

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0236-22\_

SPONSOR: Eugenia Charles-Newton

**TITLE An Act Relating to the Resources and Development, Law and Order, Budget and Finance, and Naabik'iyáti' Committees, and the Navajo Nation Council; Allocating \$900,000 from the Tourism Fund to the Tourism Department for its Personnel and Operating Expenses for FY2023; Amending 24 N.N.C. § 741 to Allow Revenue in the Tourism Fund to be Used by All Programs for Tourism-Related Purposes; Rescinding Resolution No. CS-45-22**

*Date posted:* December 6, 2022 at 5:54 PM

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## **SUMMARY OF PROPOSED LEGISLATION**

TrackingNo. 0236-22

Date: December 6, 2022

**Re: AN ACT RELATING TO THE RESOURCES AND DEVELOPMENT, LAW AND ORDER, BUDGET AND FINANCE, AND NAA'BIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; ALLOCATING \$900,000 FROM THE TOURISM FUND TO THE TOURISM DEPARTMENT FOR ITS PERSONNEL AND OPERATING EXPENSES FOR FY2023; AMENDING 24 N.N.C. §741 TO ALLOW REVENUE IN THE TOURISM FUND TO BE USED BY ALL PROGRAMS FOR TOURISM-RELATED PURPOSES; RESCINDING RESOLUTION NO. CS-45-22**

### **Purpose of this Legislation:**

to approve \$900,000 from the HOT/Tourism Fund for the Tourism Department/DED to cover the Department's personnel and operating expenses for FY2023; amending the HOT statute to allow the HOT/Tourism Fund to be used by all programs; rescinding the previous resolution on this same matter - Resolution No. CS-45-22

OLC No. 22-386-1

5-DAY BILL HOLD PERIOD: Johnson  
Website Posting Time/Date: \_\_\_\_\_  
Posting End Date: 12-11-22  
Eligible for Action: 12-12-22

Resources & Development Committee

Thence

Law & Order Committee

Thence

Budget & Finance Committee

Thence

Naabik'iyáti' Committee

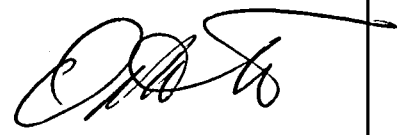
Thence

Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION  
24<sup>th</sup> NAVAJO NATION COUNCIL - Fourth Year, 2022

Introduced by:

\_\_\_\_\_  
(Prime Sponsor)



Tracking No. 0236-22

**AN ACT**

**RELATING TO THE RESOURCES AND DEVELOPMENT, LAW  
AND ORDER, BUDGET AND FINANCE, AND NAA'BIK'ÍYÁTI'  
COMMITTEES, AND THE NAVAJO NATION COUNCIL; ALLOCATING  
\$900,000 FROM THE TOURISM FUND TO THE TOURISM DEPARTMENT  
FOR ITS PERSONNEL AND OPERATING EXPENSES FOR FY2023;  
AMENDING 24 N.N.C. §741 TO ALLOW REVENUE IN THE TOURISM  
FUND TO BE USED BY ALL PROGRAMS FOR TOURISM-RELATED  
PURPOSES; RESCINDING RESOLUTION NO. CS-45-22**

BE IT ENACTED:

**SECTION ONE. AUTHORITY**

A. The Resources and Development Committee is a standing committee of the Navajo Nation Council that oversees the Division of Economic Development. 2 N.N.C. §501(C)(1). The Navajo Tourism Department is within the Division of Economic Development. ACAU-196-87, CO-50-87, GSCAP-12-07, and RDCO-055-19.

B. The Law and Order Committee is a standing committee that reviews and makes recommendations to the Navajo Nation Council regarding proposed amendments to the Navajo Nation Code. 2 N.N.C. §601(B)(14).

C. The Budget and Finance Committee is a standing committee with the responsibility to review

1 and recommend to the Navajo Nation Council the budgeting, appropriation, investment, and  
2 management of all funds. 2 N.N.C. §301(B)(2).

3 D. The Budget and Finance Committee also has final approval authority for the Fund  
4 Management Plan for the Navajo Nation Tourism Fund which consists of revenue collected  
5 from the Navajo Nation's Hotel Occupancy Tax ("HOT"). 24 N.N.C. §741(A) and §741(B),  
6 Resolution No. BFO-56-93.

7 E. The Naa'bik'iyáti' Committee is responsible for reviewing proposed resolutions requiring  
8 final action by the Navajo Nation Council. 2 N.N.C. §164(A)(9).

9 F. The Navajo Nation Council is the governing body of the Navajo Nation, and generally  
10 approves allocations from the Tourism Fund, in accordance with Section 6 of the Fund  
11 Management Plan for the Tourism Fund. 2 N.N.C. §102(A). Resolution No. BFO-56-93.

## 12 13 **SECTION TWO. FINDINGS**

14 A. On January 1, 1993 the Hotel Occupancy Tax came into effect, and is codified at 24 N.N.C.  
15 §700 - §741 (as amended). See Resolution Nos. CJY-27-92, CJY-52-95, CJA-06-09. Section  
16 741 of the HOT statute provides that HOT revenues go into the Tourism Fund (that is, net  
17 HOT revenues after certain statutory allocations under other Navajo Nation laws). Section  
18 741 also instructs that the Budget and Finance Committee is responsible for the Fund  
19 Management Plan ("FMP") for the Tourism Fund. 24 N.N.C. §741.

20 B. On October 5, 1993 the Budget and Finance Committee approved the FMP for the Tourism  
21 Fund, in Resolution No. BFO-56-93. **EXHIBIT A.**

22 C. In Resolution No. CJA-06-09, signed into law on February 9, 2009, the Council amended  
23 the HOT statute to mandate that HOT revenues collected specifically from motels/hotels  
24 within Navajo Tribal Parks can only be used by the Navajo Parks and Recreation Department  
25 for the maintenance and improvement of facilities within Tribal Parks. 24 N.N.C. §741(B).

### 26 **EXHIBIT B.**

27 D. The Tourism Department, under the Division of Economic Development, is requesting  
28 \$900,000 from the Tourism Fund to mitigate the negative effects of the COVID-19 pandemic  
29 that resulted in the loss of an estimated \$115,500,000 of tourism-related revenue since the  
30 Spring of 2020. The Tourism Department explains that it needs the \$900,000 to cover its

- 1 personnel and operating expenses for FY2023. **EXHIBIT C.**
- 2 E. The Tourism Department has provided completed Budget Forms. **EXHIBIT D.**
- 3 F. The Tourism Department has also provided a detailed “Listing of Positions and Assignments  
4 by Business Unit” and “Program Performance Criteria.” **EXHIBIT E.**
- 5 G. The Controller has provided a memorandum regarding this funding request, indicating the  
6 amount of funds available in the Tourism Fund. **EXHIBIT F.**
- 7 H. The Navajo Nation Council previously approved the Tourism Department’s funding request  
8 in Resolution No. CS-45-22, and President Jonathan Nez signed CS-45-22 into law on  
9 October 17, 2022. However, due to an oversight, the approved allocation lapsed and the funds  
10 reverted to the Tourism Fund on September 30, 2022. **EXHIBIT G.**
- 11 I. Notably, all HOT revenues collected both from within Navajo Tribal Parks and from  
12 locations outside the Tribal Parks, are deposited into the Tourism Fund without regard to the  
13 source of such revenues - the funds are simply comingled.
- 14 J. Because of this comingling there is no way to distinguish which dollars in the Tourism Fund  
15 are available for programs other than the Navajo Parks and Recreation Department. Thus,  
16 approval of the Tourism Department’s funding request would appear to violate 24 N.N.C.  
17 §741(B), which states: “[a]ny tax imposed by this Chapter that is collected within any duly  
18 established Navajo Tribal Park shall be retained within the Navajo Nation Tourism Fund *for*  
19 *the exclusive use of the Navajo Parks and Recreation Department . . . .*”
- 20 K. The Navajo Nation finds that, in order to approve the Tourism Department’s funding request,  
21 the above-cited wording in 24 N.N.C. §741(B) must be addressed. Furthermore, the above-  
22 cited provision appears overly restrictive and may unfairly impede the Tourism Department  
23 and other Navajo Nation programs from requesting and receiving allocations from the  
24 Tourism Fund, even if such funds would be used for tourism-related purposes.
- 25 L. The Navajo Nation finds it in the best interest of the Navajo Nation and the Navajo People  
26 to approve the Tourism Department’s funding request as described herein, and to amend  
27 Section 741(B) of the HOT statute to allow all revenue in the Tourism Fund to be used by  
28 any and all Navajo Nation programs, so long as such use is for legitimate tourism-related  
29 purposes and is consistent with the provisions set forth in the FMP. Such amendment would  
30 not prevent the Navajo Parks and Recreation Department from requesting allocations out of

1 the Tourism Fund if needed, but would merely allow the Tourism Department and other  
2 programs to request this money for approved tourism-related activities and goals.

3  
4 **SECTION THREE. ALLOCATING \$900,000 FROM THE TOURISM FUND TO THE**  
5 **TOURISM DEPARTMENT FOR ITS PERSONNEL AND**  
6 **OPERATING EXPENSES FOR FY2023**

7 A. The Navajo Nation hereby allocates \$900,000 from what will become known as the  
8 “HOT/Tourism Fund” to the Division of Economic Development/Tourism Department for  
9 the Tourism Department’s personnel and operating expenses for FY2023, as shown in  
10 **EXHIBITS C, D, and E.**

11 B. The Tourism Department shall expend the approved \$900,000 strictly in accordance with the  
12 amended Fund Management Plan for the HOT/Tourism Fund, which amended FMP will  
13 amend the original version of the Tourism Fund approved in BFO-56-93 and will be  
14 hereinafter approved by the Budget and Finance Committee within 60 calendar days after  
15 the effective date of this Act. See **SECTION FIVE. DIRECTIVE** herein.

16 C. The \$900,000 approved in this Act shall not become available to, and shall not be used by,  
17 the Tourism Department until the effective date of the amended FMP for the HOT/Tourism  
18 Fund, as approved by the Budget and Finance Committee.

19 D. The HOT/Tourism Fund may be reimbursed the amount of funds approved herein, from  
20 funds available to the Navajo Nation from any and all state, federal, or other sources.

21  
22 **SECTION FOUR. AMENDING 24 N.N.C. §741 TO ALLOW REVENUE IN THE**  
23 **TOURISM FUND TO BE USED BY ALL PROGRAMS FOR**  
24 **TOURISM-RELATED PURPOSES**

25 The Navajo Nation hereby amends 24 N.N.C. §741 in the Navajo Nation Code, as follows:

26 **TITLE 24. Taxation**

27 **Chapter 7. Hotel Occupancy Tax**

28 \* \* \* \*

29 **§ 741. Allocation**

30 A. ~~Except as provided in Subsection B, the~~ The tax imposed by this Chapter is imposed

1 for the purposes of generating revenue for Navajo Nation programs to use in promoting  
2 tourism and tourism development. To accomplish this end, after certain mandatory  
3 allocations pursuant to other Navajo Nation statutory law, the net revenue from this tax  
4 shall be deposited and retained in a special fund entitled the "Navajo Nation  
5 HOT/Tourism Fund" ("HOT/Tourism Fund"). ~~which shall be administered by the~~  
6 ~~Navajo Tourism Department, and which shall,~~

7 B. On an annual basis, funds from the HOT/Tourism Fund shall be allocated and expended  
8 first to cover the Tourism Department's upcoming fiscal year budget that is approved  
9 annually in the Navajo Nation's Comprehensive Budget. Thereafter, the Navajo Nation  
10 Council may allocate funds remaining in the HOT/Tourism Fund, if any, to the Tourism  
11 Department or other Navajo Nation programs.

12 C. e~~Consistent with the laws of the Navajo Nation and utilizing the "prudent person rule,"~~  
13 ~~be applied for the advancement of allocations from the HOT/Tourism Fund shall be~~  
14 used strictly for local tourism promotion; and to develop tourism-related projects  
15 throughout the Navajo Nation.

16 D. The Division of Economic Development and the Navajo Tourism Department are  
17 hereby authorized to develop and recommend to the Budget and Finance Committee of  
18 the Navajo Nation Council the a Fund's mManagement pPlan for the HOT/Tourism  
19 Fund, including any amendments thereto. The Budget and Finance Committee shall  
20 have the final authority to approve/adopt, and/or amend, the Fund Management Plan.

21 ~~B. Any tax imposed by this Chapter that is collected within any duly established Navajo~~  
22 ~~Tribal Park shall be retained within the Navajo Nation Tourism Fund for the exclusive~~  
23 ~~use of the Navajo Parks and Recreation Department for maintenance and improvement~~  
24 ~~of facilities within Navajo Tribal Parks, in accordance with the fund management plan~~  
25 ~~for the Navajo Nation Tourism Fund, which shall be amended by the Budget and~~  
26 ~~Finance Committee to accommodate this provision.~~

27 E. All budgeting, funding requests, appropriations, allocations, and expenditures of  
28 money from the HOT/Tourism Fund, by the Tourism Department or any other program,  
29 shall be in accordance with the approved Fund Management Plan, as amended.

30 \* \* \* \*

1   **SECTION FIVE. DIRECTIVE**

2   No later than 60 calendar days after the effective date of this Act, the Tourism Department shall  
3   prepare amendments to the original Fund Management Plan for the HOT/Tourism Fund, which  
4   FMP was approved in BFO-56-93. Such amendments shall conform to the 24 N.N.C. §741  
5   amendments approved in this Act, and shall be presented to the Budget and Finance Committee  
6   for final approval within the 60 calendar days.

7  
8   **SECTION SIX. RESCINDING RESOLUTION NO. CS-45-22**

9   The Navajo Nation hereby rescinds Resolution No. CS-45-22 that was signed into law by  
10   President Jonathan Nez on October 17, 2022. All amendments and statements set forth in this  
11   Act, and all exhibits attached hereto, shall supersede all amendments, statements, and exhibits  
12   included in CS-45-22, in its entirety.

13  
14   **SECTION SEVEN. CODIFICATION**

15   The provisions included in this Act that amend or adopt new sections of Title 24 of the Navajo  
16   Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative  
17   Counsel shall incorporate such amended provisions in the next codification of the Navajo  
18   Nation Code. A clean copy of the Title 24 amendments as shown in **SECTION FOUR** herein  
19   (with no strikeouts or underlining) is attached as **EXHIBIT H**.

20  
21   **SECTION EIGHT. EFFECTIVE DATE**

22   This Act shall become effective according to 2 N.N.C. §221(B) and 2 N.N.C. §164(A)(17),  
23   except that the approved \$900,000 allocation to the Tourism Department shall be effective as  
24   provided in **SECTION THREE (C)** of this Act.

25  
26   **SECTION NINE. SAVING CLAUSE**

27   If any portion of this Act is determined invalid by the Navajo Nation Supreme Court, or by a  
28   District Court of the Navajo Nation without appeal to the Navajo Nation Supreme Court, the  
29   remainder of this Act shall be the law of the Navajo Nation.