. §601(B)(14).
- B. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council. A proposed resolution that requires final action by the Navajo Nation Council shall be assigned the standing committee having authority over the subject matter at issue and the Naabik'íyáti' Committee. 2 N.N.C. §§164(A)(9) and 700(A).
- C. The Navajo Nation Council must review and approve enactments or amendments of positive law. 2 N.N.C. §164(A).
- D. The Bond Financing Act may be amended by a majority vote of the full membership of the Navajo Nation Council upon the recommendation of the Budget and Finance Committee. 12 N.N.C. §1370.

Section Two. Findings.

- A. 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 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 finds that the investment process has been unduly delayed by the current provisions of the Bond Financing Act and the proposed amendments will allow for greater flexibility and more expedient processing of bond and investment documents.
- E. It is in the best interest of the Navajo Nation to amend 12 N.N.C. §1330(A) and (B) in the manner described below.
- F. The Budget and Finance Committee of the Navajo Nation Council has recommended amendments to the Bond Financing Act in Resolution BFAP-16-17. This Resolution is attached as **Exhibit A**.

Section Three. Amendment to Title 12

The Navajo Nation amends the Navajo Nation Code 12 N.N.C. §1330(A) and (B), as follows:

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

§1330. Financing of capital improvements and related projects

A. General Obligation Bonds.

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 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. The Controller shall review all general obligation bonds 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 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.

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:

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

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

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, provided that approval by the Controller is not required if such revenue bonds will be held by the Navajo Nation and (ii) with respect to legal matters, ~~legal counsel for the issuing governmental unit has reviewed the Office of the Attorney General~~ has approved the issuance of such general obligation bonds for compliance with the laws of, provided that approval by the Office of the Attorney General is not required if such general obligation bonds will be held by the Navajo Nation.

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.

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 Opportunity Act, and the Navajo Nation Procurement Act (12 N.N.C. §301 et seq.)

B. Revenue Bonds.

1. The Navajo Nation, through its Controller, may issue revenue bonds for the financing of specific capital improvements for the Navajo Nation or any governmental unit pursuant to an authorizing resolution or ordinance adopted or enacted by 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. 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 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 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.

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, provided that approval by the Controller is not required if such revenue bonds will be held by the Navajo Nation and (II) with respect to legal matters, legal counsel for the issuing governmental unit has reviewed the Office of the Attorney General has approved the issuance of such revenue bonds for compliance with the laws of, provided that

approval by the Office of the Attorney General is not required if such revenue bonds will be held by the Navajo Nation.

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 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. 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. 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. 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. 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. Investment of Bond Proceeds and Funds. Prior to the expenditure for 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. 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. 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. 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. 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.

L. Changes in Law, Non-Impairment. Any law, ordinance, resolution, initiative, referendum or other action enacted, adopted or taken subsequent to the issuance 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, 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.

Section Four. Codification

The provisions of the Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

Section Five. Saving Clause

Should any provision 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, the remainder of the Act shall remain the law of the Navajo Nation.

Section Six. Effective Date

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

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 14 in favor and 03 opposed, this 19th day of July 2017.



LoRenzo C. Bates, Speaker
Navajo Nation Council

7-28-17

Date

Motion: Honorable Norman M. Begay
Second: Honorable Tuchoney Slim, Jr.
Speaker Bates not voting

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 _____ 2017.

Russell Begaye, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (c)(11), on this _____ day of _____ 2017 for reason(s) expressed in the attached letter to the Speaker

Russell Begaye, President
Navajo Nation

NAVAJO NATION

RCS# 809

NNC Summer Session

7/19/2017

07:20:37 PM

Amd# to Amd#

Legislation No. 0151-17

PASSED

MOT Begay, NM

Amending of 12 N.N.C. Section

SEC Slim

1330 (A) and (B) of the Bond

Financing Act

Yea : 14

Nay : 3

Not Voting : 7

Yea : 14

Begay, K
Begay, NM
Begay, S
Bennett

Brown
Chee
Damon
Hale

Pete
Slim
Tso

Tsosie
Witherspoon
Yazzie

Nay : 3

Smith

Perry

Crotty

Not Voting : 7

Bates
BeGaye, N

Daniels
Filfred

Jack
Phelps

Shepherd



RESOLUTION OF THE
BUDGET AND FINANCE COMMITTEE
OF THE NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL - Third Year, 2017

AN ACTION

RELATING TO THE BUDGET AND FINANCE COMMITTEE; RECOMMENDING THE
AMENDMENT OF 12 N.N.C. § 1330 (A) AND (B), OF THE BOND
FINANCING ACT

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Budget and Finance Committee is a Standing Committee of the Navajo Nation Council and exercises oversight authority over budget and finance for the purposes of recommending to the Navajo Nation Council the adoption of resolutions designed to strengthen the fiscal and financial position of the Navajo Nation and to promote the efficient use of the fiscal and financial resources of the Navajo Nation 2 N.N.C. §§ 300(A) and 300(C) (3).
- B. The Bond Financing Act may be amended by a majority vote of the full membership of the Navajo Nation Council upon the recommendation of the Budget and Finance Committee. 12 N.N.C. § 1370.

SECTION TWO. FINDINGS

- A. 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 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 finds that the investment process has been unduly delayed by the current provisions of the Bond Financing Act and the proposed amendments will allow for greater flexibility and more expedient processing of bond and investment documents.
- E. It is in the best interest of the Navajo Nation to amend 12 N.N.C. § 1330(A) and (B) in the manner described below.

SECTION THREE. AMENDMENTS TO TITLE 12

The Navajo Nation amendment the Navajo Nation Code 12 N.N.C. § 1330(A) and (B), as follows:

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

§1330. FINANCING OF CAPITAL IMPROVEMENTS AND RELATED PROJECTS

A. General Obligation Bonds.

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 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. The Controller shall review all general

obligation bonds 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 Controller shall have the responsibility for issuing general obligation bonds on behalf of the Navajo 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.

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:

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

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

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, provided that approval by the Controller is not required if such revenue bonds will be held by the Navajo Nation and (ii) with respect to legal matters, the Office of the Attorney General has approved the issuance of such general obligation bonds, provided that approval by the Office of the Attorney General is not required if such general obligation bonds will be held by the Navajo Nation.

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.

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 conclusion 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 Nations laws, including the Navajo Preference in Employment Act, the Navajo Business Opportunity Act, and the Navajo Nation Procurement Act (12 N.N.C. § 301 et seq.)

B. Revenue Bonds.

1. The Navajo Nation, through its Controller, may issue revenue bonds for the financing of specific capital improvements for the Navajo Nation or any governmental unit pursuant to an authorizing resolution or ordinance adopted or enacted by 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. 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 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 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 times as the bonds are retired.

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, provided that approval by the Controller is not required if such revenue bonds will be held by the Navajo Nation and (II) with respect to legal matters, the Office of the Attorney General has approved the issuance of such revenue bonds, provided that approval by the Office of the Attorney General is not required if such revenue bonds will be held by the Navajo Nation.
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 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. 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. 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. 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 system owned or operated by the governmental unit. Such security may be given in favor of the holders or 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 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 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 of the security interest granted. Pledged revenues or other property are subject immediately to the lien

of the pledge or security interest without physical deliver, 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 pledge 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 right and remedies available to the pledge 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 pledge 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. **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 of the 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. **Investment of Bond Proceeds and Funds.** Prior to the expenditure of bond proceeds or 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. 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. 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. 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 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 officer 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.

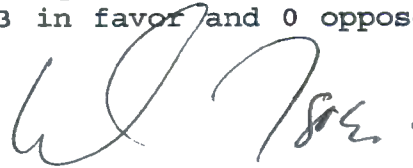
- K. Severability. If any provision of this Chapter, or its application to any governmental unit or circumstance is held invalid, the remainder of the provisions of this Chapter, and their application to any governmental unit or circumstance, shall not be affected.
- L. Changes in Law, Non-Impairment. Any law, ordinance, resolution, initiative, referendum or other action enacted, adopted or taken subsequent to the issuance 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, 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.

SECTION FOUR. RECOMMENDING AMENDMENT

The Navajo Nation Council Budget and Finance Committee hereby recommends the proposed amendments to the Bond Financing Act, 12 N.N.C. §§ 1330(A) and (B).

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 passed by a vote of 3 in favor and 0 opposed, this 11th day of April, 2017.



Leonard Tsosie, Pro Tem Chairperson
Budget and Finance Committee

Motion: Honorable Tom T. Chee
Second: Honorable Lee Jack, Sr.