

LEGISLATIVE SUMMARY SHEET

Tracking No. 0040-22

**DATE:** February 17, 2022

**TITLE OF RESOLUTION:** AN ACT RELATING TO RESOURCES AND DEVELOPMENT, HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; ESTABLISHING THE SAN JUAN RIVER MITIGATION FUND; DIRECTING THAT MONIES RECEIVED FROM *IN RE: GOLD KING MINE RELEASE IN SAN JUAN COUNTY, COLORADO, ON AUGUST 5, 2015*, NO. 1:18-md-02824 (D.N.M.) AND UNDERLYING AND RELATED ACTIONS BE DEPOSITED IN THE SAN JUAN RIVER MITIGATION FUND AFTER REIMBURSEMENT OF LITIGATION COSTS

**PURPOSE:** This resolution, if approved, will establish the San Juan River Mitigation Fund as a depository for the litigation and settlement funds stemming from the numerous Gold King Mine litigations. The resolution also set forth the process and criteria for expenditures from the Fund.

**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.**

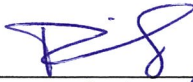
5-DAY BILL HOLD PERIOD: Johnson  
Website Posting Time/Date: 4:40pm; 02-22-22  
Posting End Date: 02-27-22  
Eligible for Action: 02-28-22

Resources & Development Committee  
Thence  
Health Education & Human Services Committee  
Thence  
Law & Order Committee  
Thence  
Budget & Finance Committee  
Thence  
Naabik'iyáti' Committee  
Thence  
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

24<sup>th</sup> NAVAJO NATION COUNCIL – Fourth Year, 2022

INTRODUCED BY



Rick Nez  
(Prime Sponsor)

TRACKING NO. 0040-22

AN ACT

RELATING TO RESOURCES AND DEVELOPMENT, HEALTH,  
EDUCATION AND HUMAN SERVICES, LAW AND ORDER, BUDGET AND  
FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO  
NATION COUNCIL; ESTABLISHING THE SAN JUAN RIVER  
MITIGATION FUND; DIRECTING THAT MONIES RECEIVED FROM *IN  
RE: GOLD KING MINE RELEASE IN SAN JUAN COUNTY, COLORADO, ON  
AUGUST 5, 2015, NO. 1:18-md-02824 (D.N.M.)* AND UNDERLYING AND  
RELATED ACTIONS BE DEPOSITED IN THE SAN JUAN RIVER  
MITIGATION FUND AFTER REIMBURSEMENT OF LITIGATION COSTS

BE IT ENACTED:

SECTION ONE. AUTHORITY.

A. The Navajo Nation Council is the governing body of the Navajo Nation and empowered to enact positive law of the Navajo Nation. 2 N.N.C. §§ 102(A) and 164(A). The Council also has the statutory authority to designate deposit of additional revenues. 12 N.N.C. § 820(K) (“Funds received in excess of the initial or current revenue projection shall be deposited into the General Fund Unreserved, Undesignated Fund Balance unless otherwise designated by the Navajo Nation Council.”).

- 1 B. The Health, Education and Human Services Committee is a standing committee of the  
2 Navajo Nation Council and is empowered to review and recommend resolutions  
3 relating to social services, health, environmental health, education, veterans and  
4 veterans' services, employment and labor. 2 N.N.C. §§ 400(A) and 401(b)(6)(a).
- 5 C. The Resources and Development Committee is a standing committee of the Navajo  
6 Nation Council and is empowered to exercise oversight over water, land, environment,  
7 environmental protection, and agriculture, among other matters, and to make  
8 recommendations to the Navajo Nation Council for final approval of resolutions  
9 requiring Navajo Nation Council approval to accomplish or impact the Committee  
10 purposes. 2 N.N.C. §§ 500(A) and (C) and 501(B)(4)(f).
- 11 D. The Budget and Finance Committee of the Navajo Nation Council is empowered to  
12 review and recommend to the Navajo Nation Council the budgeting, appropriation,  
13 investment, and management of all funds and to approve Fund Management Plans  
14 pursuant to the recommendations of the appropriate oversight committee and affected  
15 Division or Branch. 2 N.N.C. §§ 301(B)(2) and (14).
- 16 E. The Law and Order Committee is a standing committee of the Navajo Nation Council  
17 and is empowered with the authority to review and make recommendations to the  
18 Navajo Nation Council on amendments to and enactments in the Navajo Nation Code.  
19 2 N.N.C. §§ 600(A), and 601(B)(14).
- 20 F. The Naabik'íyáti' Committee of the Navajo Nation Council is empowered to review  
21 all proposed legislation which requires final action by the Navajo Nation Council. 2  
22 N.N.C. § 164(A)(9).
- 23 G. The Navajo Nation Environmental Protection Agency, a regulatory agency within the  
24 Executive Branch of the Navajo Nation Government, is responsible for the protection  
25 of public health and the Navajo Nation environment. RDCMY-44-17. This includes  
26 the prevention, reduction, and elimination of pollution of the waters of the Navajo  
27 Nation, and the restoration, preservation, and enhancement of land and water resources  
28 within the Navajo Nation. 4 N.N.C. § 1303.

29  
30 **SECTION TWO. FINDINGS.**

- 1 A. On August 5, 2015, the United States Environmental Protection Agency (“U.S. EPA”)  
2 and its contractors triggered a blowout of the Gold King Mine near Silverton, CO, while  
3 excavating the mine in preparation for a possible cleanup.
- 4 B. The blowout released at least three million gallons of toxic acid mine wastewater into  
5 Cement Creek, a tributary of the Animas River which flows into the San Juan River  
6 and through the Navajo Nation. At least 880,000 pounds of heavy metals poured out  
7 and coursed through downstream waterways, including approximately two hundred  
8 miles of the San Juan River.
- 9 C. Prior to the spill, the San Juan River provided water to many Navajo farmers and  
10 ranchers for irrigation of crops, livestock drinking water, and personal drinking water.  
11 The San Juan River is and remains not only an important water resource for agricultural  
12 use, but also of great cultural significance for the Diné people.
- 13 D. As a result of the spill, water utilities were forced to shut down intake valves, and  
14 farmers stopped drawing from the rivers as the plume moved downstream. One of the  
15 Navajo people’s most important sources of water for life and livelihood was poisoned  
16 with some of the worst contaminants known to man, including lead and arsenic. The  
17 impact of this environmental disaster cannot be overstated. On August 8, 2015, the  
18 Navajo Nation declared a State of Emergency for the San Juan River valley.
- 19 E. In addition, the Navajo Nation Environmental Protection Agency (“NN EPA”)  
20 conducted water quality monitoring and ecological restoration activities including,  
21 among other things, sediment sampling and a fish tissue contaminant study to  
22 understand contaminant levels and potential human health risks associated with the  
23 spill.
- 24 F. NN EPA also developed a report on livestock and irrigation water quality standards,  
25 tracked metal sources through ongoing studies, created a communication strategy,  
26 assessed and stored analytical water quality data, and assisted the U.S. EPA and the  
27 U.S. Geological Survey with other technical studies.
- 28 G. In the months immediately after the spill, the U.S. EPA publicly acknowledged its fault.  
29 Additionally, two different Congressional committees found the U.S. EPA to be at fault  
30 for the spill.

- 1 H. On August 16, 2016, the Navajo Nation filed a lawsuit against the U.S. EPA and its  
2 contractors, as well as several mining companies, in the US District Court for the  
3 District of New Mexico (*Navajo Nation v. USEPA, et al.*, No. 1:16-cv-00931  
4 (D.N.M.)). The lawsuit seeks recovery for damages caused by the August 2015 spill,  
5 as well as reimbursement for costs spent responding to the spill. The Navajo Nation's  
6 case was eventually consolidated into *In re Gold King Mine Release in San Juan*  
7 *County, Colorado on August 5, 2015*, 1:18-md-02824 (D.N.M.) (the "Consolidated  
8 Case") with similar suits brought by the States of New Mexico and Utah.
- 9 I. In September 2016, the U.S. EPA designated the Gold King Mine and 47 other mining  
10 sites in the area a Superfund cleanup district. The U.S. EPA worked with Navajo  
11 Nation Department of Emergency Management to provide alternative drinking,  
12 agricultural, and livestock water and feed.
- 13 J. In December 2016, the Nation submitted an administrative claim to the U.S. EPA under  
14 the Federal Tort Claims Act, a prerequisite to suing the United States in tort, in the  
15 amount of approximately \$160 million.
- 16 K. In addition, claims on behalf of approximately 300 individual Navajo tribal members  
17 remain pending in *Allen et al. v. United States, et al.*, 1:18-CV-00744 (D.N.M.). These  
18 claims were filed in a separate 2018 lawsuit by the Egolf Ferlic Martinez & Harwood  
19 Law Firm, and are also coordinated into the Consolidated Case, *In re Gold King Mine*  
20 *Release in San Juan County, Colorado on August 5, 2015*, 1:18-md-02824 (D.N.M.).
- 21 L. On May 11, 2018, the Nation filed a First Amended Complaint to the Consolidated  
22 Case adding the United States as a named defendant.
- 23 M. In January 2021, the Nation announced that it had reached a settlement in the  
24 Consolidated Case with the defendant mining companies, Kinross Gold Corp., Kinross  
25 Gold U.S.A., Inc., and Sunnyside Gold Corp., a subsidiary of Canada's Kinross Gold,  
26 in the amount of ten million dollars (\$10,000,000) million to resolve claims from the  
27 2015 spill. (Which case was settled or partially settled?)
- 28 N. The Nation's lawsuit against the remaining Defendants of the Consolidated Case  
29 including the U.S. EPA and its contractors who caused the spill remains ongoing.  
30

1     **SECTION THREE. ESTABLISHING THE NAVAJO NATION SAN JUAN**  
2     **RIVER MITIGATION FUND.**

3     The Navajo Nation hereby establishes the Navajo Nation San Juan River Mitigation Fund  
4     and approves its enabling legislation as follows:

5     \_\_\_\_\_  
6  
7                     **Title 12. Fiscal Matters**

8                     **Chapter 29. Navajo Nation San Juan River Mitigation Fund**

9  
10     **§ 2901. Establishment**

11     There is established the “Navajo Nation San Juan River Mitigation Fund”, hereinafter  
12     referred to as “Fund”.

- 13     A. The Navajo Nation Council hereby designates that any and all net proceeds and  
14     earnings awarded to the Navajo Nation by or through the litigation captioned *In re:*  
15     *Gold King Mine Release in San Juan County, Colorado, on August 5, 2015*, No. 1:18-  
16     md-02824 (D.N.M.), or any of its underlying or related actions, including but not  
17     limited to *Navajo Nation v. USEPA, et al.*, No. 1:16-cv-00931 (D.N.M.) and *New*  
18     *Mexico v. USEPA, et al.*, No. 1:16-cv-00465 (D.N.M.), shall be deposited into the Fund  
19     after the Fixed Cost Litigation Account has been reimbursed for the actual costs of said  
20     litigation(s), as calculated and attested to by the Attorney General of the Navajo Nation.  
21     B. The Navajo Nation Council may make additional appropriations to the Fund from any  
22     other sources of revenue, including directed donations, that become available to the  
23     Navajo Nation.  
24     C. Any money deposited in or appropriated to the Fund, regardless of source, including  
25     earnings thereon, shall be used only as provided herein.  
26     D. The Fund shall be a continuing account and shall not lapse on an annual basis pursuant  
27     to 12 N.N.C. § 820(N).

28  
29     **§ 2902. Purpose**  
30

- 1 A. The purpose(s) of this Fund are to finance environmental technical studies, water  
2 quality monitoring activities, and/or preventative and corrective measures, all of  
3 which are necessary to address potential contamination and related issues in the San  
4 Juan River, and implement a NNEPA communication strategy.
- 5 B. Expenditures from the Fund shall not be subject to or limited by 12 N.N.C. § 810(F) of  
6 the Appropriations Act, 12 N.N.C. § 1310(F) of the Bond Financing Act, or the Capital  
7 Improvement Project Guidelines, Policies, and Procedures approved through  
8 TCDCJY-77-99.

9

10 **§ 2903. Reimbursement of Litigation Costs**

- 11 A. The Navajo Nation Department of Justice shall be reimbursed for the actual litigation  
12 costs and expenses expended in *In re: Gold King Mine Release in San Juan County,*  
13 *Colorado, on August 5, 2015*, No. 1:18-md-02824 (D.N.M.) and any underlying and  
14 related actions, including but not limited to *Navajo Nation v. USEPA, et al.*, No. 1:16-  
15 cv-00931 (D.N.M.), *New Mexico v. USEPA, et al.*, No. 1:16-cv-00465 (D.N.M.), and  
16 *Allen et al. v. United States, et al.*, 1:18-CV-00744 (D.N.M.), as calculated and attested  
17 to by the Attorney General, from any and all settlements and awards stemming from  
18 such litigation.
- 19 B. All monies awarded to the Department of Justice in Section 5(A) of this Act shall be  
20 deposited into the Fixed Cost Litigation Account, prior to any monies being deposited  
21 into the Fund.

22

23 **§ 2904. Investment of the Fund**

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

29

30 **§ 2905 Definition of Fund Principal and Income**

1 A. "Fund Principal" shall consist of all deposits made to the Fund pursuant to Section 3 of  
2 this Act.

3 B. "Fund Income" shall consist of all earnings (interest, dividends, etc.) generated and  
4 realized through the investment of the Fund Principal. Realized Fund Income shall be  
5 added to the Fund Principal after Fund management and administration expenses, as  
6 set forth in this Act, have been deducted.

7  
8 **§ 2906. Expenditure of the Fund**

9 A. The Fund Principal and Income shall only be expended pursuant to an annual or multi-  
10 year expenditure plan recommended by the Executive Director of the Navajo Nation  
11 Environmental Protection Agency and approved by the Resource and Development and  
12 Budget and Finance Committees by resolution.

13 B. Any changes or modifications to an approved expenditure plan shall be approved by  
14 the Resource and Development Committee and Budget and Finance Committee by  
15 resolution upon the recommendation of the Executive Director of the Navajo Nation  
16 Environmental Protection Agency.

17 C. Any Fund amounts, whether Fund Principal or Fund Income, not included in an  
18 expenditure plan, shall remain invested as set forth herein.

19  
20 **§ 2907. Annual Audit**

21 The Fund shall be audited annually by independent auditors and within 180 days of the end  
22 of each fiscal year. An audit report shall be distributed to the members of the Navajo  
23 Nation Council and the Navajo Nation President and Vice-President.

24  
25 **§ 2908. Expenses**

26 All expenses directly with the administration and management of the Fund shall be paid  
27 from the Fund Income. Such expenses shall include investment advisory and management  
28 fees, audit costs, and other related expenses, all pursuant to duly approved contracts for  
29 such services.



1 **§ 2909. Amendments**

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

5  
6 **§ 2910. Termination**

7 The Fund shall expire and terminate when all Fund Principal and Fund Income have been  
8 expended.

9  
10  
11 **SECTION FOUR. CODIFICATION.**

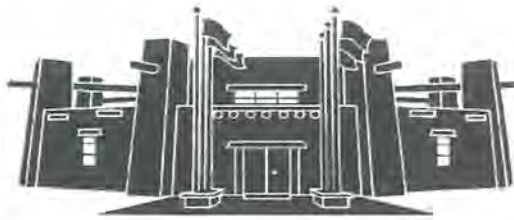
12 The provisions of this Act which amend or adopt new sections of the Navajo Nation Code  
13 shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel  
14 shall incorporate such amended provisions in the next codification of the Navajo Nation  
15 Code.

16  
17 **SECTION FIVE. SAVINGS CLAUSE.**

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


21  
22 **SECTION SIX. EFFECTIVE DATE.**

23 This Act is effective upon its approval pursuant to 2 N.N.C. § 221(B).  
24  
25  
26  
27  
28  
29  
30



## MEMORANDUM

TO: Honorable Rickie Nez  
Navajo Nation Council

FROM:   
Dana L. Bobroff, Chief Legislative Counsel  
Office of Legislative Counsel

DATE: February 17, 2022

SUBJECT: **AN ACT RELATING TO RESOURCES AND DEVELOPMENT, HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; ESTABLISHING THE SAN JUAN RIVER MITIGATION FUND; DIRECTING THAT MONIES RECEIVED FROM *IN RE: GOLD KING MINE RELEASE IN SAN JUAN COUNTY, COLORADO, ON AUGUST 5, 2015*, NO. 1:18-md-02824 (D.N.M.) AND UNDERLYING AND RELATED ACTIONS BE DEPOSITED IN THE SAN JUAN RIVER MITIGATION FUND AFTER REIMBURSEMENT OF LITIGATION COSTS**

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: \_0040-22\_

SPONSOR: Rickie Nez

**TITLE: An Act Relating to Resources and Development, Health, Education and Human Services, Law and Order, Budget and Finance, and Naabik'íyáti' Committees and the Navajo Nation Council; Establishing the San Juan River Mitigation Fund; Directing that Monies Received from In Re: Gold King Mine Release In San Juan County, Colorado, on August 5, 2015, NO. 1:18-md-02824 (D.N.M.) and Underlying and Related Actions Be Deposited in the San Juan River Mitigation Fund After Reimbursement of Litigation Costs**

***Date posted:*** February 22, 2022 at 4:40 PM

**Digital comments may be e-mailed to [comments@navajo-nsn.gov](mailto: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) 871-7586**

**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.: 0040-22**

**SPONSOR: Honorable Rickie Nez**

**TITLE: An Act Relating to Resources and Development, Health, Education and Human Services, Law and Order, Budget and Finance, and Naabik'iyáti' Committees and the Navajo Nation Council; Establishing the San Juan River Mitigation Fund; Directing that Monies Received from In Re: Gold King Mine Release In San Juan County, Colorado, on August 5, 2015, NO. 1:18-md-02824 (D.N.M.) and Underlying and Related Actions Be Deposited in the San Juan River Mitigation Fund After Reimbursement of Litigation Costs**

**Posted: February 22, 2022 at 4:40 PM**

**5 DAY Comment Period Ended: February 27, 2022**

**Digital Comments received:**

<b>Comments Supporting</b>	<i>None</i>
<b>Comments Opposing</b>	<i>None</i>
<b>Comments/Recommendations</b>	<i>None</i>

  
\_\_\_\_\_  
**Legislative/Tracking Secretary  
Office of Legislative Services**

**February 28, 2022; 9:32 AM**  
**Date/Time**

**RESOURCES AND DEVELOPMENT COMMITTEE  
24th NAVAJO NATION COUNCIL**

**FOURTH YEAR 2022**

**COMMITTEE REPORT**

Mr. Speaker,

The **RESOURCES AND DEVELOPMENT COMMITTEE** to whom has been assigned:

**LEGISLATION #0040-22:** AN ACT RELATING TO RESOURCES AND DEVELOPMENT, HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; ESTABLISHING THE SAN JUAN RIVER MITIGATION FUND; DIRECTING THAT MONIES RECEIVED FROM *IN RE: GOLD KING MINE RELEASE IN SAN JUAN COUNTY, COLORADO, ON AUGUST 5, 2015*, NO. 1:18-MD-02824 (D.N.M.) AND UNDERLYING AND RELATED ACTIONS BE DEPOSITED IN THE SAN JUAN RIVER MITIGATION FUND AFTER REIMBURSEMENT OF LITIGATION COSTS.      *Sponsor: Honorable Rickie Nez      Co-Sponsor: Honorable Seth Damon*

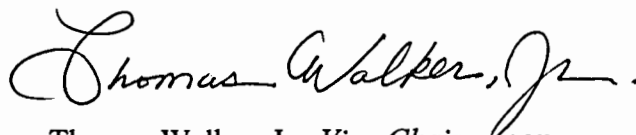
Has had it under consideration and reports a **DO PASS** with one (1) amendment.

**AMENDMENT #1:**

1.      On page 4, line 27, delete ~~(Which case was settled or partially settled?~~
2.      Renumber or re-letter succeeding paragraphs, sections, and/or exhibits accordingly, if necessary; and this amendment shall supersede inconsistent language contained in any other committee amendment, which shall be conformed to the intent or language of this amendment. The Office of Legislative Services, with notice to the sponsor(s) of the Legislation, is hereby authorized to make necessary grammatical changes.

And thereafter the legislation was referred to the Health, Education & Human Services Committee.

Respectfully submitted,



Thomas Walker, Jr., *Vice-Chairperson*  
Resources and Development Committee of  
the 24th Navajo Nation Council

Date: March 2, 2022 – Regular Meeting (Teleconference)  
Location: Resources and Development Committee also called in via teleconference from their location within the boundary of the Navajo Nation.

**Main Motion:**

**M:** Wilson C. Stewart, Jr.                      **S:** Kee Allen Begay, Jr.                      **V:** 5-0-1 (VCNV)  
**In Favor:** Rickie Nez; Kee Allen Begay, Jr.; Herman M. Daniels; Mark A. Freeland; Wilson C. Stewart, Jr.  
**Opposition:** None  
**Excuse:** None  
**Not Voting:** Thomas Walker, Jr., *Vice-Chairperson*

**Amendment #1 Motion:**

**M:** Mark A. Freeland                      **S:** Wilson C. Stewart, Jr.                      **V:** 5-0-1 (VCNV)  
**In Favor:** Rickie Nez; Kee Allen Begay, Jr.; Herman M. Daniels; Mark A. Freeland; Wilson C. Stewart, Jr.  
**Opposition:** None  
**Excuse:** None  
**Not Voting:** Thomas Walker, Jr., *Vice-Chairperson*

(NOTE: VOTE TALLY attached hereto)



Resources and Development Committee

*Rodney L. Tahe*

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Rodney L. Tahe, *Legislative Advisor*  
Office of Legislative Services