

LEGISLATIVE SUMMARY SHEET

Tracking No. 0058-20

DATE: February 21, 2020

TITLE OF RESOLUTION: AN ACT RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, NAABIK'ÍYÁTI' AND NAVAJO NATION COUNCIL; AMENDING VOTE PROVISIONS OF 24 N.N.C. § 605 (B), VOTE REQUIREMENT FOR ENACTMENT OF SALES TAX ORDINANCE BY LOCAL GOVERNANCE-CERTIFIED CHAPTER

PURPOSE: This resolution will amend 24 N.N.C. § 605(B), the Navajo Nation Tax Code. Regarding the enactment of sales taxes by local governance-certified chapters (within rates allowed), the requirement of a majority vote of registered voters will be changed to a majority of votes cast by registered voters (if proposed amendment approved).

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: 288
Website Posting Time/Date: 03/18/2020 11:51 AM
Posting End Date: 03/23/2020
Eligible for Action: 03/24/2020

Law & Order Committee
Thence
Resources & Development Committee
Thence
Budget & Finance Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL – Second Year, 2020

INTRODUCED BY



(Prime Sponsor)

TRACKING NO. 0058-20

AN ACT

RELATING TO LAW AND ORDER, RESOURCES AND DEVELOPMENT,
BUDGET AND FINANCE, NAABIK'ÍYÁTI' AND NAVAJO NATION COUNCIL;
AMENDING VOTE PROVISIONS OF 24 N.N.C. § 605 (B), VOTE REQUIREMENT
FOR ENACTMENT OF SALES TAX ORDINANCE BY LOCAL GOVERNANCE-
CERTIFIED CHAPTER

BE IT ENACTED:

SECTION ONE. AUTHORITY

A. The Law and Order Committee is a standing committee of the Navajo Nation Council with authority to "review and make recommendations to the Navajo Nation Council on proposed amendments to and enactments in the Navajo Nation Code." 2 N.N.C. §601(B)(14).

B. The Resources and Development Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 500(A). The committee, among other responsibilities, has oversight authority over chapter activities for certain purposes, including establishing policies and coordinating projects. See generally, 2 N.N.C. § 500(C)

C. The Budget and Finance Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 300(A). For purposes of coordinating fiscal policies of the Navajo

1 Nation, the committee, among other responsibilities, has oversight authority over “chapter
2 budget and finance” matters. 2 N.N.C. § 300 (C)(1).

3 D. The Naa'bik'íyáti' Committee is a standing committee of the Navajo Nation Council.
4 2 N.N.C. § 700(A). All proposed legislation requiring final action by the Navajo Nation
5 Council are assigned to the committee. 2 N.N.C. § 164 (A)(9).

6 E. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §
7 102.

8 9 **SECTION TWO. FINDINGS**

10 A. The Navajo Nation Local Governance Act provides:

11 “A chapter ballot measure shall be used for the adoption of an alternative form of
12 chapter governance, a municipal form of government, chapter subunits, local taxes and
13 fees, issuance of community bonds and compensation of chapter officials. Adoption of
14 a chapter ballot measure shall be in accordance with 11 N.N.C. §§ 401-408.” 26
15 N.N.C. § 2001(H).

16 B. Local Governance-certified chapters, subject to provisions of the Navajo Nation sales
17 tax statute, may enact sales tax ordinances. 24 N.N.C. § 605 (B). However, passage
18 of such ordinances under current law requires a majority vote of all registered voters
19 of a Local Governance-certified chapter.

20 C. The Navajo Commission on Government Development and the Navajo Tax
21 Commission support amending 24 N.N.C. § 605(B) to change the vote requirement to
22 votes cast by registered voters. See **Exhibit A** (CNCD-1205-19) and **Exhibit B**
23 (TAX-20-235), respectively.

24 D. A purpose of the Local Governance Act is to “recognize governance at the local
25 level.” 26 N.N.C. § 1(B)(1). It is necessary, and in the best interest of the Navajo
26 Nation, to amend the Navajo Nation Sales Tax statute to authorize Local Governance-
27 certified chapters to enact sales tax ordinances by a majority vote of registered voters
28 voting in a referendum or initiation election on the matter.

1 **SECTION THREE. AMENDING 24 N.N.C. § 605(B)**

2 The Navajo Nation hereby amends 24 N.N.C. § 605(B) as follows:

3
4 **§ 605. RATE OF TAX**

5 A. The tax imposed by this Chapter is imposed at a rate of not less than two
6 percent (2%), nor more than six percent (6%), which shall be specifically
7 established by promulgated by the Navajo Tax Commission. This tax shall
8 not be imposed on the purchase of fresh fruits, fresh vegetables and filtered
9 bottled water including nuts, nut butters, and seeds. Until another rate is
10 established, the rate shall be five percent (5%) of the applicable gross
11 receipts from all retail sales (.05 x applicable gross receipts).

12 B. ~~A majority of the registered voters of any governance-certified chapter may~~
13 ~~enact an ordinance imposing an additional tax rate in addition to the rate~~
14 ~~approved by the Navajo Tax Commission in accordance with paragraph A,~~
15 ~~above. Any Local Governance Act-certified chapter may enact a local sales~~
16 ~~tax ordinance, by an election on a referendum measure / initiative, imposing~~
17 ~~a local tax rate that shall be in addition to the Navajo Nation Sales Tax rate~~
18 ~~approved by the Navajo Tax Commission in accordance with paragraph A~~
19 ~~above, provided that the Chapter complies with requirements in the Uniform~~
20 ~~Local Tax Code, 24 N.N.C. § 150 et seq., the Local Governance Act, 26~~
21 ~~N.N.C. § 1 et seq., and the Navajo Election Code, 11 N.N.C. § 1 et seq.~~
22 ~~Passage of the chapter referendum measure / initiative shall require approval~~
23 ~~by a majority of votes cast in the election by eligible registered voters of the~~
24 ~~Local Governance Act-certified chapter, in accordance with 11 N.N.C. §~~
25 ~~406. This additional rate may be from one- quarter of one percent (.25%) to~~
26 ~~four percent (4%) and shall be set forth in the ordinance.~~

1 **SECTION FOUR. EFFECTIVE DATE**

2 This action of the Navajo Nation Council herein shall be effective pursuant to 2
3 N.N.C. § 221(B). Further, the "President's authority to sign into law or veto legislation
4 shall be deemed waived if not exercised within ten calendar days after certification of the
5 legislation by the Speaker or Speaker Pro Tem and the legislation shall be deemed
6 enacted and become effective pursuant to 2 N.N.C. §221." 2 N.N.C. § 1005(C)(12).

7
8 **SECTION FIVE. CODIFICATION**

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

12
13 **SECTION SIX. SAVINGS CLAUSE**

14 Should any provision of these amendments be determined invalid by the Navajo
15 Nation Supreme Court, or the District Courts of the Navajo Nation without appeal to the
16 Navajo Nation Supreme Court, those amendments that are not determined invalid shall
17 remain the law of the Nation.



**RESOLUTION OF THE
COMMISSION ON NAVAJO GOVERNMENT DEVELOPMENT**

**AN ACTION TO RECOMMEND AMENDMENTS TO 24 N.N.C § 605(B) SO CHAPTER TAX
ORDINANCES ARE APPROVED BY A MAJORITY OF VOTES CAST RATHER THAN A
MAJORITY OF REGISTERED VOTERS.**

WHEREAS:

1. Pursuant to CD-68-89, the Navajo Nation Council established the Commission ("Commission") on Navajo Government Development and Office of Navajo Government Development with the quasi-independent authority to accomplish the Navajo Nation Council's project of instituting reforms necessary to ensure an accountable and responsible government; and
2. Pursuant to 2 N.N.C § 971 (A), the purpose of the Commission on Navajo Government Development shall be as follows, "To review and evaluate all aspects of the existing government structure of the Navajo Nation including laws, rules and regulations, practices, functions, goals and objectives of the central government as it relates to Chapters, and local communities and the relationship of Chapters and local communities and the relationship of Chapters and local communities to the central government"; and
3. In January of 2018, the Navajo Nation Council enacted the Uniform Local Tax Code through Resolution CJA-12-18, codified at 24 N.N.C. §§ 150 *et seq.*, which created the requirements and process for governance-certified chapters to enact chapter taxes; and
4. Governance-certified chapters are authorized to impose chapter sales taxes pursuant to the Uniform Local Tax Code at 24 N.N.C. §§ 150 *et seq.*, the Sales Tax at 24 N.N.C. § 605(B), and the Local Governance Act at 26 N.N.C. § 103(E)(8), 26 N.N.C § 2001 (E) & (H); and
5. A sales tax is the only type of tax the Navajo Nation Council authorized governance-certified chapters to impose; and
6. A chapter's sales tax shall be in addition to the Navajo Nation Sales Tax and shall be at a rate of one quarter of one percent (.25%) to four percent (4%). 24 N.N.C. § 605(8); and
7. The vote requirements for enactment of chapter tax ordinances is contained at 24 N.N.C. § 605(B), 26 N.N.C. § 2001(H), and 11 N.N.C. § 406; and
8. 24 N.N.C. § 605(B) requires a majority of registered voters to approve a tax; and
9. The Commission and Office of Government Development recommend an amendment to 24 N.N.C § 605(B) so chapter tax ordinances are approved by a majority of votes cast rather than a majority of registered voters.

NOW THEREFORE IT BE RESOLVED:

1. The Commission and Office of Navajo Government Development hereby recommend an amendment to 24 N.N.C § 605(B) so chapter tax ordinances are approved by a majority of votes cast rather than a majority of registered voters.

CERTIFICATION

I certify the forgoing resolution was duly considered by the Commission on Navajo Government Development at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that same was passed by a vote of 5 in favor, 0 opposed, and 3 abstained, on this 17th day of December, 2019.


Shawnevan Dale, Vice-Chairperson
Commission on Navajo Government Development

Motion: Shawnevan Dale

Second: Anselm Morgan

LEGISLATIVE BRANCH
NAVAJO NATION



HONORABLE SETH DAMON
Speaker, 24th Navajo Nation Council

December 23, 2019

Jamie Henio, Chairman, Budget & Finance Committee
24th Navajo Nation Council
PO Box 3390
Window Rock, AZ 86515

Honorable Chairman Henio,

Yá'at'tééh! I hope this letter finds you in good spirit and health. On October 17, 2019 the Commission on Navajo Government Development ("Commission") passed Resolution No. CNGD-1205-19. This resolution is an action by the Commission to recommend amendments to 24 N.N.C § 605(B) to allow governance-certified Chapters enact their own tax ordinance if approved by a majority of votes cast in a local chapter referendum. The current standard requires that a governance-certified Chapter cannot enact a tax ordinance unless if it is approved by a majority of the Chapter's registered voters. The Commission forwards this recommendation pursuant to 2 N.N.C § 971(A).

The Commission seeks to amend the language in 24 N.N.C § 605(B) to empower governance-certified Chapters to enact tax ordinances that would enable them to generate their own revenue. The current standard described in 24 N.N.C § 605(B) requires that, "A majority of the registered voters of any governance-certified Chapter may enact an ordinance imposing an additional tax rate..." The Commission has determined this standard to be an immense barrier that unnecessarily prevents Chapters from enacting a tax ordinance that would benefit their Chapter communities.

In your collaboration with the Speaker of the Navajo Nation Council, the Office of Navajo Government Development faithfully requests that you be the primary sponsor for this legislation. The Commission greatly appreciates your consideration of this recommendation.

Attached to this letter are the following:

1. Resolution No. CNGD-1205-19

If you have any questions, please do not hesitate to contact me at (928) 871-6378. Thank you for your time and assistance.

Sincerely,


Edward K. Dee, Executive Director
Office of Navajo Government Development

xc: Hon. Seth Damon, Speaker of the Navajo Nation Council
File

RESOLUTION OF THE NAVAJO TAX COMMISSION

RECOMMENDING TO THE NAVAJO NATION COUNCIL,
THE APPROVAL OF AMENDMENTS TO THE SALES TAX STATUTE,
24 N.N.C. § 605(B), RELATED TO THE VOTING REQUIREMENT FOR
A LOCAL GOVERNANCE ACT-CERTIFIED CHAPTER TO ENACT
A LOCAL SALES TAX ORDINANCE

EXHIBIT

B

WHEREAS:

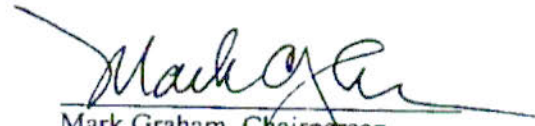
1. The Navajo Tax Commission is established as a part of the Executive Branch of the Navajo Nation government, and is empowered to review and study all sources of wealth and income within the Navajo Nation and the possible revenues from the taxation of those sources, in order to develop an appropriate, comprehensive system of taxation, 2 N.N.C. §§ 3351 and 3353(A)(1); and
2. The Navajo Nation Council enacted the Navajo Nation Sales Tax ("Sales Tax"), pursuant to Resolution No. CO-84-01, as amended by CJA-03-07, CO-38-09, CO-46-12, CAP-20-14, CO-62-17, CJA-07-18, and CO-74-18, codified at 24 N.N.C. § 601 *et seq.* (the "Sales Tax Statute"); and
3. The Sales Tax Statute, at 24 N.N.C. § 605(B), authorizes any Local Governance Act-certified Chapter to enact a local chapter sales tax ordinance; and
4. The Sales Tax Statute establishes the voting requirement for a LGA-certified Chapter to enact a chapter sales tax ordinance, as follows: "A majority of the registered voters of any governance-certified chapter may enact an ordinance imposing an additional tax rate in addition to the rate approved by the Navajo Tax Commission," 24 N.N.C. § 605(B); and
5. There is now a contention that the voting requirement to enact a chapter sales tax ordinance in 24 N.N.C. § 605(B) by "a majority of the registered voters in the chapter" should be amended to the lower voting standard in the Navajo Nation Election Code, 11 N.N.C. § 406(A), which only requires "a majority of voters who vote in the election;" and
6. The Navajo Tax Commission now proposes an amendment to the voting requirement for a LGA-Certified Chapter to enact a chapter sales tax ordinance, at 24 N.N.C. § 605(B), attached as Exhibit "A", and recommends that the Navajo Nation Council approve and adopt the proposed amendment.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Tax Commission hereby proposes an amendment to 24 N.N.C. § 605(B) of the Sales Tax Statute, attached as Exhibit "A".
2. The Navajo Tax Commission recommends that the Navajo Nation Council approve the amendment to the Sales Tax Statute, attached as Exhibit "A".

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tax Commission at a duly called meeting in St. Michaels, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 4 in favor and 0 opposed, with 0 abstaining, this 13th day of February, 2020.


Mark Graham, Chairperson
Navajo Tax Commission

Motion: Pearline Kirk
Second: Loretta Largo

- xc. NTC Resolution File
 ONTC Resolution File
 Navajo Nation Department of Justice
 Navajo Nation Office of Legislative Counsel
 The 24th Navajo Nation Council

SALES TAX STATUTE

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601. SHORT TITLE

The tax imposed by this Chapter shall be called the "Sales Tax."

602. PURPOSE

The Navajo Nation Council hereby enacts this tax for the privilege of engaging in business activity within the Navajo Nation, and for purposes of defraying necessary governmental expenses at the national and local level incurred in providing for the public welfare.

603. TAX IMPOSED

A tax is hereby imposed on the gross receipts of a person. The tax due for a period is determined by first calculating applicable gross receipts for a period, and then multiplying those gross receipts by the applicable tax rate.

604. LEGAL INCIDENCE AND RESPONSIBILITY FOR PAYMENT

The person liable for the payment of the tax imposed by this Chapter is the person receiving the gross receipts from a sale.

605. RATE OF TAX

- A. The tax imposed by this Chapter is imposed at a rate of not less than two percent (2%), nor more than six percent (6%), which shall be specifically established by promulgated by the Navajo Tax Commission. This tax shall not be imposed on the purchase of fresh fruits, fresh vegetables and filtered bottled water including nuts, nut butters, and seeds. Until another rate is established, the rate shall be five percent (5%) of the applicable gross receipts from all retail sales (.05 x applicable gross receipts).
- B. ~~A majority of the registered voters of any governance certified chapter may enact an ordinance imposing an additional tax rate in addition to the rate approved by the Navajo Tax Commission in accordance with paragraph A, above. Any Local Governance Act-certified chapter may enact a local sales tax ordinance, by an election on a referendum measure / initiative, imposing a local tax rate that shall be in addition to the Navajo Nation Sales Tax rate approved by the Navajo Tax Commission in accordance with paragraph A above, provided that the Chapter complies with requirements in the Uniform Local Tax Code, 24 N.N.C. § 150 et seq., the Local Governance Act, 26 N.N.C. § 1 et seq., and the Navajo Election Code, 11 N.N.C. § 1 et seq. Passage of the chapter referendum measure / initiative shall require approval by a majority of votes cast in the election by eligible registered voters of the Local Governance Act-certified chapter, in accordance with 11 N.N.C. § 406. This additional rate may be from one-quarter of one percent (.25%) to four percent (4%) and shall be set forth in the ordinance.~~

606. ADMINISTRATION

All provisions of the Uniform Tax Administration Statute apply to this Chapter.

607. DEFINITIONS

Subject to additional definitions (if any) contained in the subsequent sections of this Chapter, and unless the context otherwise requires, in this Chapter:

TAX-20-235
EXHIBIT "A"

- A. "Consideration" means any money or other pecuniary benefit, goods, personal or real property, services, or any combination thereof, which accrues as a right, profit, advantage, or benefit to a person, or which reflects a payment, detriment, loss, or responsibility of a person.
- B. "Construction activity" means any building, altering, repairing, installing, or demolishing in the ordinary course of business, whether a project is completed or not, any:
1. Road, highway, bridge, parking area, fence, livestock guard, gate, or related structure;
 2. Building, stadium, or other structure;
 3. Airport, railway, or similar transportation facility;
 4. Park, trail, athletic field, golf course, or similar facility;
 5. Dam, reservoir, canal, ditch, culvert, or similar facility;
 6. Sewerage or water treatment facility, power plant, pumping station, natural gas compressing station, gas processing plant and gathering lines, coal gasification plant, refinery, distillery, blending, or similar facility;
 7. Sewerage, water, coal, coal slurry, gas, or other pipeline;
 8. Transmission line;
 9. Radio, television, microwave, telephone, or other similar tower;
 10. Water, oil, gasoline, fuel or other storage tank;
 11. Shaft, tunnel, or other mining appurtenance;
 12. Microwave station, or similar facility;
 13. Leveling, clearing, or other preparation of land;
 14. Excavating of earth;
 15. Drilling of wells of any type, including seismograph shot holes or core drilling; or
 16. Any similar work or activity.
- C. "Employee" means a person in the service of another person under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.
- D. "Enterprise" means any non-corporate business entity created by action of the Navajo Nation Council.
- E. "Fair market value" means the amount of consideration at which personal or real property or services would change hands via an arms-length transaction between a willing buyer and a willing seller, or a willing lessor and a willing lessee, neither of whom is under any compulsion to act.
"Fair market value" is to be determined on the basis of consideration in comparable sales, leasing, or rental transactions. If such information is not available, the Office of the Navajo Tax Commission may estimate the fair market value of the subject of a transaction according to procedures established by regulations.
- F. "Fresh fruits and fresh vegetables" means produce in fresh form generally considered as perishable fruits and vegetables, whether or not packed in ice or held in common or cold storage.
- G. "General contract" means any legal duty, obligation, or responsibility, express or implied,

unilateral or bilateral, written or unwritten, which is entered into by a general contractor.

- H. "General contractor" means a person primarily responsible for the performance of a construction project pursuant to a contract.
A "General contractor" may enter into subcontracts, but remains primarily responsible for the management, planning, supervision, coordination, and performance of the contract.
- I. "Gross receipts" means the total amount of money, credit, or any other pecuniary benefit or advantage, plus the fair market value of any other consideration, which is actually received during any period by any person from the sale or leasing of real or personal property of any kind, the sale of services of any kind, and any other productive activity of any kind, whether for profit or not, conducted wholly or partially within the Navajo Nation. "Gross receipts" does not include the salary or wages of an individual engaged as an employee.
"Gross receipts" includes those amounts received for any and all personal or real property which is an integral, but not necessarily a significant or primary, component of the service(s) rendered, regardless of the date, time, manner, and location of sale, delivery, or use of such personal or real property.
"Gross receipts" includes those amounts received for any and all services which are an integral, but not necessarily a significant or primary, component of the sale or delivery of personal or real property, such as those amounts received as payment or reimbursement for costs of putting personal or real property into a finished and marketable form, payment for delivery and set-up, and payment for warranty or service contracts, regardless of the date, time, manner, or location of performance of such services(s).
"Gross receipts" does not include amounts received as reimbursement for federal, state, or Navajo Nation taxes.
- J. "Nut Butters" means ground nuts blended to make a paste or spread.
- K. "Nuts" means a fruit consisting of a hard or tough shell around an edible kernel.
- L. "Manufacturing activity" means combining or processing components or materials into a finished product, whether manually or mechanically, for the purpose of resale in the ordinary course of business, but does not include construction activity.
- M. "Navajo Nation " means all areas within the territorial jurisdiction of the Navajo Nation government.
- N. "Performance" means the partial or complete fulfillment or accomplishment of a promise, contract, or other obligation according to the terms of such promise or contract.
- O. "Period" means a calendar quarter.
- P. "Personal property" means any tangible property which may be seen, touched, weighed or measured, or is in any manner perceptible to the human senses, including, but not limited to, electricity, natural gas, goods or merchandise of any kind, goods purchased for consumption or other use, goods purchased for incorporation into other personal or real property, and goods purchased for use in the performance of any service, whether or not such goods are

consumable, movable, separable, affixed to, or incorporated into, other personal or real property, and whether or not such goods retain their original character upon final sale.

"Personal property" also means any intangible property which cannot be physically perceived by the human senses, such as patents, trademarks, copyrights, franchises, licenses, knowledge, information, ideas, advice, and other intangible items of value or legal rights of any kind.

- Q. "Sale" means any transaction, including a lease or rental, for consideration of any kind that results in the transfer of ownership and/or possession, delivery, use, or enjoyment of personal or real property, or the performance of any service.
A "Sale" includes circumstances where the title to personal or real property is retained as security for payment, and includes circumstances where no actual physical transfer of personal or real property or services occurs.
- R. "Sale for resale" means a sales transaction for purposes of any further sale, processing, manufacturing, or other commercial or industrial purposes, as distinguished from a retail sale.
- S. "Seeds" means the grains or ripened ovules of fruits, vegetables, or plants such as sunflower seeds, flax seeds, pumpkin seeds, mixed nuts without sugared candies.
- T. "Services" means manual, mechanical, or intellectual labor performed, and includes other business activity that does not have physical characteristics.
- U. "Subcontract" means any legal duty, obligation, or responsibility, express or implied, unilateral or bilateral, written or unwritten, between a general contractor and a subcontractor.
- V. "Subcontractor" means a person who takes from the general contractor a specific part of the work undertaken by the general contractor.
- W. "Water" means drinking water that has no added sugar or other artificial sweeteners. It includes artisan, fluoridated, mineral, purified, sparkling, spring, or sterile (distilled) water.

608. NAVAJO NATION GOVERNMENT

- A. Sales by corporations owned by the Navajo Nation government or any political sub-division thereof shall be fully subject to the tax imposed by this Chapter.
- B. Sales by the government of the Navajo Nation, or political subdivisions or enterprises thereof, shall be subject to the tax imposed by this Chapter according to the following schedule:
1. For all periods during calendar years 2001 and 2002, the Navajo Nation government, political subdivisions, and enterprises shall not be subject to the tax;
 2. For all periods during calendar year 2003, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to twenty-five percent (25%) of the rate imposed under § 605 of this Chapter;
 3. For all periods during calendar year 2004, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to fifty percent (50%) of the rate imposed under § 605 of this Chapter;

4. For all periods during calendar year 2005, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to seventy-five percent (75%) of the rate imposed under § 605 of this Chapter;
 5. For all periods during calendar year 2006 and all periods thereafter, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to one hundred percent (100%) of the rate imposed under § 605 of this Chapter.
- C. In cases where a person is partially owned by the Navajo Nation government or any of its political subdivisions or enterprises, gross receipts shall be prorated if necessary.

609. EXEMPTIONS AND EXCLUSIONS

- A. Nothing in this Chapter shall be construed as imposing a tax on the gross receipts of a subcontractor, provided that:
1. The general contractor with whom the subcontractor has contracted has reported and paid all taxes due under this Chapter, or has assumed liability for payment of all taxes due under this Chapter by signing and issuing a certificate of exemption to the subcontractor; and,
 2. The subcontractor must obtain from the general contractor a certificate of exemption issued to the general contractor by the Office of the Navajo Tax Commission. This certificate must be signed by the general contractor, and must indicate that the general contractor has reported and paid all taxes due under this Chapter, or has assumed liability for payment of all taxes due under this Chapter.
 3. The Commission may by form or regulation provide for the proper issuance and filing of the certificate of exemption.
- B. In calculating applicable gross receipts, a person may exclude those gross receipts on which any of the following Navajo Nation taxes have been paid:
1. Navajo Nation Oil and Gas Severance Tax;
 2. Navajo Tobacco Products Tax; or
 3. Navajo Nation Fuel Excise Tax.
- C. The tax imposed by this Chapter does not apply to gross receipts generated directly by the following:
1. Sales for resale;
 2. Sales related to agricultural, farming, or livestock activities conducted within the Navajo Nation;
 3. Sales, other than sales from an unrelated trade or business as defined in §§ 511 – 513 of the Internal Revenue Code,¹ by any person operating exclusively for non-profit or charitable purposes, and recognized as such pursuant to § 501(C)(3) and 501(C)(19) of the United States Internal Revenue Code² at the time of sale;
 4. Sales by facilities engaged in childcare, foster care or adoption placement, or battered families and homeless shelters;
 5. Sales of stocks, private or government-issued bonds, mutual funds, or other investments, including income received as dividends or interest;
 6. Sales by itinerant salespersons;
 7. Occasional sales by persons who are not regularly engaged in the business of selling

- personal or real property or services;
8. Sales by educational institutions, including primary and secondary schools, colleges, vocational, and job training programs;
 9. Sales by hospitals and health-care organizations or facilities, such as nursing care institutions, residential care and mental health facilities, senior citizen care facilities or retirement homes, kidney dialysis facilities and blood banks, or other facilities which provide medical care and services;
 10. Sales from coin-operated vending machines of any type;
 11. Sales related to traditional Native American ceremonies or services;
 12. Sales of prescription medicines, prosthetic devices, or other medical devices, including medical oxygen, monitoring devices, dentures, hearing aids, crutches, insulin syringes, blood sugar monitoring strips or devices, prescription eyeglasses and contact lenses, or any durable medical equipment primarily and customarily used for medical purposes and not useful in the absence of illness, injury, or other medical condition;
 13. Sales related to funerals and human burials;
 14. Sales paid for by coupons issued by the United States Department of Agriculture under the Food Stamp Act of 1977 (P.L. 95-113);³
 15. Sales paid for by vouchers issued under § 17 of the Child Nutrition Act (P.L. 95- 627 and P.L. 99-669);⁴
 16. Sales of newspapers or other daily publications; or
 17. Sales of mobile homes, motor homes, motor vehicles, tractors, and hauling trailers for private use, possession, or enjoyment, provided that such items are not resold or used in any business activity or service.
- D. Nothing in this Chapter shall be construed as imposing directly upon the United States a tax which is prohibited by federal law.
- E. Through December 31, 2005, a person may exclude from gross receipts any amount received from a transaction on which the Hotel Occupancy Tax has been paid.

610. CREDITS

A person may take a credit against the tax imposed by this Chapter for taxes paid pursuant to any nondiscriminatory excise tax imposed by any duly established township or local government subunit, provided that revenues from such excise tax are utilized to provide essential governmental services.

611. RESERVED

612. FILING OF RETURN

- A. Each person must file a return indicating all sales from applicable gross receipts and the tax due under this Chapter for each period by the fifteenth day of the second month after the end of each calendar quarter. Returns are due on May 15, August 15, November 15, and February 15 of each calendar year.

¹ 26 U.S.C. §§ 511 to 513.

² 26 U.S.C. § 501(c)(3) and (19)

- B. The Commission may by form or regulation require that other information, records or relevant documents which it deems necessary for the proper and efficient administration of this Chapter be included with the return, and that the return be signed by a specified person. No return need be filed by any person who is exempt under § 609, provided that the Office of the Navajo Tax Commission may require such person to file the information necessary to establish its exempt status.
- C. In the case of the exemption provided for in § 609(A), the filing by a person of a proper certificate of exemption with the Office of the Navajo Tax Commission shall constitute a claim for exemption.

613. PAYMENT OF TAX

Payment in full of the taxes owed for a particular period is due on the same date that the completed return for that same period is due. The Office of the Navajo Tax Commission, however, may require payment of any taxes due on a monthly basis.

614. RECORDKEEPING

A. Each person shall keep all records which pertain to or relate in any manner to all sales from any business activity engaged in at any time by such person. Such records shall be maintained separately for each reporting period during which a person is engaged in business activity.

B. Records required to be kept must be preserved for four years beyond the end of the period to which the records relate.

615. RESERVED

616. RESERVED

617. RESERVED

618. RESERVED

619. RESERVED

620. ALLOCATION OF REVENUE

After allocation to permanent or special revenue funds as required by Navajo Nation law, and allocation to the Tax Administration Suspense Fund as required by the fiscal policy adopted by the Navajo Tax Commission for such Fund, the net revenue from this Chapter shall be disbursed as follows:

³ 7 U.S.C. §2011 *et. seq.*
⁴ 42 U.S.C. § 1786

TAX-20-235
EXHIBIT "A"

- A. To the extent that any amount is collected pursuant to Section 605(B) above, that amount shall be transmitted by the Office of the Navajo Tax Commission to the chapter in a timely manner, to be expended in accordance with the ordinance referred to in Section 605(B), above.
- B. Except as otherwise provided in subsections (C) or (D), fifty percent (50%) of the revenue collected shall be deposited into the General Fund of the Navajo Nation, sixteen point six, six... percent (16.6666%) of the revenue collected shall be deposited into the Judicial/Public Safety Facilities Fund, eight point three, three... percent (8.3333%) of the revenue collected shall be deposited to the Scholarship Fund, and eight point three, three... percent (8.3333%) of the revenue shall be deposited to the Economic Development Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council, and the remaining sixteen point six, six... percent (16.6666%) of the reserve shall be deposited to the Fire and Rescue Services Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council.
- C. Fifty percent (50%) of the revenue collected from retail establishments located in the Navajo Nation shall be deposited into a trust fund to be appropriated pursuant to a plan of operation developed by the Office of Navajo Government Development and approved by the Budget and Finance Committee of the Navajo Nation Council; sixteen point six, six... percent (16.6666%) of the revenue collected shall be deposited into the Judicial/Public Safety Facilities Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council; eight point three, three... percent (8.3333%) of the revenue collected shall be deposited into the Scholarship Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council and eight point three, three... percent (8.3333%) of the revenue collected shall be deposited into the Economic Development Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council, and sixteen point six, six... percent (16.6666%) of the reserve shall be deposited to the Fire and Rescue Services Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council.
- D. Sixty-percent (60%) of the revenue collected from the Sales Tax revenue associated with construction of public water and wastewater systems shall be deposited into the Navajo Tribal Utility Authority Emergency Reserve Fund and the Navajo Tribal Utility Authority Replacement Reserve Fund in accordance with a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council. Monies from those funds will be expended in accordance with the fund management plan. Twenty percent (20%) of the revenue collected shall be deposited into the Judicial/Public Safety Facilities Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council; ten percent (10%) of the revenue collected shall be deposited into the Scholarship Fund to be appropriated pursuant to a fund management plan approved by the Budget and Finance Committee of the Navajo Nation Council; and ten percent (10%) of the revenue collected shall be deposited into the Economic Development Fund to be appropriated pursuant to a fund management plan approved by the Budget and

Finance Committee of the Navajo Nation Council.

621. NO CONFLICT WITH LOCAL GOVERNANCE ACT

The provisions of this Chapter and corresponding regulations shall not be construed inconsistently with the Local Governance Act, 26 N.N.C. §§1 – 2008.

622. SEVERABILITY

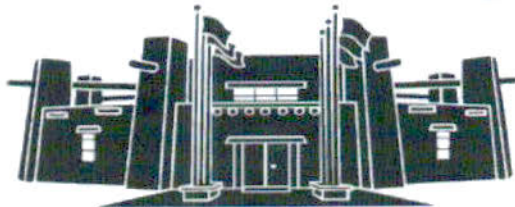
If any provision of this Chapter, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are severable.

623. EFFECTIVE DATE

~~This~~ The amendments enacted to this Chapter shall become effective January 1, 2013 pursuant to 2 N.N.C. § 221(B).

624. REPEALS

All laws or parts of laws (or attachments thereto) which are inconsistent with the provisions of this Chapter are hereby repealed, including, without limitation, any law purporting to waive any right of taxation by the Navajo Nation.



MEMORANDUM

To : Hon. Jamie Henio, Delegate
Navajo Nation Council

From : 
Ron Haven, Attorney
Office of Legislative Counsel

Date : February 21, 2020

Re : AN ACT RELATING TO LAW AND ORDER, RESOURCES AND
DEVELOPMENT, BUDGET AND FINANCE, NAABIK'ÍYÁTT' AND
NAVAJO NATION COUNCIL; AMENDING VOTE PROVISIONS OF 24
N.N.C. § 605 (B), VOTE REQUIREMENT FOR ENACTMENT OF SALES
TAX ORDINANCE BY LOCAL GOVERNANCE-CERTIFIED CHAPTER

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting.¹ Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient (at least to format). As with any legislation, it can be subject to review by the courts in the event of proper challenge. Also, the Speaker (or designee) may decide to assign the proposed resolution for other committees than those referenced in the title of the resolution. 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.

If you are satisfied with the proposed resolution, please sign it as "sponsor" and submit it to the Office of Legislative Services where it will be given a tracking number and sent to the Office of the Speaker for assignment.

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution. Ahéhee'.

OLC # 20-006-1

¹ At your request, the language suggested by the Navajo Department of Justice and the Navajo Tax Commission was used in this bill.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: 0058-20

SPONSOR: Jamie Henio

TITLE: An Act Relating to Law and Order, Resources and Development, Budget and Finance, Naabik'iyáti and Navajo Nation Council; amending vote provisions of 24 N.N.C. § 605 (B), Vote Requirement for enactment of Sales Tax ordinance by local governance-certified chapter

Date posted: March 18, 2020 at 11:51am

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.*