LEGISLATIVE SUMMARY SHEET
Tracking No. 0036-20

DATE: February 12, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO THE LAW AND ORDER, BUDGET AND FINANCE, AND NAABÍK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; APPROVING THE NAVAJO NATION PERMANENT FUND INCOME FIVE-YEAR EXPENDITURE PLAN FOR FISCAL YEARS 2021-2025; WAIVING 12 N.N.C. §§ 820 (E), (F) AND (N) AND 1162 (B) FOR SPECIFIC PURPOSES AND A LIMITED TIME PERIOD; ESTABLISHING THE STRATEGIC PLANNING FUND IN TITLE 12 OF THE NAVAJO NATION CODE

PURPOSE: This resolution, if approved, will establish the five-year plan to expend Permanent Fund Income from 2021-2025.

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

5-DAY BILL HOLD PERIOD: [signature]
Website Posting Time/Date: 2/18/2020 4:18PM
Posting End Date: 02-23-20
Eligible for Action: 02-24-20

Law & Order Committee
Thence
Budget & Finance Committee
Thence
Naabik'íyáti Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

24TH NAVAJO NATION COUNCIL – Second Year, 2020

INTRODUCED BY

(Prime Sponsor)

TRACKING NO. 0036-20

AN ACTION
RELATING TO THE LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; APPROVING THE NAVAJO NATION PERMANENT FUND INCOME FIVE-YEAR EXPENDITURE PLAN FOR FISCAL YEARS 2021-2025; WAIVING 12 N.N.C. §§ 820 (E), (F) AND (N) AND 1162 (B) FOR SPECIFIC PURPOSES AND A LIMITED TIME PERIOD; ESTABLISHING THE STRATEGIC PLANNING FUND IN TITLE 12 OF THE NAVAJO NATION CODE

BE IT ENACTED

Section One. Authority

A. The Navajo Nation Council is the governing body of the Navajo Nation, pursuant to 2 N.N.C. § 102 (A).

B. The Naabik'íyáti' Committee of the Navajo Nation Council, pursuant to 2 N.N.C. §164 (A) (9), reviews proposed legislation which requires final action by the Navajo Nation Council.

C. The Law and Order Committee has the authority to review and make recommendations to the Navajo Nation Council on proposed amendments to and enactments to the Navajo Nation Code. 2 N.N.C. §601 (B) (14).D. The Budget and Finance Committee is empowered to review and recommend to the Navajo Nation Council the budgeting, appropriation, investment, and management of all funds, pursuant to 2 N.N.C. §300(B)(2).

E. The Budget and Finance Committee of the Navajo Nation Council shall exercise oversight authority, including but not limited to, budget, finance, investment, bonds, contracting, insurance, audits, accounting, taxes, loans, chapter budget and finance for the purpose 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, pursuant to 2 N.N.C. §300(C)(3),

Section Two. Findings

A. The Navajo Nation Permanent Fund was established in 1985 for the purpose of creating reserves for future generations after finding that the Navajo Nation's General Reserve Fund (aka General Fund) had been declining. CJY-53-85, Whereas Clauses Two and Six.

B. The Navajo Nation Permanent Fund made certain Fund earnings available, starting in 2005, as a source of funding to replace the declining revenues from the Nation's oil and gas and other depletable natural resources. CJY-53-85, codified at 12 N.N.C. §§ 901 *et seq*.

C. In 2000, the Navajo Nation Local Governance Trust Fund was established with an initial appropriation of $2,400,000 from the Undesignated Unreserved Fund Balance (UUFB) and then "[b]eginning in Fiscal Year 2007, the Fund [Local Governance Trust Fund] shall annually receive fifty percent (50%) of the income available from the Navajo Nation Permanent Fund pursuant to 12 N.N.C. § 905." 12 N.N.C. § 1162 (B).

D. In 2016, the Navajo Nation approved a plan for the use of the Permanent Fund Income covering a 5-year period, Fiscal Years 2016 to 2020, for major waterline projects throughout the Navajo Nation and economic development projects in regional centers across the Navajo Nation. CAP-19-16, amended by CD-85-18 and CD-88-18.

E. The Navajo Nation relies on revenue from a variety of sources to provide services through the Navajo Nation government and to associated entities; with the declining revenues from the closure of the nearby power plant and coal mine, along with a decline in other revenue sources, the Navajo Nation faces a significant revenue shortfall for the future which may lead to a reduction in services to the Navajo people and their communities.

F. A Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025 is necessary and warranted to address the declining revenues of the Navajo Nation and to augment the projected revenue of the Navajo Nation in future fiscal years to sustain the financial stability of the Navajo Nation government.

G. A Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025, as established below in Section Three and illustrated in **Exhibit A**, will mitigate the Navajo Nation's projected revenue deficit for the upcoming fiscal years.

H. The Permanent Fund statute defines Fund Income as consisting of all earnings generated by the principal of the Fund, 12 N.N.C. §903(B); and at §905 further provides that

> ninety-five percent (95%) of the Fund income may be expended in accordance with a plan for its use covering at least a five-year period adopted by resolution of the Navajo Nation Council provided that the expenditure of income during any fiscal year shall not exceed the income earned during that year [and] [t]he remaining five percent (5%) of the Fund income shall be reinvested in the Permanent Fund.

12 N.N.C. §905.

I. While the Permanent Fund specifies that the Navajo Nation cannot spend more Income than is earned in the fiscal year, it does not require that the Permanent Fund Income be subjected to a completed audit prior to projection or expenditure.

J. The Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2016–2020, approved by CAP-19-16, used Permanent Fund Income from the years 2015 through 2019; correspondingly, Permanent Fund Income from 2020 through 2024 is available for projection and use in the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025.

K. The first priority of the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025 is to mitigate or make-up the anticipated annual budget shortfalls due to declining Navajo Nation revenues; unmet needs and projects can be funded after the deficiencies of the Navajo Nation's annual comprehensive budget have been met.

L. The average annual Permanent Fund Income (audited) available for expenditure over Fiscal Years 2016-2018 was approximately $50,500,000 (fifty million five hundred thousand dollars), as set forth in **Exhibit B**; guided by that average, the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025, will conservatively allocate Permanent Fund Income of up to $30,000,000 (thirty million dollars) per year to be added to the General Fund Revenue Projection for the current fiscal year.

M. If, after audit, there is Permanent Fund Income realized over the amount included in the current year Revenue Projections, the excess Income shall be deposited in and expended pursuant to the Strategic Planning Fund, established below.

Section Three. Approval of Expenditure Plan and Implementation

A. The Navajo Nation hereby approves the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025 ("Five-Year Plan") set forth as follows and illustrated in **Exhibit A**:

a. For each Fiscal Year from 2021 to 2025, up to $30,000,000 (thirty million dollars) of pre-audit 12 N.N.C. § 905 Permanent Fund Income (hereinafter "Permanent Fund Income" or "Income") shall be added to the General Fund Revenue Projection prepared by the Office of the Controller for the current budget cycle and be appropriated as part of the Comprehensive Budget.

b. If, after audit, the actual Permanent Fund Income from the preceding year is more than the projected amount used in the current year's Comprehensive Budget, the excess amount shall be deposited in and expended consistent with the Strategic Planning Fund established below.

c. If, after audit, the actual Permanent Fund Income from the preceding year is less than the projected amount used in the current year's Comprehensive Budget, the deficiency amount shall be transferred from the Strategic Planning Fund established below to the Navajo Nation General Fund to replenish any amounts funded through the Unreserved Undesignated Fund Balance ("UUFB") as part of the budget implementation process.

d. If the balance of the Strategic Planning Fund is not sufficient to fund the deficiency, a Supplemental Appropriation from the UUFB, obtained through Navajo Nation Council resolution, shall be used to fund the deficiency.

e. If the deficiency is not covered through Supplemental Appropriation from the UUFB, the current year Comprehensive Budget will be proportionately reduced through Navajo Nation Council resolution, unless the Budget and Finance Committee has identified an alternative source of funding the deficiency.

f. Under no circumstances shall any amount of Permanent Fund Principal be used to fund the deficiency unless 12 N.N.C. § 904 is strictly complied with.

g. The Five-Year Plan amounts added to the Revenue Projection(s) shall be treated as recurring revenue, notwithstanding 12 N.N.C. §§ 820 (E) and (F) and shall not lapse pursuant to 12 N.N.C. § 820 (N), but shall otherwise be governed by the Navajo Nation Appropriations Act, 12 N.N.C. § 800 et seq., the Budget Instruction Manual for the appropriate fiscal year, and related budgetary process policies, rules, and regulations as required to prepare and approve the Navajo Nation's comprehensive budget legislation.

h. For Fiscal Years 2021-2025, the Comprehensive Budget legislation shall include each Branch's prioritized list of unfunded (unmet) needs.

i. The Budget and Finance Committee shall be responsible for adopting rules and regulations necessary to implement the Five-Year Plan.

B. The Navajo Nation hereby approves the Five-Year Plan as meeting the requirements for an expenditure plan as set forth in the Permanent Fund, 12 N.N.C. § 905.

Section Four. Waiving 12 N.N.C. §§ 820 (E), (F) and (N) and 1162(B)

A. The Navajo Nation hereby waives 12 N.N.C. § 1162(B) for the period of the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025 and approves suspension of the annual Permanent Trust Fund Income appropriation to the Navajo

Nation Local Governance Trust Fund to conform with the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025.

B. The Navajo Nation hereby waives 12 NNC §§ 820 (E), (F) and (N) for the purposes set forth in Section Three (A) (d) of this Chapter and § 2703 (H) of the proposed Strategic Planning Fund.

Section Five. Enactment of the Navajo Nation Strategic Planning Fund

The Navajo Nation hereby enacts the Navajo Nation Strategic Planning Fund, at 12 N.N.C. §§ 2701 et seq., as follows:

TITLE 12. FISCAL MATTERS

***

CHAPTER 27 NAVAJO NATION STRATEGIC PLANNING FUND

§ 2701. Establishment

There is established the "Navajo Nation Strategic Planning Fund ("Fund").

A. The Navajo Nation Council hereby designates that any annual Permanent Fund Income from the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025 not included with the General Fund Revenue Projections shall be deposited in the Fund. The annual amount deposited in the Fund will vary depending on the Permanent Fund Income realized each year.

B. In addition to the deposits from Permanent Fund Income, other deposits, allocations, or appropriations may be made into the Fund upon a duly-authorized resolution of the Navajo Nation Council.

C. Permanent Fund Principal shall not be deposited into the Fund unless 12 N.N.C. § 904 is strictly complied with.

D. Any monies deposited in, and otherwise allocated or appropriated to the Fund, shall be used only as provided in this Chapter.

§ 2702. Purpose

The purpose of the Fund is to house and hold annual Permanent Fund Income from the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025 that is not included with the General Fund Revenue Projection until such funds are appropriated by the Navajo Nation Council for unmet needs and projects not funded through the annual Comprehensive Budget.

§ 2703. Fund Management and Administration

A. The Fund shall maintain all monies deposited, appropriated, or otherwise allocated into the Fund, as well as any investment income earned.

B. As soon as practical, the Office of the Controller shall report the audited Income earned by the Permanent Fund for the preceding year.

C. If the audited Permanent Fund Income for the preceding year is greater than the projected amount of Permanent Fund Income included in the current year Comprehensive Budget, the excess amount shall be deposited in the Fund.

D. If the audited Permanent Fund Income for the preceding year is less than the amount of Permanent Fund Income included in the current year Comprehensive Budget, the deficiency amount shall be transferred from the Fund to the Navajo Nation General Fund to replenish any amounts funded through the Undesignated Unreserved Fund Balance as part of the budget implementation process..

E. After the Office of the Controller has reported the audited Income, the Budget and Finance Committee shall determine the amount that can be expended from the Fund in the current fiscal year for unmet needs.

F. Fund expenditures shall be recommended by the Budget and Finance Committee and approved by Navajo Nation Council as Supplemental Appropriations, 12 N.N.C. § 820 L, and otherwise be governed by the Navajo Nation Appropriations Act, 12 N.N.C. § 800 et seq., and the Budget Instruction Manual for the respective fiscal year.

G. All deposits made into the Fund shall be treated as recurring revenue, notwithstanding 12 N.N.C. §§ 820 (E) and (F) and shall not lapse pursuant to 12 N.N.C. § 820 (N).

H. The Budget and Finance Committee shall be responsible for adopting rules and regulations necessary to implement the Fund and expenditures from the Fund.

§ 2704. Fund Accounting

The day-to-day accounting for the Fund shall be performed by the Office of the Controller in accordance with generally accepted accounting principles.

§ 2705. Investment of Fund

All monies deposited into the Fund shall be invested as soon as practicable 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 security; and

B. The Investment Objectives and Investment Policies of the Navajo Nation as adopted by the Budget and Finance Committee of the Navajo Nation Council and the Navajo Nation Master Investment Policy.

§ 2706. Audit requirements

The Fund shall be audited annually by independent external auditors as part of the overall audit of the Navajo Nation government.

§ 2707. Amendments

Any section herein may be amended by a two-thirds (2/3) vote of the full membership of the Navajo Nation Council.

***

Section Six. Directives

A. The Navajo Nation Controller shall exercise ordinary standards of professional care, consistent with this legislation, in performing the necessary computations as to the Permanent Fund Income available for inclusion in the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025. In the event revisions need to be made to the annual Permanent Fund Income due to market fluctuations or economic downturns, the Controller shall immediately notify the Navajo Nation Council through written memorandum addressed to the Speaker of the Navajo Nation, Chairperson of the Budget and Finance Committee, and Office of the President and Vice-President, so that appropriate action may be taken.

B. The Office of Management and Budget shall include provisions in the respective Fiscal Year Budget Instruction Manual to support the expeditious implementation of the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025, as well as the expeditious implementation of the Strategic Planning Fund and expenditures thereunder.

Section Seven. Codification

The provisions of these amendments of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amendments in the next codification of the Navajo Nation Code.

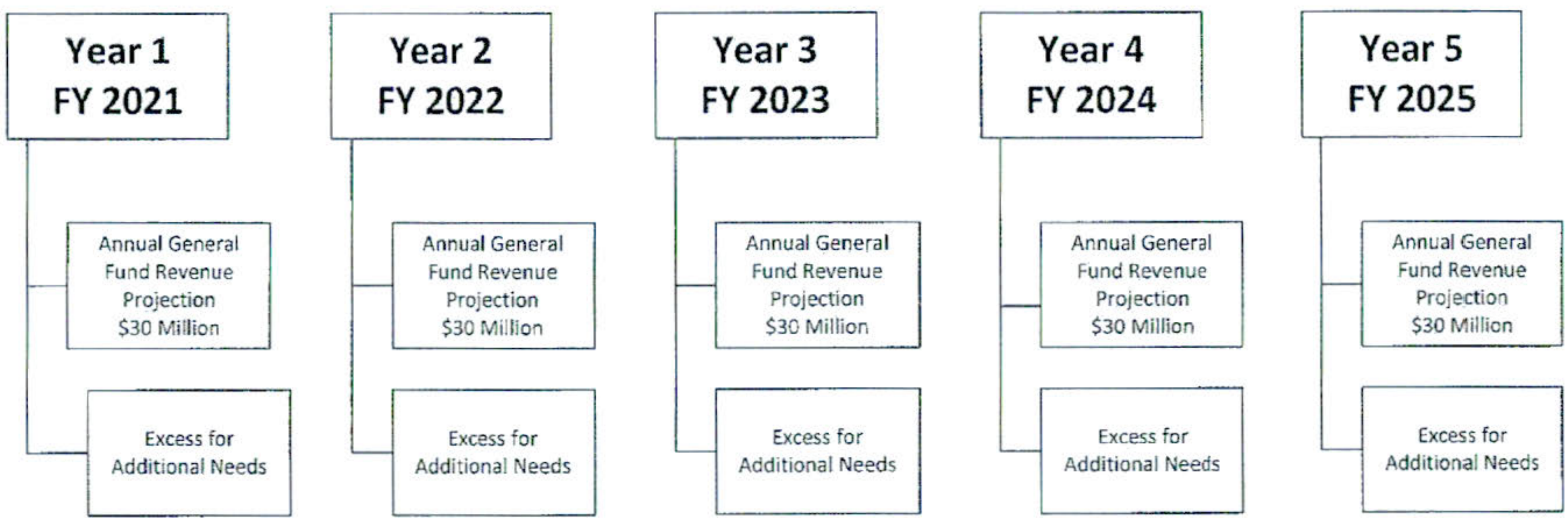
Section Eight. Savings Clause

Should any provision of these amendments 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, those amendments that are not determined invalid shall remain the law of the Nation.

EXHIBIT

A

Permanent Fund Interest 5 Year Plan (2021 – 2025)



02/07/2020

EXHIBIT

B

TO BE SUBSITUTED AT COMMITTEE
WITH CONTROLLER MEMORADUM

tabbies

EXHIBIT

B

	Fiscal Year					
	16	17	18	19	20	21
Project Year	1	2	3	4	5	
Project Amount	30	30.939	30.5	30.5	30.5	
Excess		22.9	10.88	19.8	19.17	?
FY Audited Financials		FY 15	FY 16	FY 17	FY 18	FY 19
Total PTF Income used		52.9	41.7	50.3	59.6	48.80*

*Projected

2016 $41.7

2017 50.3

2018 59.6

$151.6/3 = $50.53 AVR

EXHIBIT "B"

THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE-PRESIDENT

MEMORANDUM:

DATE : June 17, 2016

TO : Honorable Russell Begaye, President
Office of the President/Vice President

Honorable LoRenzo Bates, Speaker
Legislative Branch

Honorable Alan Sloan, Chief Justice
Judicial Branch

FROM : Jim Parris, Controller
Office of the Controller

SUBJECT : Fiscal Year 2017 Permanent Fund Interest Available for General Fund.

Below is the Initial Fiscal Year 2017 Permanent Fund Interest Available for the General Fund. The Navajo Nation Council in April 2016 passed CAP-19-16 The Navajo Nation Permanent Fund Income Five Year Expenditure Plan. Within this plan there included a portion for use by the General Fund. After calculating interest available and the uses for Admin Fees, Reinvestment Fees and the allocation to the projects the total gross interest available to the General Fund is $24.4 million. After the set asides in the amount of $1.4 are taken out, the Net Total Permanent Fund Interest available for General Fund use is $22.9 which is recurring.

($1=$1,000)	Recurring	Total
Total interest Recurring :	$24,411	$24,411
TOTAL GROSS REVENUES	**$24,411**	**$24,411**
Total Set-Aside Subtotal	$ (1,465)	$ (1,465)
NET TOTAL PTI for GENERAL FUND	**$22,946**	**$22,946**

If there are any questions, you can call me at tribal extension 6308.

Cc: File

Exhibit A

THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE-PRESIDENT

June 29, 2017

MEMORANDUM:

TO : Honorable Russell Begaye, President
Office of the President/Vice President

Honorable LoRenzo Bates, Speaker
Legislative Branch

Honorable Alan Sloan, Chief Justice
Judicial Branch

FROM : Pearline Kirk, Controller
Office of the Controller

SUBJECT : Fiscal Year 2018 Permanent Fund Interest Available for General Fund.

Below is the Initial Fiscal Year 2018 Permanent Fund Interest Available for the General Fund. The Navajo Nation Council in April 2016 passed CAP-19-16 The Navajo Nation Permanent Fund Income Five Year Expenditure Plan. Within this plan there included a portion for use by the General Fund. After calculating interest available and the uses for Admin Fees, Reinvestment Fees and the allocation to the projects the total gross interest available to the General Fund is $10.8 million.

($1=$1,000)	Recurring	Total
Total interest Recurring :	$10,881	$10,881
TOTAL GROSS REVENUES	**$10,881**	**$10,881**
NET TOTAL PTI for GENERAL FUND	**$10,881**	**$10,881**

If there are any questions, you can call me at tribal extension 6308.

THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

April 9, 2018

Memorandum:

TO : Honorable Russell Begaye, President
Office of the President/Vice President

Honorable LoRenzo Bates, Speaker
Legislative Branch

Honorable JoAnn Jayne, Chief Justice
Judicial Branch

FROM : Pearline Kirk, Controller
Office of the Controller

SUBJECT : Fiscal Year 2019 Permanent Fund Interest Available for General Fund.

Below is the Initial Fiscal Year 2019 Permanent Fund Interest Available for the General Fund. The Navajo Nation Council in April 2016 passed CAP-19-16, The Navajo Nation Permanent Fund Income Five Year Expenditure Plan. Within this Plan, a portion of the Permanent Fund is used for the General Fund. After calculating interest available and the uses for Administrative Fees, Reinvestment Fees and allocation to the 3rd year projects, the total gross Permanent Fund interest available to the General Fund is $19.8 million.

($1=$1,000)	Recurring	Total
Total interest Recurring :	$19,828	$19,828
TOTAL GROSS REVENUES	**$19,828**	**$19,828**
NET TOTAL PTI for GENERAL FUND	**$19,828**	**$19,828**

If there are any questions, you can call me at tribal extension 6308.

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT   MYRON LIZER | VICE PRESIDENT

March 28, 2019

Memorandum:

TO : Honorable Jonathan Nez, President
Office of the President/Vice President

Honorable Seth Damon, Speaker
Legislative Branch

Honorable JoAnn Jayne, Chief Justice
Judicial Branch

FROM : Pearline Kirk, Controller
Office of the Controller

SUBJECT : Fiscal Year 2020 Permanent Fund Interest Available for General Fund.

Below is the Initial Fiscal Year 2020 Permanent Fund Interest Available for the General Fund. The Navajo Nation Council in April 2016 passed CAP-19-16, The Navajo Nation Permanent Fund Income Five Year Expenditure Plan. Within this Plan, a portion of the Permanent Fund is used for the General Fund. After calculating interest available and the uses for Administrative Fees, Reinvestment Fees and allocation to the 4th year projects, the total gross Permanent Fund interest available to the General Fund is $19.2 million.

($1=$1,000)	Recurring	Total
Total interest Recurring :	$19,170	$19,170
TOTAL GROSS REVENUES	**$19,170**	**$19,170**
NET TOTAL PTI for GENERAL FUND	**$19,170**	**$19,170**

If there are any questions, you can call me at tribal extension 6308.

NAVAJO NATION OFFICE OF THE CONTROLLER
P.O.BOX 3150 · WINDOW ROCK, AZ 86515 · PHONE: (928) 871-6398 · FAX: (928) 871-6026

Office of Legislative Counsel
Telephone: (928) 871-7166
Fax # (928) 871-7576

Honorable Seth Damon
Speaker
24th Navajo Nation Council

MEMORANDUM

TO: Honorable Jamie Henio
Alamo, Ramah, and Tohajiilee Chapters

FROM: Dana Bobroff for
Kristen Lowell, Principal Attorney
Office of Legislative Counsel

DATE: February 12, 2020

SUBJECT: AN ACTION RELATING TO THE LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍY#TI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; APPROVING THE NAVAJO NATION PERMANENT FUND INCOME FIVE-YEAR EXPENDITURE PLAN FOR FISCAL YEARS 2021-2025; WAIVING 12 N.N.C. §§ 820 (E), (F) AND (N) AND 1162 (B) FOR SPECIFIC PURPOSES AND A LIMITED TIME PERIOD; ESTABLISHING THE STRATEGIC PLANNING FUND IN TITLE 12 OF THE NAVAJO NATION CODE

I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).
Please ensure that his particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION

LEGISLATION NO: _0036-20_____ SPONSOR: Jamie Henio

TITLE: An Action Relating to the Law and Order, Budget and Finance, and Naabik'íyáti' Committee, and the Navajo Nation Council; Approving the Navajo Nation Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025; waiving 12 N.N.C. §§ 820 (E), (F), and (N) and 1162 (B) for specific purposes and a limited time period; establishing the strategic planning fund in Title 12 of the Navajo Nation Code

***Date posted*: February 18, 2020 at 4:18pm**

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7590

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: **0036-20**

SPONSOR: **Honorable Jamie Henio**

TITLE: An Action Relating to the Law and Order, Budget and Finance, and Naabik'íyáti' Committee, and the Navajo Nation Council; Approving the Navajo Nation Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025; waiving 12 N.N.C. §§ 820 (E), (F), and (N) and 1162 (B) for specific purposes and a limited time period; establishing the strategic planning fund in Title 12 of the Navajo Nation Code

Posted: **February 18, 2020 at 4:18 PM**

5 DAY Comment Period Ended: **February 23, 2020**

Digital Comments received:

Comments Supporting	*None*
Comments Opposing	**1) Pearline Kirk, Office of the Controller**
Inconclusive Comments	*None*

Legislative Tracking Secretary
Office of Legislative Services

2/24/2020 8:34am

Date/Time

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT

MEMORANDUM

To: 24th Navajo Nation Council
Office of Legislative Branch

Jonathan Nez, Navajo Nation President
Office of the President and Vice President

From: Pearline Kirk, Controller
Office of the Controller

Date: February 20, 2020

Re: Response to Legislation 0036-20

Our office has reviewed the proposed Legislation 0036-20. We've identified the following concerns.

The Permanent Fund
The Permanent Fund ("Fund") was established to provide a source of revenues in future years. The original framers of the Fund had the foresight to provide for the time when the Nation needs to address its dependent natural resources and may have to look elsewhere. See CJY-53-85. That time is now due to declining natural resource revenues. It is imperative to emphasize that the Permanent Fund is a very restrictive fund. For example, it takes a 2/3 referendum vote by the Navajo voters to expend Fund Principal. 12 N.N.C. §904. "Fund Principal" itself is defined to include 12% of all revenues (referred as "set asides") the Nation receives, and such a percentage can only be amended by 2/3 referendum vote by the Navajo voters. 12 N.N.C. §903. A.; 12 N.N.C. §904. Because the fund is so restrictive on expending Fund Principal, an annual audit by independent outside auditor is required. 12 N.N.C. §906. The Permanent Trust Fund is so restrictive that after 20 years from its inception, Fund Income may be expended through a 5-year plan so long as expenditure of income **shall not exceed the income earned**. 12 N.N.C. §905. Additionally, "Fund Income" shall consist of **all earnings generated** by the principal of the Fund. 12 N.N.C. §903. B. Therefore, any proposed legislative action must be considered with the totality of those restrictive requirements.

The Proposed legislation
The proposed legislation is using "projected income" language of the Permanent Fund instead of "earned" income. This is based only on a false premise that Fund Income is not required to be audited in order to be expended. Note, there is an audit requirement and the use of audited financials is a safety mechanism and ensures not dipping into principal. The proposed legislation ignores the fact that Fund Income shall be earned (in accounting language that is "realized" or is "actual"); the original Permanent Fund does not say Fund income can be "projected", or "estimated" or even a "best guess".

Navajo Nation Office of the Controller
Administration Building 1 · 2559 Tribal Hill Dr.
Post Office Box 3150 · Window Rock, AZ 86515 · Phone: (928) 871-6308 · FAX: (928) 871-6026

The proposed legislation wants to use projected fund income that has yet to be earned. That is contrary to the intent and restrictive nature of the Permanent Fund. Going even further, the proposed legislation creates a "Strategic Planning Fund" ("SPF"), which acts as a derivative fund using projected amounts (essentially Fund income that has not yet been earned) and reconciling long after the fact with audited income. This is in circumvention of the original intent of the Permanent Fund. The following points demonstrates those concerns.

Legal

Whether the proposed legislation is legal is certainly up for debate. Our Office believes it is not legally within the realm of the original law regarding the Permanent Fund. For example, the proposed legislation has the following language:

- Section 2. I. states "*...it does not require that the Permanent Fund Income be subjected to a completed audit prior to* ***projection*** *or expenditure*".
- Section 2. J. states "*...Permanent Fund Income from 2020 through 2024 is available for* ***projection*** *and use in the Permanent Fund Income Five-Year Expenditure Plan for Fiscal Years 2021-2025*".

Absolutely nowhere in the original Fund law does the word "projection" exist. The plain language simply states that "expenditure of income shall not exceed the income earned". Furthermore, Fund Income is plainly defined as "all earnings generated" by the principal of the fund. Our Office believes that to use projected income for the Permanent Fund violates the original intent of this restrictive fund. We feel strongly about this so that the Fund Principal is not inadvertently expended. Therefore, Permanent Income is available for expenditure (not available for projection).

Departure from Accounting Standards

Not only does the Fund law itself defines the restrictive nature but also the Governmental Accounting Standards Board Statement ("GASB") No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*, paragraph 35 defines a permanent fund as a fund that should be used to account for and report resources that are **restricted** to the extent that only earnings, and not principal, may be used for purposes that support the reporting government's programs—that is, for the **benefit of the government or its citizenry**.

Our research whether there is usage of "projections" with other Trust Funds at other governmental entities turned up any such practice, so this proposed legislation is unprecedented. Also, the Nation has always used 'actual' or 'earned' income with the first 5-year plan. Therefore, this proposed legislation is in unchartered territory and as such, the risk of violating the Permanent Fund is high.

Appropriations

The reason for unchartered territory is that this proposed legislation attempts to apply budgetary principles to the Permanent Fund. For example, starting immediately it requires the Controller to "project" what the Fund Income would be for FY2020, obviously before such Fund Income is "realized" or "earned". Then such "projection" is used in the Comprehensive Budget for FY2021. It then contemplates that when the actual Fund Income is earned and audited (a year later), the excess or deficit will be transferred in or out, dependent on whether we dipped into principal, in a "Strategic Planning Fund". There are some bold assumptions including if there's a deficit, there are monies available elsewhere (i.e., UUFB) to replenish or the Nation will make budgetary adjustments late in a fiscal year. Note that the moment there is a deficit the Nation has violated the Permanent Fund by dipping into Fund Principal. These assumptions are dangerous and not conservative and certainly not taking into consideration our fiduciary responsibilities.

What is problematic is that this proposed legislation attempts to take budgetary principles for other less restrictive funds such as the General Funds and apply to a restrictive fund such as the Permanent Fund. Our Office believes the appropriation through these budgetary principles are meant for less restrictive funds and do not apply to the Permanent Fund. The Permanent Fund is restrictive and you can only expend what is earned. The Nation's appropriation law in the Navajo Nation code only references other funds that are less restrictive, i.e., General Fund, Special Revenue and Fiduciary Fund. In fact, the Permanent Fund has its own section. Again, as mentioned above, because under GASB 54 that Permanent Fund by its nature being restrictive the appropriations and budgetary principles do not apply.

Such problematic language are as follows:

- Section 3:
  - *d. The Five-Year Plan amounts added to the Revenue Projection(s) shall be* ***treated as recurring revenue****, notwithstanding 12 N.N.C. §§ 820 (E) and (F) and* ***shall not lapse*** *pursuant to 12 N.N.C. § 820 (N), but* ***shall otherwise be governed by the Navajo Nation Appropriations Act,*** *12 N.N.C. § 800 et seq.,* ***the Budget Instruction Manual for the appropriate fiscal year, and related budgetary process policies, rules, and regulations as required to prepare and approve the Navajo Nation's comprehensive budget legislation.***
  - *e. For Fiscal Years 2021-2025, the Comprehensive Budget legislation shall include a prioritized list of unfunded (unmet) needs and projects encompassing all three branches.*
- Subsection 2703. Fund Management and Administration
  - *B. As soon as practical, the Office of the Controller shall report the audited Income earned by the Permanent Fund for the preceding year.*

Use of Projections
Projecting future earnings is especially complex due to several factors. Not all relevant financial information of a governmental entity such as the Nation can be found by analyzing an income statement or balance sheet. Not all the answers will be discovered in these financial statements. External considerations and larger macroeconomic factors must be evaluated (E.G., volatility). However, it is the introduction of these external factors that multiply the downside risk of utilizing projections, especially when it relates to funds as large and sensitive as the Permanent Fund.

The draft legislation is considering the past 3-year average of interest income for fiscal years 2016-2018 and making a bold assumption that past performance is an indicator of future performance of the Fund portfolio. No one can predict the market with 100% confidence.

First, as of January 2020, the Fund's asset allocation is taking on new strategies. The Fund now has exposure to Bank loans and Non-core Real Estate. The Non-core Real estate is much less liquid and may not expect to see income immediately. It would not be wise to consider the past 3-year average returns as a forward-looking projection for those returns don't take into consideration of the ongoing diversification of the Fund portfolio.

Second, the Fund under current law has a requirement to reinvest 5% of income earned and net out the relevant fund expenses. Those all must be "projected" and calculated. Those are uncertain factors that could easily impact whether "projections" will be on target. The fees are based on market values and as a result of the current high growth in equity markets one may not project on target even with the best capital assumptions. Then not only does the Nation run the risk of dipping into Fund Principal but also not paying investment fees and those are some of the serious problems of utilizing projections.

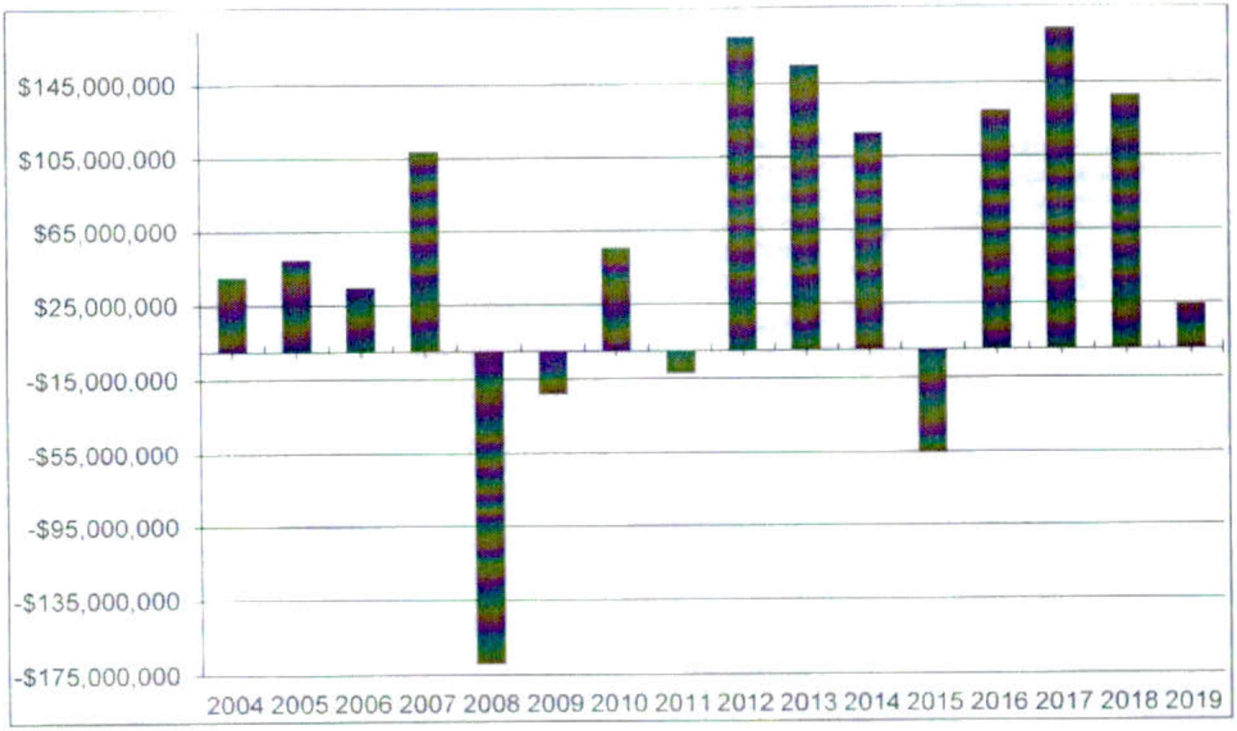
As one can imagine, using "projected" income and not "earned" income is problematic on a restrictive fund but there are other factors that should be considered when it comes to why this is a big ask of the Controller.

Nature of Investment Volatility and Market Changes
Volatility refers to the amount of uncertainty or risk related to the size of changes in the value of an investment. A higher volatility measure means that a security's value fluctuates at wider ranges. This means that the value of investments can change dramatically over a short time period in either direction. Simply put, it is not possible to predict the stock market or the level of potential volatility.

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT

The following graph demonstrates the historical volatility of the Fund through the amount of unrealized gains and losses reported in the financial statements. The fiscal year 2019 result is unaudited.



While the Fund has seen tremendous growth in its almost 30-year history, it has also experienced unexpected and even unprecedented losses. Imagine experiencing another 2008. How would the proposed legislation and a proposed Strategic Planning Fund address a shortfall is a question that should be heavily scrutinized. Once again, it is our job as leadership to think and plan conservatively as we all have fiduciary duties to act in the best interest of the Nation and its people.

Bond Ratings

Another aspect for consideration is our bond rating. The Nation received an issuer credit rating and a long-term rating on its general obligation bonds from Standard & Poor's (S&P), which are reaffirmed each year. Although the Nation only pledges its General Fund revenue to pay debt service, S&P considers the strength of the Permanent Fund as part of the reason for an upgrade in its bond rating and its stable outlook.

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Summary:

Navajo Nation, Arizona; General Obligation; Miscellaneous Tax

Credit Profile		
Navajo Nation GO rfdg bnds (Tax-exempt)		
Long Term Rating	A/Stable	Upgraded
Navajo Nation ICR		
Long Term Rating	A/Stable	Affirmed

Rationale

S&P Global Ratings raised its long-term rating to 'A' from 'BBB+' on the Navajo Nation's (headquartered in Window Rock, Ariz.) series 2015A general obligation (GO) refunding bonds. At the same time, S&P Global Ratings affirmed its 'A' issuer credit rating (ICR) on the Navajo Nation. The outlook is stable.

Rating factors

The rating reflects our opinion of the Nation's:

- Very strong reserves, supported by solid reserves when including the Nation's permanent fund and a self-created endowment fund (although not specifically pledged);
- Revenue-generating natural resource assets, coupled with additional revenue streams;
- Low debt burden; and
- Good management policies that support permanent fund growth.

S&P upgraded the Nation's favorable rating to "A/stable" based, in part, on the strong and conservative track record of our management of the Permanent Fund.

Utilizing long-term projections would be considered an increased risk to the Nation and may put our rating in jeopardy. This is an important consideration because the Nation is always looking to potential financing I.e., transportation bonds, judicial public safety bonds.

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Solution

Our Office was initially involved when the discussion was flipping the usage of the Fund income to first supplement the budget, then fund capital projects. Since then those discussions have turned over to using "projections" and creating a "Strategic Planning Fund". We've voiced concerns regarding the timing of the current 5-year plan which involves the usage of "actual" income earned. In that memorandum we explained that when the 5-year plan was passed in April 2016, the same discussion took place (Projections versus Actual/earned/realized). In FY 2016, FY 2015 Fund income was earned, audited, and used to set-up capital projects. Any excess income was then used to supplement the FY 2017 budget. At that point in time, conservatively and rightly so, the practice of using actuals was agreed upon. We are currently in the middle of the FY 2019 audit review and the fifth-year capital projects will utilize FY 2019 Fund income. Again, our office will calculate what the excess income will be, which will be available for FY 2021 Comprehensive Budget. This practice has been conservative, legal and without the usage of "projections". See Memorandum dated January 14, 2020. Our Office was also asked for limited input on this proposed legislation, but we believe the threshold matter of whether to use "projections" as a valid mechanism needs to be reconsidered.

Additionally, current leadership a year ago had the foresight to set aside $31 million during the budgeting process. Such amount was in part from Undesignated, Unreserved Fund Balance (UUFB) and non-recurring funds of (NGS retirement savings from extension lease). Together with the FY 2019 excess Fund Income and the $31 million can be utilized for the FY 2021 Comprehensive Budget, without resorting to usage of "projections". Why go down this complex road and increase the risk of dipping into Fund principle when there is an easy solution to address the specific purpose of finding funds for the FY 2021 Budget. Unless, there are other plans for the $31 million and the need to create monies that don't exist is the new approach.

To wait a year and do-nothing approach includes conservatively using actual Fund Income is the right approach for all the foregoing reasons. However, that seems like the unpopular recommendation because expending whether from Sihasin Fund, Permanent Trust Fund and UUFB seems to be the norm. The slippery slope of loosening up the Permanent Trust Fund purse is dangerous, unsustainable and problematic. Let's not get in the habit of playing with monies not yet earned, especially with the Permanent Fund.

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