

## LEGISLATIVE SUMMARY SHEET

Tracking No. 0308-19

**DATE:** October 1, 2019

**TITLE OF RESOLUTION:** AN ACTION RELATING TO LAW AND ORDER COMMITTEE, RESOURCES AND DEVELOPMENT COMMITTEE, BUDGET AND FINANCE COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION COUNCIL; ALLOCATING \$12,000,000.00 FROM THE SÍHASIN FUND TO THE KAYENTA JUDICIAL COMPLEX AND APPROVING AND ADOPTING THE KAYENTA JUDICIAL COMPLEX FUND EXPENDITURE PLAN PURSUANT TO 12 N.N.C §§ 2501 – 2508

**NOTE:** The Navajo Nation Department of Justice provide a memorandum that Exhibit 2 of this legislation is confidential.

**PURPOSE:** The purpose of this legislation is to approve and adopt funding for the Kayenta Judicial Complex from the Sihasin Fund.

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: 2800  
Website Posting Time/Date: \_\_\_\_\_  
Posting End Date: 10/12/19  
Eligible for Action: 10/13/19

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

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

24<sup>th</sup> NAVAJO NATION COUNCIL – First Year, 2019

INTRODUCED BY



(Prime Sponsor)

TRACKING NO. 0308-19

AN ACTION

RELATING TO LAW AND ORDER COMMITTEE, RESOURCES AND  
DEVELOPMENT COMMITTEE, BUDGET AND FINANCE COMMITTEE,  
NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION COUNCIL; ALLOCATING  
\$12,000,000.00 FROM THE SÍHASIN FUND TO THE KAYENTA JUDICIAL  
COMPLEX AND APPROVING AND ADOPTING THE KAYENTA JUDICIAL  
COMPLEX FUND EXPENDITURE PLAN PURSUANT TO  
12 N.N.C §§ 2501 – 2508

BE IT ENACTED:

**Section One. Authority**

- A. The Law and Order Committee of the Navajo Nation Council is empowered to serve as the oversight authority for the Division of Public Safety and the Judicial Branch Navajo Nation. 2 N.N.C. § 600 (C)(6).
- B. The Budget and Finance Committee of the Navajo Nation Council is empowered to review and recommend to the Navajo Nation Council the budgeting, appropriation, investment, and management of all funds. 2 N.N.C. § 301(B)(2).
- C. The Naabik'iyati' Committee of the Navajo Nation Council is empowered to review all proposed legislation which requires final action by the Navajo Nation Council. 2 N.N.C. § 164(A)(9).

1 D. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §  
2 102 (A).

3 E. The Navajo Nation Code provides the purpose of the Navajo Nation Síhasin Fund  
4 (“Síhasin Fund”) is as follows:

5 § 2502 Purpose

6 A. The purposes of this Fund are to provide financial support and/or  
7 financing for:

8 1. The planning and development of economic development  
9 and regional infrastructure supporting economic  
10 development, and community development, including such  
11 infrastructure as, but not limited to, housing, commercial  
12 and government buildings, waterline, solid waste  
13 management development, powerline projects, and  
14 transportation and communication systems, within the  
15 Navajo Nation; and

16 2. Education opportunities for members of the Navajo  
17 Nation.

18 B. For the Purpose in § 2502(A)(1), Fund expenditures for  
19 infrastructure shall not be limited by 12 NNC § 1310(F) or  
20 TCDCJY-77-99.

21 C. Leveraging the Fund by way of guaranteeing loans, match  
22 funding, direct funding in part, and other weighted uses of the  
23 Fund, including loan financing from the Fund, for the purposes  
24 in § 2502(A)(1), shall be favored over direct funding in whole.

25 12 N.N.C. § 2502, as amended by CJA-03-18.

26 F. The Síhasin Fund provides that “Fund Principal” shall consist of all deposits made  
27 to the Síhasin Fund and that “Fund Income” shall consist of all earnings (interest,  
28 dividends, etc.) generated and realized by the Fund Principal, and that Fund  
29 Income shall be deposited in and added to Fund Principal until such time as a  
30 Fund Expenditure Plan is duly adopted. 12 N.N.C. §§ 2504 and 2505 (C).

1  
2 **Section Two. Findings**

- 3 A. The Kayenta Township ("Township") was permanently made a home rule  
4 municipality of the Navajo Nation by Navajo Nation Council Resolution CAU-  
5 47-03 (August 29, 2003).
- 6 B. The Kayenta Township Commission ("KTC"), the Township's governing body,  
7 was given broad authority to perform all functions necessary for local self-  
8 government consistent with generally applicable laws of the Navajo Nation and the  
9 federal government. 2 N.N.C. §§ 4081 and 4084.
- 10 C. The Kayenta Judicial District (the "District") covers approximately 2,439,395  
11 acres with a population of over 19,240 residents. Growth and economic  
12 development initiatives within the Kayenta Judicial District, has created the need  
13 to enhance and expand the availability and delivery of judicial service, including  
14 the need for a new public safety and judicial facility in the District.
- 15 D. Since 2001, the KTC, Kayenta Chapter Administration, the Kayenta Judicial  
16 District, and Kayenta Public Safety personnel have been working on a four phase  
17 master plan for the construction of a new public safety and judicial complex (the  
18 "Project") for the District. These entities have obtained community support from  
19 the seven chapters in the district for the Project and secured the necessary land use  
20 clearances, including an archeological survey and an environmental assessment.
- 21 E. The first two phases of the Project were funded through the use of an  
22 appropriation from the United States Congress (ARRA or "stimulus" funds"),  
23 which were accepted by the Navajo Nation on September 23, 2009. The new  
24 Department of Corrections and Public Safety facilities had their grand opening on  
25 June 04, 2015. However, the last two phases of the Project for the Juvenile  
26 Detention and Judicial Facilities remain to be completed.
- 27 F. The Kayenta District Court provides court services, peacemaking, probation and  
28 parole services for the Kayenta, Chilchinbeto, Dennehotso, Oljato, Tsa'ah bii Kin,  
29 Naatsis'aan, and Shonto Chapters of the Navajo Nation. The current 26-year-old  
30 court facility is cramped, aged and inadequate to provide the necessary judicial

1 services, which are a critical component of public safety for the Township and  
2 surrounding communities.

3 G. A new 17,000 square foot Kayenta Judicial Complex will provide a safe and  
4 permanent building for courts services, judicial program personnel, the  
5 prosecutor's office, probation and parole services, the public defender's office,  
6 the peacekeeping program, offices, meeting rooms, and hearing rooms that are  
7 culturally-based, and expand and improve the availability and delivery of judicial  
8 services.

9 H. The Law and Order Committee of the Navajo Nation, on the recommendation of  
10 the Judicial Branch and the Division of Public Safety, by Committee Resolution  
11 LOCJN-04-17 (June 2, 2017), attached as **Exhibit 1**, identified construction of the  
12 Kayenta Judicial Complex as the third priority for construction of judicial/public  
13 safety facilities on the Navajo Nation.

14 I. KTC approved an appropriation to the Navajo Nation Judicial Branch by  
15 Resolution No. KTCAU-38-18, for the Kayenta Judicial Complex in the amount  
16 of \$650,000.00.

17 J. At the request of the various stakeholder agencies of the Navajo Nation, including  
18 the Judicial Branch, the Kayenta District Court, the Department of Corrections,  
19 and the Office of the Prosecutor, by Resolution No. KTCD-58-18 (Dec. 10,  
20 2018), KTC authorized the Township to serve as Fiscal Agent for the Kayenta  
21 Judicial Complex, whereby the Township would hold all of the funding for the  
22 Complex from whatever source, assist in the procurement of the contractor for the  
23 Complex, and directly disburse payments for the Complex, which would be  
24 owned by the Navajo Nation under the primary custody of the Judicial Branch.

25 K. The land for the Kayenta Judicial Complex is located within the Township and  
26 KTC has already approved a withdrawal of the land for the exclusive use of the  
27 Kayenta Judicial Complex. The Township will not charge rent or other fees for  
28 the use of the land. The land on which the Kayenta Judicial Complex will be  
29 located is estimated to be valued at \$247,771.55, which is an additional in-kind  
30

1 contribution by KTC for the Complex, for a total contribution by KTC of  
2 \$897,771.55.

- 3 L. An additional \$12,000,000.00 in funding is needed to complete the design and  
4 construction of the Kayenta Judicial and Public Safety Complex, as set forth in  
5 the Kayenta District Conceptual Project Budget/Expenditure Plan, attached and  
6 incorporated herein as **Exhibit 2**.

7  
8 **Section Three. Approval and Adoption of the Kayenta Judicial Complex**  
9 **Expenditure Plan**

- 10 A. The Navajo Nation hereby allocates to Kayenta Township the total amount of  
11 \$12,000,000.00 to construct the Kayenta Judicial Complex as detailed in **Exhibit 2**.  
12 B. The Navajo Nation hereby approves and adopts the Kayenta Judicial Complex  
13 Expenditure Plan, attached and incorporated herein as **Exhibit 2**.  
14 C. The Sihasin Funds allocated for the Kayenta Judicial Complex Expenditure Plan  
15 may be further leveraged by bond or loan financing pursuant to the Navajo Nation  
16 Bond Financing Act, 12 N.N.C. § 1300 *et seq.*, as amended, using Sihasin Fund  
17 earnings for repayment and financing costs upon the recommendation of the Budget  
18 and Finance Committee and approval by a two-thirds (2/3) vote of all members of  
19 the Navajo Nation Council.

20  
21 **Section Four. Approval and Adoption of Expenditure Plan Administration**

22 The Navajo Nation hereby approves administration of the Sihasin Fund Kayenta  
23 Judicial Complex Expenditure Plan as follows:

- 24 A. The Navajo Nation Controller shall determine whether the source of the annual  
25 allocations from the total allocation of \$12,000,000.00 will be Sihasin Fund  
26 Principal or Income or a combination of both;  
27 B. The funding to the Kayenta Judicial Complex shall be distributed promptly to the  
28 Kayenta Township after the approval of this legislation. The Township shall  
29 serve as the fiscal agent and procuring party for the design and construction of  
30 the Kayenta Judicial Complex, in coordination with the Navajo Nation

1 stakeholders. Upon completion of the Project, the Navajo Nation shall own the  
2 Complex, which shall be under the primary custody of the Judicial Branch;

3 C. The funds allocated for the Kayenta Judicial Complex shall be used solely to  
4 design, plan, and construct the Kayenta Judicial Complex as described in  
5 **Exhibit 2**. Any and all cost-savings shall be returned to the to the Síhasin Fund  
6 once the Kayenta Judicial Complex is completed; and

7 D. The funds allocated for the Kayenta Judicial Complex shall not lapse on an  
8 annual basis pursuant to 12 N.N.C. §820 (N), however, any funds not spent or  
9 encumbered within twenty-four (24) months of the date funds are made  
10 available to the Kayenta Judicial Complex shall revert to the Síhasin Fund  
11 principal, unless recommended otherwise by the Law and Order Committee and  
12 approved by the Naabik'íyáti' Committee.

#### 13 14 **Section Five. Effective Date**

15 The Síhasin Fund Kayenta Judicial Complex Expenditure Plan, as set forth above, shall  
16 become effective pursuant to 12 N.N.C. § 2505.

#### 17 18 **Section Six. Directives**

19 The Township and the Kayenta Judicial District shall jointly report the status of the  
20 Kayenta Judicial Complex project to the Naabik'íyáti Committee on a quarterly basis,  
21 after the initial disbursement of funds, until such time as the Complex is fully  
22 functional and all funds are expended or otherwise reverted as provided herein.



**NAVAJO NATION DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

DOREEN N. MCPAUL  
Attorney General

KIMBERLY A. DUTCHER  
Acting Deputy Attorney General

MEMORANDUM

TO: Stephen B. Etsitty, Administrative Director  
Administrative Office of the Courts  
Navajo Judicial Branch

FROM:

Kandis Martine, Assistant Attorney General  
Human Services & Government Unit  
Office of the Attorney General, Navajo Nation Department of Justice

DATE: September 30, 2019

SUBJECT: **Síhasin Legislation for the Kayenta Judicial Complex**

The Navajo Nation Department of Justice ("DOJ") has received a request to identify certain exhibits to the Síhasin Legislation for the Kayenta Judicial Complex as confidential. Pursuant to 2 N.N.C. § 164(A)(6), exhibits attached to any legislation can be deemed "confidential" by the DOJ. The Legislation "Allocating \$12,000,000.00 from the Síhasin Fund to the Kayenta Judicial Complex and Approving and Adopting the Kayenta Judicial Complex Fund Expenditure Plan Pursuant to 12 N.N.C. §§ 2501 – 2508" has an Exhibit 2 attached to it, that DOJ would consider confidential. The details in that Exhibit concern information pertaining to a potential contract, which is a protected record pursuant to 2 N.N.C. § 85(A)(7).

For the above stated reasons, DOJ requests Exhibit 2 of the proposed legislation not be placed on the Navajo Nation Council's website or be released to the public.

If you have any questions regarding the above, please contact me at ext. 6935 or by email at [kmartine@nndoj.org](mailto:kmartine@nndoj.org).

KM/gj.444

xc: Kristen Lowell, Attorney  
Office of Legislative Council  
Navajo Nation Council

RESOLUTION OF THE LAW AND ORDER COMMITTEE  
23rd NAVAJO NATION COUNCIL - THIRD YEAR,  
LAW AND ORDER COMMITTEE

AN ACTION

RELATING TO LAW AND ORDER; APPROVING JUDICIAL/PUBLIC SAFETY  
FACILITIES FUND PRIORITY LIST FOR FISCAL YEARS 2017 AND 2018

BE IT ENACTED:

Section One. Authority

The Navajo Nation established the Law and Order Committee (LOC) as a Navajo Nation standing committee and as such gave LOC approval authority to fund public safety facilities from the Navajo Sales Tax revenue. 2 N.N.C. §§ 600(A) see also CJA-03-13, 22nd Navajo Nation Council, sect. 5, 30 (2013) and BFD-66-11 approving the JUDICIAL/PUBLIC SAFETY FACILITIES FUND MANAGEMENT PLAN, sects. I and II (2011).

Section Two. Findings

- A. The Navajo Nation Council established the Judicial/Public Safety Facilities Fund and the fund shall be appropriated pursuant to the Judicial/Public Safety Facilities Fund Management Plan. 24 N.N.C. § 620(B).
- B. The Law and Order Committee approves a "Fund Priority List" which "shall identify and prioritize five Judicial Branch, Public Safety or combined Judicial/Public Safety facilities at specified locations that may receive funding from the Fund." BFD-66-11 approving the JUDICIAL/PUBLIC SAFETY FACILITIES FUND MANAGEMENT PLAN, sect. III.C. (2011).
- C. For Fiscal Years 2017 and 2018, the Judicial Branch and the Division of Public Safety recommend the Law and Order Committee approve the attached Fund Priority List. EXHIBIT A.

Section Three. Approving the Judicial/Public Safety Facilities  
Fund Priority List

The Law and Order Committee approves the Judicial/Public

Safety Facilities Fund Priority List for Fiscal Years 2017 and 2018 as listed in EXHIBIT A. BFD-66-11 approving the JUDICIAL/PUBLIC SAFETY FACILITIES FUND MANAGEMENT PLAN, sect. III. C. (2011).

**Section Four. Fund Administration**

With the assistance of the Controller, the Judicial Branch and the Division of Public Safety shall ensure that funds are properly administered and fund expenditures shall be restricted to facilities approved by this resolution in EXHIBIT A. BFD-66-11 approving the JUDICIAL/PUBLIC SAFETY FACILITIES FUND MANAGEMENT PLAN, sect. III. A. and B. (2011).

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Law and Order Committee of the 23<sup>rd</sup> Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 4 in favor and 0 oppose, this 2<sup>nd</sup> day of June, 2017



Honorable Raymond Smith Jr,  
Vice Chairperson  
Law and Order Committee

Motion: Honorable Edmund Yazzie

Second: Honorable Otto Tso



## AMENDED AGREEMENT

### RECOMMENDING APPROVAL OF THE JUDICIAL/PUBLIC SAFETY FACILITIES FUND PRIORITY LIST FOR FISCAL YEARS 2017 AND 2018 AS PROVIDED BY THE JUDICIAL/PUBLIC SAFETY FACILITIES FUND MANAGEMENT PLAN

WHEREAS,

The Judicial Branch ("Branch") and the Division of Public Safety ("Division") are joint administrators of the Judicial/Public Safety Facilities Fund Management Plan.

The Fund requires that a priority listing of facilities for funding be approved beginning with Fiscal Years 2008-2009 and every two years thereafter.

The Navajo Nation District Judicial/Public Safety Master Plan completed in March 2007 serves as a guide for the planning and design of judicial/public safety facilities.

The Chief Justice and the Division Director have reviewed the facility needs for judicial/public safety facilities and have identified projects that may receive funding from the Judicial/Public Safety Facilities Fund.

THEREFORE, The Chief Justice and the Division Director hereby recommend to the Law and Order Committee of the Navajo Nation Council ("Committee") that the priorities for the Judicial/Public Safety Facilities Fund Management Plan be approved as follows:

1. Window Rock, Navajo Nation, Arizona – Division of Public Safety, Window Rock Judicial District and NDPS Headquarters Facility
2. Shiprock, Navajo Nation, New Mexico – Judicial/Public Safety/Correctional Facilities
3. Kayenta, Navajo Nation, Arizona – Judicial Facility
4. Chinle, Navajo Nation, Arizona – Public Safety Training Facility
5. Dilkon, Navajo Nation, Arizona – Public Safety/Correctional Facilities
6. Pinon, Navajo Nation, Arizona – Judicial/Public Safety/Correctional Facilities
7. Window Rock, Navajo Nation, Arizona – Supreme Court Facility
8. Ramah, Navajo Nation, New Mexico – Judicial Facility
9. Aneth, Navajo Nation, Utah – Judicial/Public Safety/Correctional Facilities
10. Alamo, Navajo Nation, New Mexico – Judicial/Public Safety/Correctional Facilities
11. Pueblo Pintado, Navajo Nation, New Mexico –Public Safety/Correctional Facilities
12. To'hajiilee, Navajo Nation, New Mexico –Public Safety/Correctional Facilities
13. Kaibeto, Navajo Nation, Arizona – Public Safety Substation
14. Cameron, Navajo Nation, Arizona – Public Safety Substation
15. Leupp, Navajo Nation, Arizona – Public Safety Substation
16. Tuba City, Navajo Nation, Arizona – Fire Department and Emergency Medical Services Facility

77-10-10010  
The Branch and Division further recommend to the Committee that the sequence of construction of facilities may be modified by the timing of approval of financing and upon the shovel- and construction-readiness of each project.

The Branch and Division further recommend to the Committee that from time to time, additional appropriation requests be made to the Navajo Nation Council for deposit into the Judicial/Public Safety Facilities Fund to address construction of judicial/public safety facilities.

The Branch and Division further recommend to the Committee that from time to time, additional appropriation requests be considered for other judicial/public safety facility projects outside of the priority list.

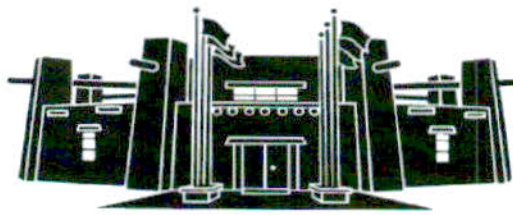
Signed this 2nd day of June 2017



Allen Sloan, *Acting Chief Justice*  
Judicial Branch of the Navajo Nation



Jesse Delmar, *Division Director*  
Division of Public Safety



**MEMORANDUM**

TO: Honorable Nathaniel Brown  
24<sup>th</sup> Navajo Nation Council

FROM:   
Kristen Lowell, Principal Attorney  
Office of Legislative Counsel

DATE: October 1, 2019

SUBJECT: **AN ACTION RELATING TO LAW AND ORDER COMMITTEE,  
RESOURCES AND DEVELOPMENT COMMITTEE, BUDGET AND  
FINANCE COMMITTEE, NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO  
NATION COUNCIL; ALLOCATING \$12,000,000.00 FROM THE SÍHASIN  
FUND TO THE KAYENTA JUDICIAL COMPLEX AND APPROVING AND  
ADOPTING THE KAYENTA JUDICIAL COMPLEX FUND EXPENDITURE  
PLAN PURSUANT TO  
12 N.N.C §§ 2501 – 2508**

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).

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.