

LEGISLATIVE SUMMARY SHEET

Tracking No. 0024-19

DATE: February 4, 2019

TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION;
AN ACTION RELATING TO NAABIK'ÍYÁTI' COMMITTEE; REQUESTING THE
GOVERNOR OF THE STATE OF NEW MEXICO TO RESCIND EXECUTIVE ORDER
2013-006

PURPOSE: The purpose of the resolution is to request that New Mexico Michelle Lujan Grisham rescind the former State of New Mexico Governor Susana Martinez issued Executive Order 2013-006 *Establishing Uniform Funding Criteria and Grant Management and Oversight Requirements for Grants of State Capital Outlay Appropriations by State Agencies to Other Entities.*

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

5-DAY BILL HOLD PERIOD: 2/13/19
Website Posting Time/Date: 6:57 PM / 02-08-19
Posting End Date: 2/13/19
Eligible for Action: 2/14/19

PROPOSED STANDING COMMITTEE RESOLUTION
24th NAVAJO NATION COUNCIL—FIRST YEAR, 2019

INTRODUCED BY



Primary Sponsor

TRACKING NO. 0024-19

AN ACTION

RELATING TO NAABIK'ÍYÁTI' COMMITTEE; REQUESTING THE
GOVERNOR OF THE STATE OF NEW MEXICO TO RESCIND EXECUTIVE
ORDER 2013-006

WHEREAS:

- A. The Navajo Nation established the Naabik'iyáti' Committee as a Navajo Nation Council standing committee and as such empowered the Naabik'iyáti' Committee to coordinate all state programs, including education in public schools. *See 2 N.N.C. §§ 700 (A), 701 (A)(6).*
- B. The Navajo Nation has a government-to-government relationship with the State of New Mexico.
- C. Former State of New Mexico Governor Susana Martinez issued Executive Order 2013-006 *Establishing Uniform Funding Criteria and Grant Management and Oversight Requirements for Grants of State Capital Outlay Appropriations by State Agencies to Other Entities*. Executive Order 2013-006 is attached hereto as **Exhibit A**.
- D. New Mexico Executive Order 2013-006 has resulted in a lengthy process for tribes to obtain state capital outlay funding. Rescinding Executive Order 2013-006 would streamline the capital outlay funding process. In addition, the Navajo Nation's capital outlay process provides for cost reimbursement.

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2 **THEREFORE, BE IT RESOLVED:**

3 A. The Navajo Nation hereby requests New Mexico Governor Michelle Lujan Grisham
4 rescind Executive Order 2013-006 ESTABLISHING UNIFORM FUNDING CRITERIA
5 AND GRANT MANAGEMENT AND OVERSIGHT REQUIREMENTS FOR
6 GRANTS OF STATE CAPITAL OUTLAY APPROPRIATIONS BY STATE
7 AGENCIES TO OTHER ENTITIES. Executive Order 2013-006 is attached hereto as
8 **Exhibit A.**

9 B. The Navajo Nation hereby authorizes the Speaker of the Navajo Nation Council,
10 President of the Navajo Nation, and their designees, to advocate the Navajo Nation's
11 request to rescind Executive Order 2013-006
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State of New Mexico

Susana Martinez
Governor

EXECUTIVE ORDER 2013-006

ESTABLISHING UNIFORM FUNDING CRITERIA AND GRANT MANAGEMENT AND OVERSIGHT REQUIREMENTS FOR GRANTS OF STATE CAPITAL OUTLAY APPROPRIATIONS BY STATE AGENCIES TO OTHER ENTITIES

WHEREAS, robust capital outlay oversight requires grantees' accounting methods and procedures, including their internal control framework, to be scrutinized, so as to safeguard State capital outlay appropriations and assets acquired with such appropriations; and

WHEREAS, timely annual audits, approved budgets, and financial reports are necessary to assess a grantee's accounting methods and procedures; and

WHEREAS, State agencies must critically examine annual audits to identify relevant material weaknesses and significant deficiencies and, where necessary and feasible, impose special conditions to address such weaknesses and deficiencies; and

WHEREAS, intended end-users of some State-funded projects are private entities, necessitating that such projects receive extra scrutiny and oversight to avoid unconstitutional donations of public capital to private entities; and

WHEREAS, the lack of annual audits and financial reports, material weaknesses and significant deficiencies, and private use of State-funded capital increase the risk that State capital outlay appropriations will be subject to fraud, waste, or abuse; and

WHEREAS, capital outlay processes vary among State agencies, which can cause confusion among grantees and result in best practices not being uniformly followed; and

WHEREAS, these risks and concerns can be avoided or minimized by establishing and requiring State agencies to follow a set of uniform minimum funding criteria focused on the accounting methods and procedures of grantees and grant management and oversight requirements; and

WHEREAS, among other statutory authority, the Department of Finance and Administration has the authority to "devise, formulate, approve, control and set standards for the accounting methods and procedures of all state agencies" (NMSA 1978, Section 6-5-2(A)); "prescribe procedures, policies and processing documents for use by state agencies in connection with fiscal matters" (NMSA 1978, Section 6-5-2(A)); "coordinate all procedures for financial administration and financial control and integrate them into an adequate and unified system" (NMSA 1978, Section

6-5-2.1(A)); and "make improvements in the state's model accounting practices, systems and procedures" (NMSA 1978, Section 6-5-2.1(Q)).

NOW, THEREFORE, I, Susana Martinez, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, do hereby order the following:

1. **Definitions.** As used in this Executive Order:

A. "annual audit" means the annual examination and audit of the financial affairs of an agency required by NMSA 1978, Section 12-6-3(A);

B. "DFA" means the Department of Finance and Administration;

C. "grant" means a non-exchange transaction whereby a State agency makes all or a part of a State capital outlay appropriation available to a grantee;

D. "grant agreement" means the written agreement pursuant to which a State agency grants all or a part of a State capital outlay appropriation to a grantee;

E. "grantee" means an entity to which a State agency grants or considers granting all or a part of a State capital outlay appropriation; and

F. "State agency" means any department, institution, board, bureau, commission, district or committee of the government of the state and means every office or officer of any of the above.

2. **Uniform Funding Criteria.**

A. Pursuant to the statutory authority cited above, DFA shall establish the following uniform funding criteria for a grantee to be eligible for a grant:

1. a grantee's annual audit for the most recently concluded fiscal year must be a public record pursuant to NMSA 1978, Section 12-6-5(A);

2. in the case of a grantee whose most recent annual audit, or special audit released since its most recent annual audit became a public record, documents material weaknesses or significant deficiencies that raise concerns about the grantee's ability to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired with grant funds:

a. the grantee must have remedied the material weaknesses and significant deficiencies to the satisfaction of the State agency making the grant;

b. the State agency making the grant must have determined that it can impose and has the resources to implement special grant conditions that adequately address those weaknesses and deficiencies; or

c. the State agency making the grant must have determined that another appropriate entity is able and willing to act as fiscal agent for the grant;

3. in the case of a grantee that is not required to have annual audits conducted under the Audit Act:

a. the grantee must have otherwise demonstrated to the satisfaction of the State agency making the grant that it has adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds;

b. the State agency must have determined that it can impose and has the resources to implement special grant conditions that will adequately address any relevant deficiencies in the grantee's accounting methods and procedures; or

c. the State agency must have determined that another appropriate entity is able and willing to act as fiscal agent for the grant; and

4. the grantee must have a budget approved by its oversight agency (if any) for the current fiscal year and be in compliance with any financial reporting requirements.

B. DFA shall require these uniform funding criteria to be met prior to allowing a State agency (i) to certify to the State Board of Finance for the issuance of severance tax bonds for a project or (ii) to make a grant to a grantee.

3. **Uniform Grant Management and Oversight Requirements.** Pursuant to the statutory authority cited above, DFA shall establish uniform grant management and oversight requirements that, at a minimum, require State agencies to:

A. ensure that sales, leases, and licenses of capital assets acquired with State capital outlay appropriations granted to a grantee are approved in accordance with law;

B. in the event no oversight agency is required to approve of the sale, lease, or license of capital assets acquired with State capital outlay appropriations granted to a grantee, independently confirm that such disposition complies with law and that the grantee is receiving adequate consideration in exchange for the capital assets;

C. utilize the appropriate capital outlay grant agreement template developed by DFA; and

D. conduct field audits of capital outlay projects, on a statistical or stratified basis, in accordance with procedures and policies prescribed by DFA.

4. **DFA Responsibilities.** DFA shall:

A. prescribe procedures, policies, and processing documents to implement the uniform funding criteria and uniform grant management requirements set forth in Paragraphs 2 and 3 of this Executive Order;

B. prescribe one or more capital outlay grant agreement templates for use by State agencies;

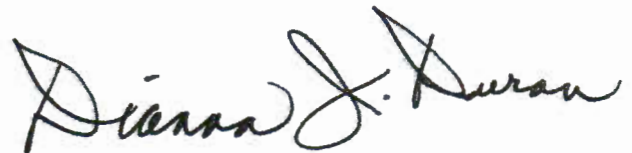
C. develop criteria for granting requests for deviations from its grant agreement templates and grant management and oversight requirements; and

D. monitor and enforce State agencies' compliance with the uniform funding criteria and uniform grant management and oversight requirements required by this Executive Order.

I DIRECT that this Executive Order supersedes any other previous orders, proclamations, or directives in conflict. This Executive Order shall take effect immediately and shall remain in effect until such time as the Governor rescinds it. This Executive Order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

SIGNED AT THE EXECUTIVE OFFICE THIS
2nd DAY OF MAY 2013.

ATTEST:



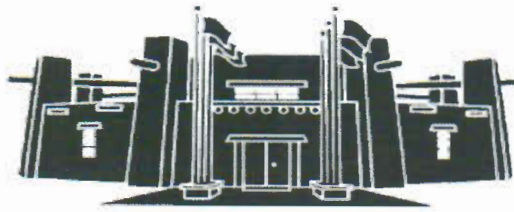
DIANNA J. DURAN
SECRETARY OF STATE

WITNESS MY HAND AND THE GREAT
OF SEAL OF THE STATE OF NEW MEXICO.



SUSANA MARTINEZ
GOVERNOR





MEMORANDUM

TO: Honorable Mark Freeland
Becenti, Lake Valley, Nahodishgish, Standing Rock, Whiterock, Huerfano,
Nageezi, Crownpoint Chapters

FROM: Mariana Kahn
Mariana Kahn, Attorney
Office of Legislative Counsel

DATE: February 4, 2019

SUBJECT: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION
RELATING TO NAABIK'ÍYÁTI' COMMITTEE; REQUESTING THE
GOVERNOR OF THE STATE OF NEW MEXICO TO RESCIND EXECUTIVE
ORDER 2013-006

As requested, 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. Please ensure that this 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 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).

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0024-19_____ SPONSOR: Mark Freeland

TITLE: An Action Relating to Naabik'íyáti' Committee; Requesting the Governor of the State of New Mexico to rescind Executive Order 2013-006

Date posted: February 8, 2019 at 6:57pm

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.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY**

LEGISLATION NO.: 0024-19

SPONSOR: Honorable Mark A Feeland

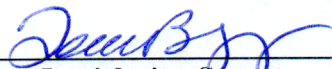
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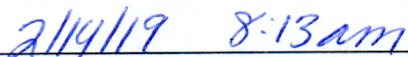
5 DAY Comment Period Ended: February 13, 2019

Digital Comments received:

Comments Supporting	None
Comments Opposing	<i>None</i>
Inconclusive Comments	<i>None</i>



**Legislative Secretary
Office of Legislative Services**



Date/Time