

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0260-22\_

SPONSOR: Eugene Tso

**TITLE An Act Relating to Budget and Finance, Health, Education and Human Services, and Naabik'iyáti' Committees and the Navajo Nation Council; Establishing the "Opioid Litigation Settlement Funding" Directing that Monies Received from In Re: National Prescription Opiate Litigation, On August 5, 2015, MLD No. 2804; Case No. 17-md-02804 and Related Actions be Deposited in the Opioid Litigation Settlement Fund; Reimbursing the Fixed Cost Litigation Account for Litigation Costs**

*Date posted:* December 15, 2022 at 9:50 PM

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**LEGISLATIVE SUMMARY SHEET**

Tracking No. 0260-22

**DATE:** December 15, 2022

**TITLE OF RESOLUTION:** AN ACT RELATING TO BUDGET AND FINANCE, HEALTH, EDUCATION AND HUMAN SERVICES, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; ESTABLISHING THE "OPIOID LITIGATION SETTLEMENT FUND"; DIRECTING THAT MONIES RECEIVED FROM *IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION, ON AUGUST 5, 2015*, MDL NO. 2804; CASE NO. 17-md-02804 AND RELATED ACTIONS BE DEPOSITED IN THE OPIOID LITIGATION SETTLEMENT FUND; REIMBURSING THE FIXED COST LITIGATION ACCOUNT FOR LITIGATION COSTS

**PURPOSE:** This resolution, if approved, establishes the Opioid Litigation Settlement Fund to house the proceeds of the Navajo Nation's litigation against Opioid manufacturers and distributors. The proceeds can only be expended for opioid and substance use recovery and abatement and will be allocated through annual or multi-year expenditure plans recommended by the Executive Director of the Department of Health and approved by the Budget and Finance Committee and the Health Education and Human Services Committee.

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each Council Delegate to review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: Johnson  
Website Posting Time/Date: \_\_\_\_\_  
Posting End Date: 12-20-22  
Eligible for Action: 12-21-22

Budget & Finance Committee  
Thence  
Health Education & Human Services 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. 0260-22

AN ACT

RELATING TO BUDGET AND FINANCE, HEALTH, EDUCATION AND  
HUMAN SERVICES, AND NAABIK'ÍYÁTI' COMMITTEES AND THE  
NAVAJO NATION COUNCIL; ESTABLISHING THE "OPIOID LITIGATION  
SETTLEMENT FUND"; DIRECTING THAT MONIES RECEIVED FROM *IN*  
*RE: NATIONAL PRESCRIPTION OPIATE LITIGATION, ON AUGUST 5, 2015,*  
MDL NO. 2804; CASE NO. 17-md-02804 AND RELATED ACTIONS BE  
DEPOSITED IN THE OPIOID LITIGATION SETTLEMENT FUND;  
REIMBURSING THE FIXED COST LITIGATION ACCOUNT FOR  
LITIGATION COSTS

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Navajo Nation Council is the governing body of the Navajo Nation and empowered to enact positive law of the Navajo Nation. 2 N.N.C. §§ 102 (A) and 164 (A).
- B. The Naabik'iyati' 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).

- 1 C. The Budget and Finance Committee of the Navajo Nation Council is empowered  
2 to review and recommend to the Navajo Nation Council the budgeting,  
3 appropriation, investment, and management of all funds. 2 N.N.C. § 301 (B)(2).
- 4 D. The Health, Education and Human Services Committee of the Navajo Nation  
5 Council is empowered to review and recommend resolutions relating to social  
6 services, health, environmental health, education, veterans and veterans' services,  
7 employment and labor. 2 N.N.C. §§ 164(A)(1), 400(A) and 401(b)(6)(a).
- 8 E. The Navajo Department of Justice is responsible for providing legal services to the  
9 Navajo Nation government. The Attorney General, as the Chief Legal Officer, has  
10 charge of the Department of Justice and of all legal matters in which the Navajo  
11 Nation government has an interest. This includes the authority to settle any action  
12 or claim by the Navajo Nation. Before concluding any such settlement, the  
13 Attorney General shall consult with the relevant branch and division or department.  
14 2 N.N.C. §§ 1962, 1964(A) & (F).

## 16 SECTION TWO. FINDINGS

- 17 A. The Native American population has suffered some of the worst consequences of  
18 the opioid epidemic of *any* population in the United States. American Indians have  
19 suffered the highest per capita rate of opioid overdoses according to the National  
20 Congress of American Indians Policy Research Center, Reflecting on a Crisis  
21 Curbing Opioid Abuse in Communities (Oct. 2016).
- 22 B. Tribal Nations have had to spend considerable tribal funds to cover the costs of the  
23 opioid crisis, including increased costs for health care, social services, child  
24 welfare, court, law enforcement, corrections and other government services that  
25 Tribes provide to their citizens.
- 26 C. The burden of paying these increased costs has diverted scarce tribal funds from  
27 other needs and has imposed severe financial burdens on Tribal Nations, which will  
28 continue to bear significant costs related to abatement of the opioid addiction  
29 problem in our communities.
- 30

1 D. The horrific consequences of the opioid epidemic have struck the Navajo Nation as  
2 hard as they have struck other Tribal Nations and communities. In response, the  
3 Navajo Department of Justice sued opioid manufacturers and distributors on behalf  
4 of the Navajo Nation in 2015. The federal District Court subsequently consolidated  
5 tribal cases, including the Navajo Nation's suit, against opioid manufacturers,  
6 distributors, and certain pharmacies into one legal action entitled *In Re: National*  
7 *Prescription Opiate Litigation*, MDL NO. 2804; CASE NO. 17-md-02804.

8 E. The federal District Court appointed a Plaintiff's Tribal Leadership Committee  
9 ("TLC") to coordinate the tribal litigation and to advocate for all Tribes in *In Re:*  
10 *National Prescription Opiate Litigation* and in any settlement negotiations. The  
11 TLC reached a settlement with numerous opioid manufacturers and distributors  
12 under which the Navajo Nation will receive formula-based settlement proceeds.  
13 The final amount of the settlement proceeds has not yet been determined. *See*  
14 **Exhibits A - C.**

15 F. Any proceeds from *In Re: National Prescription Opiate Litigation* can only be  
16 expended to support treatment of Opioid Use Disorder and any co-occurring  
17 Substance Use Disorder or Mental Health conditions through evidence-based or  
18 evidence-informed programs or strategies. The TLC has provided a non-exhaustive  
19 list of eligible uses attached as **Exhibit D.**

20 G. The Navajo Nation Council has determined that the most efficient way to ensure  
21 that its litigation and settlement awards from current and future opioid litigations  
22 are used only to support treatment of Opioid Use Disorder and any co-occurring  
23 Substance Use Disorder or Mental Health conditions is to segregate the awards into  
24 an Opioids Litigation Settlement Fund.

### 25 26 **SECTION THREE. ESTABLISHING THE OPIOID LITIGATION** 27 **SETTLEMENT FUND**

28 The Navajo Nation hereby amends Title 12 of the Navajo Nation Code and  
29 establishes the "Opioid Litigation Settlement Fund" and approves its enabling  
30 legislation as follows:

1  
2  
3 \*\*\*\*\*

4 TITLE 12. FISCAL MATTERS  
5 CHAPTER 29. OPIOID LITIGATION SETTLEMENT FUND  
6

7 **§ 2901. Establishment**

8 There is established the "Opioid Litigation Settlement Fund", hereinafter referred to as  
9 "Fund":

- 10 A. The Navajo Nation Council hereby designates that any and all net proceeds and  
11 earnings awarded to the Navajo Nation by or through litigation arising from the  
12 impact of opioid use and abuse, including the proceeds from *In Re: National*  
13 *Prescription Opiate Litigation*, MDL NO. 2804; CASE NO. 17-md-02804, shall be  
14 deposited into the Fund after the Fixed Cost Litigation Account has been  
15 reimbursed for the actual costs of said litigation(s), as calculated and attested to by  
16 the Attorney General of the Navajo Nation.
- 17 B. The Navajo Nation Council may make additional appropriations to the Fund from  
18 any other sources of revenue that become available to the Navajo Nation.
- 19 D. Any money deposited in or appropriated to the Fund, regardless of source,  
20 including earnings thereon, shall be used only as provided in this Chapter.
- 21 E. The Fund shall be a continuing account and shall not lapse on an annual basis  
22 pursuant to 12 N.N.C. § 820(N).

23  
24 **§ 2902. Purpose**

- 25 A. The purpose(s) of this Fund is to provide opioid and co-occurring substance use  
26 and mental health treatment, prevention and abatement efforts, including both  
27 services and infrastructure to support such services.
- 28 B. Expenditures from the Fund shall not be subject to or limited by 12 N.N.C. § 810(F)  
29 of the Appropriations Act, 12 N.N.C. § 1310(F) of the Bond Financing Act, or the  
30

1 Capital Improvement Project Guidelines, Policies, and Procedures approved  
2 through TCDCJY-77-99.

3  
4 **§ 2903. Investment of the Fund**

5 All monies deposited in the Fund shall be subject to the Master Investment Policies, as  
6 amended, and invested as soon as practical in accordance with the degree of care  
7 exercised by reasonable and prudent managers of investments intended to produce  
8 maximum growth of the investments with a high degree of safety necessary to fulfill  
9 the purposes and objectives of the Fund.

10  
11 **§ 2904. Definition of Fund Principal and Income**

12 A. "Fund Principal" shall consist of all deposits made to the Fund pursuant to Section  
13 §2901 of this Chapter.

14 B. "Fund Income" shall consist of all earnings (interest, dividends, etc.) generated and  
15 realized through the investment of the Fund Principal. Realized Fund Income shall  
16 be added to the Fund Principal after Fund management and administration  
17 expenses, as set forth in this Chapter, have been deducted.

18  
19 **§ 2905. Expenditure of the Fund**

20 A. The Fund Principal and Income shall be expended upon recommendation by the  
21 Executive Director of the Navajo Nation Division of Health through an annual or  
22 multi-year expenditure plan approved by the Budget and Finance Committee and  
23 then by the Health, Education and Human Services Committee.

24 B. Notwithstanding § 2905(A) of this Chapter, the construction of a stand-alone 12  
25 Step Meeting House in each Navajo Nation Agency, i.e., Chinle Agency, Eastern  
26 Agency, Ft. Defiance Agency, Northern Agency, and Western Agency, including  
27 furnishings cost and operations and maintenance costs, shall be funded prior to the  
28 funding of other opioid and co-occurring substance use and mental health  
29 treatment, prevention and abatement efforts.

1 C. Any changes or modifications to an approved expenditure plan shall be approved  
2 by the Budget and Finance Committee and then by the Health, Education and  
3 Human Services Committee upon the recommendation of the Division Director of  
4 the Navajo Nation Division of Health.

5 D. Any Fund amounts, whether Fund Principal or Fund Income, not included in an  
6 expenditure plan, shall remain invested as set forth herein.

7  
8 **§ 2906. Annual Audit**

9 The Fund shall be audited annually by independent auditors and within 120 days of the  
10 end of each fiscal year, an audit report shall be distributed to the members of the Navajo  
11 Nation Council. The audit report shall be written in easily understandable language.  
12

13 **§ 2907. Fund Management Expenses**

14 All expenses associated directly with the administration and management of the Fund  
15 shall be paid from the Fund Income. Such expenses shall include investment advisory  
16 and management fees, audit costs, and other related expenses, all pursuant to duly  
17 approved contracts for such services.  
18

19 **§ 2908. Amendments**

20 Any section(s) of this Chapter may be amended by a two-thirds (2/3) majority vote of  
21 the full membership of the Navajo Nation Council and approval of the President of the  
22 Navajo Nation.  
23

24 **§ 2908. Termination**

25 The Fund shall expire and terminate when all Fund Principal and Fund Income have  
26 been expended.  
27

28 \*\*\*\*  
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30



1     **SECTION FOUR. APPROVING REIBURSEMENT OF LITIGATION COSTS**

- 2     A. The Navajo Nation Department of Justice shall be reimbursed for the actual litigation costs  
3         and expenses expended in *In Re: National Prescription Opiate Litigation*, MDL NO. 2804;  
4         CASE NO. 17-md-02804 and any related and/or future causes of action, including but not  
5         limited to any and all settlements and awards stemming from such litigation.  
6     B. All monies awarded to the Department of Justice under this Act shall be deposited  
7         into the Fixed Cost Litigation Account prior to any monies being deposited into the  
8         Opioid Litigation Settlement Fund.

9  
10    **SECTION FIVE. EFFECTIVE DATE**

11    This Act is effective upon its approval pursuant to 2 N.N.C. 221(B).  
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13    **SECTION SIX. CODIFICATION**

14    The provisions of this Act which amend or adopt new sections of the Navajo Nation  
15    Code shall be codified by the Office of Legislative Counsel. The Office of Legislative  
16    Counsel shall incorporate such amended provisions in the next codification of the  
17    Navajo Nation Code.  
18

19    **SECTION SEVEN. SAVINGS CLAUSE**

20    Should any provision(s) of this Act be determined invalid by the Navajo Nation  
21    Supreme Court or the District Courts of the Navajo Nation, without appeal to the  
22    Navajo Nation Supreme Court, the remainder of the Act shall remain the law of the  
23    Navajo Nation.  
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