

LEGISLATIVE SUMMARY SHEET
Tracking No. 0070-16

DATE: March 9, 2016

TITLE OF RESOLUTION: RELATING TO RESOURCES AND DEVELOPMENT
AND BUDGET AND FINANCE COMMITTEES; APPROVING AMENDMENTS TO
THE NAVAJO NATION GAMING NET REVENUE DISTRIBUTION PROCEDURES

PURPOSE: The purpose of the resolution is to amend the Navajo Nation Gaming Net Revenue
Distribution Procedures.

**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: Acct. Admin. Budget
Website Posting Time/Date: 6:15pm 3/9/16
Posting End Date: 3/14/16
Eligible for Action: 3/15/16

Resources & Development Committee

THENCE

Budget & Finance Committee

PROPOSED STANDING COMMITTEE RESOLUTION

23rdnd NAVAJO NATION COUNCIL – Second Year, 2016

INTRODUCED BY


(Primary Sponsor)

TRACKING NO. 0070-16

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Jon Ahee.

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT AND BUDGET AND
FINANCE COMMITTEES; APPROVING AMENDMENTS TO THE NAVAJO
NATION GAMING NET REVENUE DISTRIBUTION PROCEDURES

BE IT ENACTED:

Section One. Authority

- A. The Resources and Development Committee is established as a standing committee of the Navajo Nation Council. 2 N.N.C § 500(A).
- B. The Resources and Development Committee of the Navajo Nation Council is exercise oversight authority over gaming. 2 N.N.C § 500(C).
- C. The Budget and Finance Committee is established as a standing committee of the Navajo Nation Council. 2 N.N.C § 300(A).
- D. The Budget and Finance Committee of the Navajo Nation Council is empowered to “approve Fund Management Plans pursuant to the recommendations of the appropriate oversight committees and affected Division or Branch. 2 N.N.C. § 301(B)(14).
- E. The Budget and Finance Committee of the Navajo Nation Council provides oversight for the Gaming Revenues Fund Management Plan. 12 N.N.C § 2205. See also Navajo Nation Gaming Revenues Fund Management Plan, 3.B.

1 Section Two. Findings

2 A. The Navajo Nation Council established the Gaming Revenue Fund Management Plan
3 in which Class II and III net gaming revenues received by the Navajo Nation
4 government from the Navajo Nation Gaming Enterprise shall be received and
5 distributed. 12 N.N.C. § 2201.

6 B. The Budget and Finance Committee approved the Navajo Nation Gaming Revenues
7 Fund Management Plan. BFF-03-10, as amended by BFF-05-13.

8 C. The purpose of the Gaming Revenues Fund Management Plan is to establish
9 procedures for the Navajo Nation to allocate gaming revenues in a manner which
10 recognizes both the immediate and long-term needs of the Navajo Nation and its
11 members, and meets the requirements of the Indian Gaming Regulatory Act, see 12
12 N.N.C. § 2202(B) and Navajo Nation Revenues Fund Management Plan, 2. A.

13 D. The Budget and Finance Committee approved an amount equal to 5% of net revenues
14 deposited from all gaming facilities shall be divided equally and distributed to the
15 host gaming chapters through the budget process. Navajo Nation Revenues Fund
16 Management Plan, 4. A.

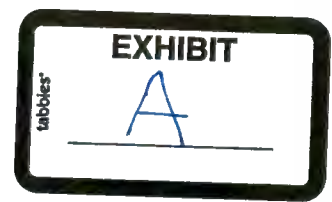
17 E. The Navajo Nation Revenues Fund Management Plan provides the remaining net
18 shall be distributed equally to the non-host chapter(s) through the budget process,
19 which revenues shall be used by the non-host gaming chapter(s) for the purpose
20 identified in 12 N.N.C. §2202(B) and consistent with the Office of the Controller's
21 internal procedures; then the remaining net gaming revenues shall be distributed as
22 authorized by the Budget and Finance Committee through the budget process, in
23 accordance with Generally Accepted Accounting Principles and for the purposes
24 identified in 12 N.N.C. §2202(B). Navajo Nation Revenues Fund Management Plan,
25 4. B. and C.

26 F. The Navajo Nation Gaming Regulatory Office and the Navajo Nation Department of
27 Justice recommend approval of the Navajo Nation Net Revenue Distribution
28 Procedures. The procedures are attached as Exhibit A.
29
30

1 Section Three. Approval

2 A. The Budget and Finance Committee, pursuant to 12 N.N.C. § 2205, hereby approves
3 the amendments to the Navajo Nation Net Revenue Distribution Procedures.

4 B. The Budget and Finance Committee may amend the Navajo Nation Net Revenue
5 Distribution Procedures upon recommendation of the Navajo Nation Gaming
6 Regulatory Office and the Navajo Nation Department of Justice.



Navajo Nation Gaming Net Revenue Distribution Procedures

1. Introduction and Background

A. Pursuant to 12 N.N.C. § 2201 *et. seq.*¹, the Navajo Nation Gaming Distribution Plan provides for the allocation plan for the use of Class II and III net gaming revenues received from the Navajo Nation Gaming Enterprise (NNGE) from its gaming activities and to provide procedures to use and to account for net gaming revenues in accordance with federal and Navajo Nation law.

B. Pursuant to Budget and Finance Committee (BFC) Resolution Nos. BFMA-03-10 and BFF-05-13, the BFC approved the Navajo Nation Gaming Revenues Fund Management Plan (Plan). The Plan, Section 4, outlines the distribution of the expenditure of the net gaming revenue.

C. Pursuant to Section 5 of the Plan, the Navajo Nation Gaming Net Revenue Distribution Procedures (Procedures) shall serve as the Office of the Controller's (OOC) internal procedures.

2. Purpose of Net Gaming Revenue: Pursuant to 5 N.N.C §2005, the expenditure of funds shall be used for the purposes as outlined in the Indian Gaming Regulatory Act (IGRA) and 25 U.S.C §2710(b)(2). The purposes are outlined as follows:

- A. To fund tribal government operations and/or programs;
- B. To provide for the general welfare of the tribe and its members;
- C. To promote tribal economic development;
- D. To donate to charitable organizations; and/or
- E. To help fund operations of local government agencies

3. Definitions:

- A. "Capital Improvement Projects" are defined as projects that meet the definition as defined at 12 N.N.C. § 820(F) and (N) and serve a public purpose.
- B. "Chapter buildings" are buildings that are being maintained and operated by the Host and Non-Host Chapters within its respective Chapter boundaries.
- C. "Host Chapters" are defined as Chapters, through valid chapter resolution(s), that have approved to host a Gaming Facility within its chapter boundaries.
- D. "Net Gaming Revenue" is defined gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees pursuant to 25 USC § 2703(9).
- E. "Non-Host Chapters" are defined as Chapters that have not approved to have a Gaming Facility within its chapter boundaries.
- F. "Per Capita payments" are defined as means the distribution of money, loans or other things of value to all or any members of the Navajo Nation, or to an identified group of the Navajo Nation, which is paid from the gaming revenues of any Navajo gaming

¹Navajo Nation Council Resolution No. CJY-30-08.

activity. This definition does not apply to payments or services performed by Navajo Nation government programs, established for social welfare, medical assistance, education, housing, and veterans.

- G. "Pre-development expense" is defined as archeological clearances, environmental reviews, land use plan and feasibility study that serve a public purpose.
- H. "Public purpose" is defined as projects that benefit the public, not individuals.
- I. "Telecommunication expenses" include telephone (not cellular phones) and internet (including hard and wireless lines) that are for Chapter buildings and that serve a public purpose.
- J. "Utility expenses" include propane, utility and gas services that are for Chapter buildings that serve a public purpose.

4. Eligibility:

- A. Host and Non-Host Chapters that are designated as sanctioned by the BFC shall not be eligible to obtain funds from the Net Gaming Revenue.
- B. Until the sanction is officially lifted by the Office of the Auditor General, the Host and Non-Host Chapters shall not be eligible to obtain funds from the Net Gaming Revenue.

5. Use of Net Gaming Revenue: The Host and Non-Host Chapters may obtain funds from the Net Gaming Revenue for the following purposes:

- A. Utility expenses;
- B. Telecommunication expenses;
- C. Pre-development expenses; and
- D. Capital Improvement Projects.

6. General required Documents:

- A. In order for Host and Non-Host Chapters to obtain funds from the Net Gaming Revenue, the Host and Non-Chapters are required to submit the following documents to the Division of Community Development (DCD):
 - 1. Transmittal Cover Letter, which should reflect the following information:
 - a. Identify the Host and Non-Host Chapter;
 - b. Identify the name and title of the person authorized to obligate expenditure for the entity;
 - c. Identify the name, title and telephone numbers of the person authorized to make management decisions on behalf of the Host and Non-Host Chapter;
 - d. Identify the names and telephone numbers of the individuals to contact for clarification regarding this request;
 - e. Explicitly indicate acceptance of the terms and conditions governing the award; and
 - f. Signed by the individual authorized to obligate the Host and Non-Host Chapter.
 - 2. Funding Request Plan: the Host and Non-Host Chapter shall summarize, in writing, how the funds from the Net Gaming Revenue will be used;

3. Valid Chapter Resolution that approves the use of the funds from the Net Gaming Revenue and to note the purpose of the request as to be consistent with Section 6;
 4. Detail Budget Forms² (1, 2, and 4) as required by the Budget Instruction Manual (BIM) and utilizing the Navajo Nation's Chart of Accounts; and
 5. Expenditure Authorization Signature Form³.
- B. If the above-mentioned documents are not provided, not correctly filled out and/or not consistent with the purpose of these Procedures, DCD shall inform and return the documents to the Host and/or Non-Host Chapters within ten (10) working days of receipt.
- C. If the above-mentioned documents are provided, correctly filled out and consistent with the purpose of these Procedures, DCD shall inform the Host and Non-Host Chapters to submit the documents as provided in Section 7 to DCD.
7. **Required documents for Utility/Telecommunication and Pre-development Expenses and Capital Improvement Projects:** Upon approval as noted in Section 6(C), the Host and Non-Host Chapters are required to submit the following documents to DCD:
- A. Utility/Telecommunication expenses:
 1. Request for Direct Payment⁴;
 2. Original Invoice/Bill that reflect utilities and/or telecommunication expense(s); and
 3. *If applicable*, a copy of the Agreement between the Host and/or Non-Host Chapters and a governmental entity (i.e. Head Start) to occupy the Chapter building. The Agreement should reflect that the Host and/or Non-Host Chapter is paying 100% of the utility and/or telecommunication expense.
 - B. Pre-development expenses:
 1. Professional Service Contract⁵ that reflects the services of Pre-development expenses and has the correct Object Code as provided by the BIM;
 - C. Capital Improvement Projects: Upon receipt of the below information, Capital Improvement Office shall review to ensure compliance with the TCDC Objective Criteria, Resolution No. TCDCJY-77-99 and are sufficient.
 1. Contract that reflects the services of a Capital Improvement Projects and has the correct Object Code as provided by the BIM;

² These budget forms may be obtained off the Office of Management and Budget's website, <http://www.omb.navajo-nsn.gov/Layout/nnfunding.html>.

³ This form may be obtained off the OOC's website, <http://www.nnooc.org/Forms.htm>

⁴ This form may be obtained off the OOC's website, <http://www.nnooc.org/Forms.htm>

⁵ The Professional Service Contract template that has been approved by the Navajo Nation Department of Justice.

2. All the required documents as provided Attachment A of this Procedure and meet a public purpose;

a. Public Facilities:

- i. Chapter House;
- ii. Pre-school;
- iii. Senior Citizen Center;
- iv. Navajo Nation office building;
- v. Multi-purpose building; or
- vi. Other Public facilities.

b. Powerline extension;

c. Waterline extension;

d. Sewer/ Lagoon/Septic Tank;

e. Erosion Control and Irrigation Systems;

f. Solid Waste Transfer Station;

g. Major mechanical equipment; and

h. Other Capital Improvement Projects⁶ that serve a public purpose.

8. **Expenditure Guideline:** The funds from the Net Gaming Revenue are limited to the following:

A. Purposes as outlined in Section 2 of these Procedures.

B. Direct monetary payments to individual tribal members are strictly prohibited.

C. The Capital Improvement Projects shall be approved for a public purpose and shall not benefit one individual.

D. Per Capita payments are strictly prohibited.

E. Any costs incurred by the Host or Non-Host Chapter in preparing, transmitting, presenting, or modifying the Funding Request Plan or material for this request shall be the responsibility of the applicant are strictly prohibited.

F. This Fund cannot be used to reimburse the Host and/or Non-Host Chapters on expenses that have already been paid to a contractor, utility company and/or any other entity related to the purposes outlined in Section 5 of this Procedure.

G. Internal controls, which includes, but not limited to ensuring all the required documents as outlined in these Procedures are provided and that the funds from the Net Gaming Revenue are spent in accordance with applicable Navajo Nation and federal laws must be maintained to ensure expenditures are in compliance with the Indian Gaming Regulatory Act and Navajo Nation Laws and policies.

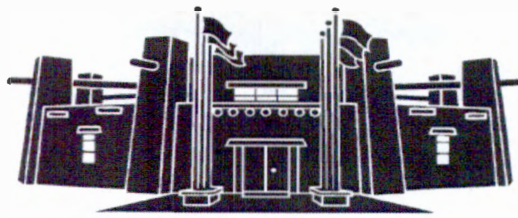
9. **Accounting-Post Award:**

A. Funds from the Net Gaming Revenue that are not expended by the Host and Non-Host Chapters at the end of the Fiscal Year shall revert to the Plan.

⁶ In this situation, the DCD would provide the required documents that need to be submitted.

- B. Notification to the Host and Non-Host Chapter of award of Funds shall be issued by DCD with copies sent to the Navajo Nation Gaming Regulatory Office (NNGRO), DCD and OOC
 - C. All the documentation as provided by this Procedure are required and cannot be waived, and shall be used for audit purposes.
 - D. The expenditure of funds from the Net Gaming Revenue for the Host and non-Host Chapter shall be maintained at OOC for tracking and auditing purposes. The NNGRO shall have access to such quarter reports for periodic audit of gaming revenues.
 - E. NNGRO has the authority to conduct unannounced audits on the Host and Non-Host Chapters' expenditure to ensure compliance with applicable Navajo Nation and Federal laws, policies and this Procedure.
 - F. OOC shall maintain all the original documents that are submitted as required by this Procedure. When DCD and Office of Management and Budget (OMB) obtains all the original documents as required this Procedure, DCD and/or OMB shall forward all original documents to OOC.
10. **Evaluation of Utilities and Telecommunication Expenses:**
- A. Upon submittal of all the documents provided in Sections 6 and 7(A), DCD shall submit the required documents to OOC.
 - B. If all the required documents are sufficient and available, OOC will then send a check to the utility and telecommunication entity that reflects the amount due on original invoice/bill.
11. **Evaluation and Criteria of Capital Improvement Projects:**
- A. CIO is required to review all Capital Improvement Project proposals to ensure compliance with the process outlined in Section 7(C).
 - B. If the documents are not all submitted and/or not sufficient, CIO shall inform the Host and/or Non-Host Chapter of the issue within ten (10) days of receipt.
 - C. If CIO determines that the Capital Improvement Project request is sufficient and eligible, CIO shall inform the Gaming Revenue Distribution Review Team (Review Team).
 - D. The Review Team shall review all Capital Improvement Project proposals in compliance with applicable Navajo Nation and Federal Laws.
 - E. The Review Team shall consist of Representatives from the following:
 - 1. OOC;
 - 2. OMB;
 - 3. NNGRO;
 - 4. DCD; and
 - 5. Department of Justice (DOJ).
 - F. The Review Team shall meet once every quarter to review and approve proposals of Capital Improvement Projects. In exigent circumstances, the Review Team shall meet outside of the quarterly meetings.

12. **Sufficient Appropriation**: Any award made is contingent upon the appropriation of funds. An award may be terminated or reduced if sufficient appropriations or authorization do not exist. Such terminations will be effected with written notice to the Host and Non-Host Chapter. The Controller shall ensure there are funds available and such determination shall be noted in writing.
13. **Governing Law**: Nothing herein shall be construed as a waiver of the Navajo Nation's sovereign immunity.
14. **Right to Waive Minor Irregularities**: OOC reserves the right to waive minor irregularities of these Procedures which will not affect the compliance with applicable Navajo Nation and federal laws, policies or this Procedure.
15. **Terms and Conditions**: OOC reserves the right to request access to any and all source documentation at any given time relating to the usage of funds the Host and non-Host Chapter(s) receives from the Plan. The Host and non-Host Chapter(s) are subject to audits by OOC, Office of the Auditor General and NNGRO at any given time regarding the usage of funds.
16. **Disclaimer**: NNGRO, in consultation with the DOJ, reserve the right to determine if expenditures or proposed expenditures are in compliance with IGRA and Navajo Nation Law, policies and this Procedure.
19. **Amendments**: This Procedure may be amended by OOC in consultation with NNGRO and DOJ.



MEMORANDUM

TO: Honorable Seth Damon
The 23rd Navajo Nation Council

FROM:

KA Lowell

Kristen A. Lowell, Attorney
Office of Legislative Counsel

DATE: March 9, 2016

SUBJECT: RELATING TO RESOURCES AND DEVELOPMENT AND BUDGET
AND FINANCE COMMITTEES; APPROVING AMENDMENTS TO THE
NAVAJO NATION GAMING NET REVENUE DISTRIBUTION
PROCEDURES

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.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: 0070-16

SPONSOR: Seth Damon

TITLE: An Action Relating To Resources and Development and Budget and Finance Committees; Approving Amendments to the Navajo Nation Gaming Net Revenue Distribution Procedures

Date posted: March 9, 2016 at 6:15pm

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

**Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7590**

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

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

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

LEGISLATION NO.: 0070-16

SPONSOR: Honorable Seth Damon

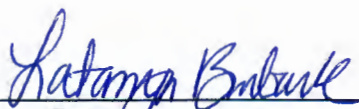
TITLE: An Action Relating to Resources and Development and Budget and Finance Committees; Approving Amendments to the Navajo Nation Gaming Net Revenue Distribution Procedures

Posted: March 9, 2016 at 6:15 pm

5 DAY Comment Period Ended: March 15, 2016

Digital Comments received:

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



**Policy Analyst
Office of Legislative Services**

3/15/16 8:02am

Date/Time

**RESOURCES AND DEVELOPMENT COMMITTEE
22rd NAVAJO NATION COUNCIL**

SECOND YEAR 2016

COMMITTEE REPORT

Mr. Speaker,

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

LEGISLATION # 0070-16: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT AND BUDGET AND FINANCE COMMITTEES; APPROVING AMENDMENTS TO THE NAVAJO NATION NET REVENUE DISTRIBUTION PROCEDURES. *Sponsor: Honorable Seth Damon Co-Sponsor: Honorable Dwight Witherspoon and Honorable Tom Chee, Jr.*

Has had it under consideration and report the same was **REFERRED** with the following directives to the Sponsor to revised procedures to certain provisions from the Indian Gaming law.

The suggested revisions include:

Page 2 of 6, Paragraph 5. Use of Net Gaming Revenue projects, C. Pre-Development expenses; should include pre-development expenses so they are all eligible. A separate heading on the predevelopment cost be incorporated.

Page 6 of 6, Paragraph 4. Right to Waive Minor Irregularities. OOC is not an elected body, therefore, OOC has no authority to waive laws. OOC can be authorize to do particular actions , but no authority to waive laws.

Page 6 of 6, Paragraph 19 Amendments. Recommended language incorporated there would be "may be amended, in consultation with NNDOJ, by NNGRO.

On March 22, 2015, RDC amended Legislation #0072-16, an action relative to the Navajo Nation Revenues Fund Management Plan on March 22, 2016, the Committee re-recommends to the Sponsor of this legislation to revise the Navajo Nation Gaming Net Revenue Distribution Procedures language accordingly and incorporated as a new Exhibit "A" to this legislation.

and thereafter the Committee **TABLED** the Legislation.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'W. Phelps', followed by a horizontal line.

Walter Phelps, Pro Tem Chairperson
Resources and Development Committee
of the 23rd Navajo Nation Council

Date: March 28, 2016

Main Motion: Honorable Walter Phelps

Second: Honorable Benjamin Bennett

Vote:

TABLING MOTION: Leonard Tsosie

Second: Davis Filfred

VOTE: 3-0-1 (PTCNV)