

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL -- Fourth Year, 2018

AN ACTION

RELATING TO LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; AMENDING CD-68-14, THE NAVAJO NATION SÍHASIN FUND

BE IT ENACTED:

Section One. Authority

- A. The Law and Order Committee is empowered to review and recommend proposed Navajo Nation Code enactments and amendments. 2 N.N.C. § 601(B)(14).
- B. The Budget and Finance Committee of the Navajo Nation Council is empowered to review and recommend to the Navajo Nation Council the budgeting, appropriation, investment, and management of all funds. 2 N.N.C. § 301(B)(2).
- C. The Naabik'íyáti' Committee of the Navajo Nation Council is empowered to review all proposed legislation which requires final action by the Navajo Nation Council. 2 N.N.C. §164(A)(9).
- D. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102 (A).

Section Two. Findings

- A. On November 1, 2006, the 20th Navajo Nation Council unanimously passed Legislation No. CN-57-06 authorizing the Navajo Nation Attorney General to file a lawsuit against the United States for the alleged breach of its fiduciary duties to the Nation arising under treaties, executive orders, public laws, statutes, regulations and contracts due to its mismanagement of the Nation's tribal trust assets, including tribal trust funds and select tribal resources, specifically excluding water and assets held in trust for individual Navajo members. Navajo Nation President, Joe Shirley, Jr., signed Legislation No. CN-57-06 into law on November 13, 2006.
- B. On September 26, 2013, the Naabik'íyáti' Committee of the Navajo Nation Council passed NABIS-42-13 creating a Trust Mismanagement Litigation Task Force ("Task Force"),

composed of Council Delegates, from each agency and each standing committee, as well as Presidential appointees, to assist and consult with the Navajo Nation Office of the Attorney General, Department of Justice, outside legal counsel and the Office of the Navajo Nation President & Vice-President in evaluating whether any proposals put forth by the United States to settle *Navajo Nation v. United States*, No. 06-945L, were in the best interests of the Nation.

- C. On May 16, 2014, the United States made a settlement offer to the Nation that the Nation's Attorney General, outside legal counsel, the Task Force and the Office of the President & Vice-President determined to be in the best interests of the Navajo Nation. On May 30, 2014, the settlement was adopted by the Navajo Nation Council through Resolution No. CMY-28-14 and signed into law by the President of the Navajo Nation on June 4, 2014.
- D. During the many decades that the United States was in breach of its fiduciary duties to the Nation and engaged in the mismanagement of the Nation's tribal trust assets and resources, the tribal government was without sufficient funds to provide basic services and amenities to the Diné of past generations. The tribal government was also without funds to develop an infrastructure within the four sacred mountains that would support the growth and development of opportunities crucial for the prosperity of future generations of Diné.
- E. The Navajo Nation established the Síhasin Fund, 12 N.N.C. §§ 2501 et seq., in the best interest of the Nation and consistent with the collective wishes expressed by its members. The Síhasin Fund is intended to ensure that the net proceeds from the redress of the United States breach of its fiduciary duties and mismanagement of the Nation's tribal trust assets and resources buttress the planning and development of economic development and regional infrastructure supporting economic and community development as well as support education opportunities for Navajo members, essential to prevent sacrifices endured by past generations of the Diné from being revisited on future generations. See CD-68-14
- F. It is in the best interest of the Navajo Nation to amend the Navajo Nation Síhasin Fund, 12 N.N.C. §§ 2501 et seq., as approved in CD-68-14, to continue to meet the Navajo

Nation's economic development and community development needs.

Section Three. Amending the Navajo Nation Síhasin Fund

The Navajo Nation hereby amends the Navajo Nation Síhasin Fund as follows:

**TITLE 12. FISCAL MATTERS
CHAPTER 25. NAVAJO NATION SÍHASIN FUND**

§ 2501. Establishment

There is established the "Navajo Nation Síhasin Fund (hereinafter "Fund").

- A. The Navajo Nation Council hereby designates that the net proceeds and earnings thereon received by the Navajo Nation through settlement of the litigation captioned *Navajo Nation v. United States*, No. 06-945L, shall be deposited into the Fund. Additional deposits, when duly designated, may be made to the Fund from the net proceeds of settlement or judgment awards of other litigation brought against the United States concerning its failure to ensure that the Navajo Nation received all funds due and owing under the United States' trust obligations and fiduciary duties.
- B. The Navajo Nation Council may make additional appropriations to the Fund from any other sources of revenue that become available to the Navajo Nation.
- C. Any money deposited in or appropriated to the Fund, regardless of source, including earnings thereon, shall be used only as provided in this Chapter.
- D. The Fund shall be a continuing account and shall not lapse on an annual basis pursuant to 12 N.N.C. § 820(N).

§ 2502. Purpose

- A. The purposes of this Fund are to provide financial support and/or financing for:
 1. The planning and development of economic development and regional infrastructure supporting economic development and community development, including such infrastructure as, but not limited to, housing, commercial and government buildings, waterline, solid waste management development, powerline projects, and

transportation and communication systems, within the Navajo Nation; and

2. Education opportunities for members of the Navajo Nation.
- B. For the purpose in § 2502(A)(1), Fund expenditures for infrastructure shall not be limited by 12 N.N.C. § 1310(F) or TCDCJY-77-99.
- C. Leveraging the Fund by way of guaranteeing loans, match funding, direct funding in part, and other weighted uses of the Fund, including loan financing from the Fund, for the purposes in § 2502(A)(1), shall be favored over direct funding in whole.

§ 2503. Investment of the Fund

All monies deposited in the Fund shall be invested as soon as practical in accordance with:

- A. The degree of care exercised by reasonable and prudent managers of investments intended to produce maximum growth of the investments with a high degree of safety; and
- B. Specific investment objectives and policies as formally adopted by the Naabik'iyáti' Committee of the Navajo Nation Council.

§ 2504. Definition of Fund Principal and Income

- A. "Fund Principal" shall consist of all deposits made to the Fund pursuant to § 2501 of this Chapter.
- B. "Fund Income" shall consist of all earnings (interest, dividends, etc.) generated and realized by the principal of the Fund.

§ 2505. Expenditure of the Fund

- A. With the exception of outstanding and accrued litigation costs, the Fund Principal and Income shall not be expended except pursuant to a Fund Expenditure Plan consistent with the purposes set forth in § 2502 of this Chapter and adopted by a two-thirds (2/3) vote of all members of the Navajo Nation Council.
- B. Expenditures for outstanding and accrued litigation costs shall be approved by the Law & Order and Budget & Finance

Committees upon the recommendations of the Attorney General and Controller of the Navajo Nation.

- C. Until such time as the Fund Expenditure Plan is duly adopted, all Fund Income shall be deposited in the Fund and added to the Fund Principal.

§ 2506. Annual Audited Report

The Fund shall be audited annually. Within 120 days of the end of each fiscal year, an audit report shall be distributed to the members of the Navajo Nation Council. The report shall be written in easily understandable language. The report shall include financial statements, a statement of the amount of money received by the Fund from each investment during the period, a statement of investments of the Fund including an appraisal at market value, a description of Fund investment activity during the period covered by the report, a statement of the Fund performance and information relevant to the management of the Fund.

§ 2507 Expenses

All expenses directly associated with the administration and management of the Fund shall be paid from the Fund income as approved by the Naabik'iyáti' Committee of the Navajo Nation Council. Such expenses shall include investment advisory and management fees, audit costs and other related expenses, all pursuant to duly approved contracts pursuant to Navajo Preference for such services.

§ 2508 Amendments

Any section(s) herein may be amended by a ninety percent (90%) majority vote of the full membership of the Navajo Nation Council and signature of the President of the Navajo Nation.

Section Four. Effective Date

The Act is effective upon its approval pursuant to 12 N.N.C. § 2508 and 2 N.N.C. §221(B).

Section Five. Codification

The provisions of this act which amends or adopts 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.

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 22 in favor and 01 opposed, on this 24th day of January 2018.



LoRenzo C. Bates, Speaker
Navajo Nation Council

1-31-18

Date

Motion: Honorable Walter Phelps
Second: Honorable Leonard Pete

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 8th day of February 2018.



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 _____ 2018 for reason(s) expressed in the attached letter to the Speaker

Russell Begaye, President
Navajo Nation

NAVAJO NATION

RCS# 935

1/24/2018
02:25:15 PM

Winter Session

Amd# to Amd#

Legislation No. 0440-17

PASSED

MOT Phelps

Amending CD-68-14, The Navajo

SEC Pete

Nation Sihasin Fund

Yea : 22

Nay : 1

Excused : 0

Not Voting : 1

Yea : 22

Begay, K

Chee

Perry

Smith

Begay, NM

Damon

Pete

Tso

Begay, S

Daniels

Phelps

Tsosie

BeGaye, N

Filfred

Shepherd

Witherspoon

Bennett

Hale

Slim

Yazzie

Brown

Jack

Nay : 1

Crotty

Excused : 0

Not Voting : 1

Bates