

LEGISLATIVE SUMMARY SHEET

Tracking No. 0133-20

DATE: June 12, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO THE BUDGET AND FINANCE COMMITTEE; APPROVING A DIRECT EQUITY INVESTMENT IN COMPANY AS SET FORTH IN NNICJU-08-20 PURSUANT TO THE NAVAJO NATION MASTER INVESTMENT POLICY

PURPOSE: This resolution, if approved, will approve the Direct Investment as recommended by Investment Committee Resolution N. NNICJU-08-20.

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.

OLC No. 20-209-1

5-DAY BILL HOLD PERIOD: Johnson
Website Posting Time/Date: 5:02pm 06-12-20
Posting End Date: 06-17-20
Eligible for Action: 06-18-20

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

INTRODUCED BY:

(Primary Sponsor)

TRACKING NO. 0133-20

AN ACTION

RELATING TO THE BUDGET AND FINANCE COMMITTEE; APPROVING A
DIRECT EQUITY INVESTMENT IN COMPANY AS SET FORTH IN NNICJU-08-20
PURSUANT TO THE NAVAJO NATION MASTER INVESTMENT POLICY

Section One. Authority

- A. The Navajo Nation established the Budget and Finance Committee as a standing committee of the Navajo Nation Council and empowered the Committee to coordinate, oversee, and regulate the fiscal, financial, investment, contracting and audit policies of the Navajo Nation, 2 N.N.C. §§ 300(A), 301(B)(5); and to promulgate rules and regulations relative to contracting, investments, and financial matters pursuant to 2 N.N.C. § 301(B)(1).
- B. The Navajo Nation created the Navajo Nation Investment Committee pursuant to Resolution No. CAU-39-73, and the Budget and Finance Committee approved and adopted the investment policies for all Navajo Nation financial resources pursuant to Resolution No. BFO-61-90, as amended by BFJY-114-03, BFJA-01-08, BFJN-17-15, BFD-38-17, BFD-41-17, and BFD-45-18.
- C. The Navajo Nation Investment Committee is an advisory group to the Budget and Finance Committee in the management of the Nation's investment program and is responsible for recommending to the Budget and Finance Committee the approval of the selection of investment managers and custodians recommended by the Investment Consultant, subject to the approval of each investment manager contract and each

1 custodian contract by the Budget and Finance Committee, pursuant to the Master
2 Investment Policy, § 4.3(d).

- 3 D. By Resolution No. BFD-45-18, the Budget and Finance Committee approved the
4 Amended and Restated Master Investment Policy for the Navajo Nation ("Investment
5 Policy") that specifically authorizes the Budget and Finance Committee to approve
6 direct investments in non-public companies, either equity or debt based, provided
7 such investments have a projected annual rate of return of more than the five (5) year
8 average rate of return of the Master Trust. *See* Investment Policy § 8.1(i).

9
10 **Section Two. Findings**

- 11 A. The Company is a non-native owned nationally recognized manufacturing entity that
12 enjoys worldwide brand recognition.
- 13 B. Due diligence was performed on the Company by outside legal counsel contracted
14 through the Office of Legislative Counsel and Office of the Speaker on behalf of the
15 Office of the Controller and Chairperson of the Navajo Nation Investment
16 Committee.
- 17 C. The due diligence and negotiations concerning the Company are covered by a Non-
18 Disclosure Agreement (NDA) and cannot be distributed to the public and/or anyone
19 not covered by the NDA.
- 20 D. The due diligence and negotiations concerning the Company indicate that a direct
21 investment in the Company of up to \$300 million in the form of equity will produce a
22 projected annual rate of return of more than the five (5) year average rate of return of
23 the Master Trust set forth in the most recent quarterly report provided by the Nation's
24 Investment Consultant.
- 25 F. The Budget and Finance Committee is strongly committed to diversifying the
26 Nation's investment portfolio to include direct investments as a means to increasing
27 the Nation's overall revenue and rate of return.
- 28 G. Pursuant to 12 N.N.C. § 203(I) and Section 4.4 of the Investment Policy, the Navajo
29 Nation Controller carries out investments authorized and approved by the Budget and
30 Finance Committee.

1 H. Through NNICJU-08-20, attached as **Exhibit 1**, the Investment Committee
2 recommended a Direct Investment in the Company.
3

4 **Section Three. Approvals, Authorizations and Directives**

- 5 A. The Budget and Finance Committee of the Navajo Nation Council hereby approves a
6 Direct Investment by the Navajo Nation in the form of equity in the Company in an
7 amount up to \$300 million
- 8 B. The Controller shall select the trust funds under the Master Trust to be used to fund the
9 Direct Investment. Each trust fund under the Master Trust that is providing funding for
10 the equity investment shall receive a *pro rata* share of the earnings paid on the Direct
11 Investment as a return on its investment.
- 12 C. The Navajo Nation Controller shall finalize the documents for the Direct Investment
13 and shall deliver the final Direct Investment documents for execution by the Navajo
14 Nation.
- 15 D. Upon execution of the Direct Investment documents, the Office of the Controller and
16 the Office of Management and Budget and all other appropriate programs and officials
17 shall immediately take all actions necessary to effectuate the intent of this Resolution
18 including without limitation the requisite transfer of funds for the Direct Investment.
19

20 **Section Four. Savings Clause**

21 Should any provision herein be determined invalid by the Navajo courts or other court of
22 competent jurisdiction, all other provisions of this legislation not determined to be invalid
23 shall remain in full force and effect.
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NNICJU-08-20

**RESOLUTION OF
THE NAVAJO NATION INVESTMENT COMMITTEE**

**Approving and Recommending to the Navajo Nation Budget & Finance Committee
An Equity Direct Investment from the Navajo Nation Master Trust Fund**

WHEREAS:

1. Pursuant to Budget and Finance Committee Resolution BFJY-114-03, as amended by BFJA-01-08, BFJN-17-15, BFD-38-17, BFD-41-17, and BFD-45-18, which involved the adoption of investment policies and sub-policies for all Navajo Nation financial resources, the Navajo Nation Investment Committee's delegated authority to approve and recommend investments to the Navajo Nation Budget and Finance Committee was continued; and
2. The Office of the Controller, in coordination with the Financial Advisor, has performed an in-depth Financial Analysis and due diligence of the Navajo Nation's investment for the acquisition of a well-known manufacturing company ("Company"), attached hereto as Exhibit A, in keeping with the operational due diligence requirement in Section 8.1(i)(i) of the Navajo Nation Master Investment Policy, related to direct investment in non-native owned entities; and
3. The Navajo Nation Investment Committee has reviewed the in-depth financial analysis and due diligence of such investment from the Navajo Nation Master Trust Fund for the acquisition of the Company, based in part on the Company's Confidential Investment Memorandum, attached hereto as Exhibit B; and
4. The minimum rate of return will be no less than the five (5) year average rate of return of the Master Trust Portfolio, as set forth in Section 8.1(i)(i) of the Navajo Nation Master Investment Policy. As of 31 March 2020, the Navajo Nation's Investment Consultant has indicated that the five-year average gross return for the Master Trust Portfolio is four point four eight percent (4.48%) as found in the most recently published quarterly performance report, attached hereto as Exhibit C; and
5. The Navajo Nation Investment Committee recommends an investment from the Navajo Nation Master Trust Fund, not to exceed three hundred million dollars (\$300,000,000.00) for the acquisition of the Company, based on the Navajo Nation's Financial Consultant RVK's recommendation on the amount of funding to be drawn from the Navajo Nation Master Trust Sub-Trusts, attached hereto as Exhibit D.

NOW THEREFORE BE IT RESOLVED THAT:

The Navajo Nation Investment Committee hereby authorizes an investment from the Navajo Nation Master Trust Fund, not to exceed three hundred million dollars (\$300,000,000.00), for the acquisition of the Company. This investment shall be in accordance with the Navajo Nation Investment Policies, and pursuant to the terms and conditions set forth in the Nondisclosure Agreement, attached hereto as Exhibit E; and the Debtor-In-Possession Loan, Security and Guaranty Agreement, attached hereto as Exhibit F; and the Asset Purchase Agreement, attached hereto as Exhibit G.

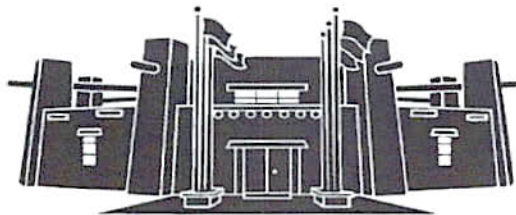
CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Investment Committee, at a duly called meeting via teleconference in Window Rock, Arizona, at which a quorum was present and that same was passed by a vote of 4 in favor, 0 opposed, and 1 abstaining, this 12th day of June, 2020.



Pearline Kirk
Presiding Chair
Navajo Nation Investment Committee

Motion: Jimmy Yellowhair
Second: Martin Ashley
Vote: 4-0-1



MEMORANDUM

TO: Honorable Jamie Henio
24th Navajo Nation Council

FROM:

A handwritten signature in black ink, appearing to read "Dana Bobroff", written over a horizontal line.

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

DATE: June 12, 2020

SUBJECT: AN ACTION RELATING TO THE BUDGET AND FINANCE COMMITTEE;
APPROVING A DIRECT EQUITY INVESTMENT IN COMPANY AS SET
FORTH IN NNICJU-08-20 PURSUANT TO THE NAVAJO NATION MASTER
INVESTMENT POLICY

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: _0133-20_

SPONSOR: Jamie Henio

TITLE: An Action Relating to the Budget and Finance Committee; Approving a Direct Equity Investment in Company as set forth in NNICJU-08-20 pursuant to the Navajo Nation Master Investment Policy

Date posted: June 12, 2020 at 5:02PM

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) 871-7586

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.: 0133-20

SPONSOR: Honorable Jamie Henio


TITLE: An Action Relating to the Budget and Finance Committee; Approving a Direct Equity Investment in Company as set forth in NNICJU-08-20 pursuant to the Navajo Nation Master Investment Policy

Posted: June 12, 2020 at 5:02 PM

5 DAY Comment Period Ended: June 17, 2020

Digital Comments received:

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



Legislative Tracking Secretary
Office of Legislative Services

06/18/20 8:15AM

Date/Time

24th NAVAJO NATION COUNCIL

Second Year 2020

Mr. Speaker:

The **BUDGET & FINANCE COMMITTEE** to whom has been assigned

NAVAJO LEGISLATIVE BILL # 0133-20:

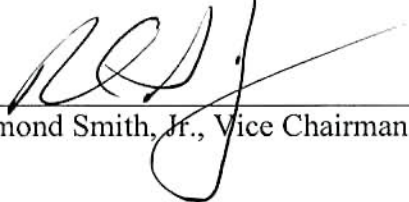
An Action Relating to the Budget and Finance Committee; Approving a Direct Equity Investment in Company as set forth in NNICJU-08-20 pursuant to the Navajo Nation Master Investment Policy *Sponsored by Jamie Henio and Seth A. Damon, Council Delegates*

has had it under consideration and reports the same with the recommendation that It **TABLE** without amendment.

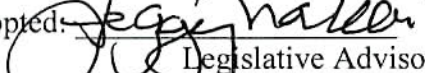
1. On page --, line -- insert “_” and on page -- line -- insert “-----”.
M: S: Vote: Yeas: Nays:

[Legislation was considered on June 23, 2020 agenda; Main motion held by Jimmy Yellowhair seconded by Elmer P. Begay; Tabling motion made by Amber K. Crotty seconded by Elmer P. Begay Vote: 3-2 Yeas: Elmer P. Begay, Amber K. Crotty, Jamie Henio, Nays: Nathaniel Brown Jimmy Yellowhair; tabled until the Committee has a work session with the Investment Committee related to the direct investment section of the Master Investment Policy]

Respectfully submitted,


Raymond Smith, Jr., Vice Chairman

Adopted: _____
Legislative Advisor

Not Adopted: 
Legislative Advisor

23 June 2020

The vote was__ in favor _ opposed yeas: nays:

Main Motion: Jimmy Yellowhair

Second: Elmer P. Begay

BUDGET AND FINANCE COMMITTEE

23 June 2020

Special Meeting

VOTE TALLY SHEET:

Legislation No. 0133-20: An Action Relating to the Budget and Finance Committee; Approving a Direct Equity Investment in Company as set forth in NNICJU-08-20 pursuant to the Navajo Nation Master Investment Policy *Sponsored by Jamie Henio and Seth A. Damon, Council Delegates*

Motion: Jimmy Yellowhair


Second: Elmer P. Begay


Vote: 0-0, Vice Chairman not voting

[Legislation was considered on June 23, 2020 agenda; Main motion held by Jimmy Yellowhair seconded by Elmer P. Begay; Tabling motion made by Amber K. Crotty seconded by Elmer P. Begay Vote: 3-2 Yeas: Elmer P. Begay, Amber K. Crotty, Jamie Henio, Nays: Nathaniel Brown Jimmy Yellowhair; tabled until the Committee has a work session with the Investment Committee related to the direct investment section of the Master Investment Policy]

Vote Tally:

Jamie Henio		
Jimmy Yellowhair		
Raymond Smith Jr.		
Elmer P. Begay		
Amber K. Crotty		
Nathaniel Brown		


Raymond Smith, Jr., Vice Chairman
Budget & Finance Committee


Peggy Nakai, Legislative Advisor
Budget & Finance Committee