

SUMMARY OF PROPOSED LEGISLATION

TrackingNo. 0026-23

Date: February 13, 2023

Subject: **AN ACT RELATING TO THE LAW & ORDER, HEALTH, EDUCATION & HUMAN SERVICES, RESOURCES & DEVELOPMENT, BUDGET & FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; AMENDING CAP-35-18, AS AMENDED BY CJA-03-21, TO EXTEND SÍHASIN FUNDS REVERSION DEADLINES FOR ALL PROJECTS TO 72 MONTHS**

Purpose of this Legislation:

to amend CAP-35-18 (as amended by CJA-03-21) to extend the funds reversion deadline to 72 months for all Síhasin-funded projects approved in CAP-35-18.

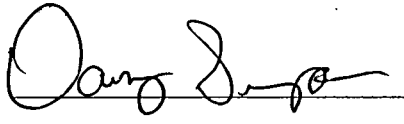
OLC No. 23-030-1

5-DAY BILL HOLD PERIOD: Johnson
Website Posting Time/Date: 1:10pm; 02-22-23
Posting End Date: 02-27-23
Eligible for Action: 02-28-23

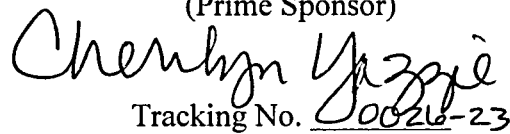
Law & Order Committee
Thence
Health Education & Human Services Committee
Thence
Resources & Development Committee
Thence
Budget & Finance Committee
Thence
Naabik'íyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
25th NAVAJO NATION COUNCIL - First Year, 2023

Introduced by:



(Prime Sponsor)



Tracking No. 0026-23

AN ACT

RELATING TO THE LAW & ORDER, HEALTH, EDUCATION & HUMAN SERVICES, RESOURCES & DEVELOPMENT, BUDGET & FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; AMENDING CAP-35-18, AS AMENDED BY CJA-03-21, TO EXTEND SÍHASIN FUNDS REVERSION DEADLINES FOR ALL PROJECTS TO 72 MONTHS

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Law & Order Committee of the Navajo Nation Council reviews and recommends proposed amendments to the Navajo Nation Code. 2 N.N.C. §600(B)(14).
- B. The Health, Education & Human Services Committee of the Navajo Nation Council provides legislative oversight regarding health and education matters, social services, human services, and general governmental services on the Navajo Nation. 2 N.N.C. §400(C)(1).
- C. The Resource & Development Committee of the Navajo Nation Council provides legislative oversight regarding roads and transportation, communications and utilities, information technology, Chapter activities, economic and community development, rights-of-way, public utilities, and housing matters on the Navajo Nation. 2 N.N.C. §500(C).
- D. The Budget & Finance Committee of the Navajo Nation Council recommends to the Navajo Nation Council the budgeting, appropriation, investment, and management of all funds, and

1 reviews all financial activities of the Navajo Nation. 2 N.N.C. §301(B)(2) and §301(B)(5).

2 E. The Naabik'iyáti' Committee of the Navajo Nation Council reviews all proposed legislation
3 that requires final action by the Navajo Nation Council. 2 N.N.C. §164(A)(9).

4 F. In Resolution No. CD-68-14 the Navajo Nation established the Síhasin Fund, codified at 12
5 N.N.C. §2501-§2508. In Resolutions Nos. CAP-35-18 and CJA-03-21 the Navajo Nation
6 Council approved Síhasin funding for numerous powerline projects and Chapter projects,
7 and extended the original deadline for reversion of allocated project funds back to the Síhasin
8 Fund account.

9 G. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §102(A).
10 As such, the Council may amend Síhasin Fund provisions by approving amendments to CAP-
11 35-18 and CJA-03-21.

12
13 **SECTION TWO. FINDINGS**

14 A. In Resolution No. CAP-35-18 the Navajo Nation Council approved the Síhasin Fund
15 Powerline and Chapter Projects Expenditure Plan to fund over 200 powerline, waterline, and
16 other capital projects throughout the Navajo Nation. CAP-35-18 is attached hereto (without
17 exhibits) as **EXHIBIT 1**.

18 B. The total cost of all projects funded by the Council's appropriation of Síhasin funds in CAP-
19 35-18 was \$100,000,000 (Navajo Nation President Jonathan Nez line-item vetoed four
20 projects listed in CAP-35-18 that amounted to \$889,350). *See* CAP-35-18.

21 C. The CAP-35-18 projects, depending on their readiness, were grouped into three funding
22 cycles: (1) Year One projects were to receive funding by the end of Fiscal Year 2018 (NTUA
23 powerline projects), or by the end of the third quarter of Fiscal Year 2018 (Non-NTUA
24 powerline projects); (2) Year Two projects were to receive funding by the end of the first
25 quarter of Fiscal Year 2019; and (3) Year Three projects were to receive funding by the end
26 of the first quarter of Fiscal Year 2020. *See* CAP-35-18.

27 D. Regardless of the designated funding cycle, all CAP-35-18 project funds were to be spent or
28 encumbered within 24 months of distribution to the recipient; and project funds not spent or
29 encumbered by that deadline would revert to the Síhasin Fund account. *See* CAP-35-18.

30 E. In Resolution No. CJA-03-21 the Navajo Nation Council amended CAP-35-18 to extend the

1 Síhasin funds reversion deadline for all projects to 48 months. CJA-03-21 is attached hereto
2 (without exhibits) as **EXHIBIT 2**.

3 F. In January 2020 the World Health Organization (“WHO”) declared a Public Health
4 Emergency of International Concern related to the outbreak of coronavirus (“COVID”) and
5 the U.S. Department of Health and Human Services declared a COVID Public Health
6 Emergency; the WHO declared a global COVID pandemic on March 11, 2020.

7 G. Because of the COVID pandemic, the Navajo Nation Commission on Emergency
8 Management, with the concurrence of Navajo Nation President Jonathan Nez, declared a
9 Navajo Nation Public Health State of Emergency on the Navajo Nation on March 11, 2020.
10 Resolution No. CEM 20-03-11. The Navajo Nation Department of Health subsequently
11 issued numerous Public Health Emergency Orders. Public Health Orders 2020-001 through
12 2022-008 are incorporated herein by reference.

13 H. The various Public Health Emergency Orders and related Executive Orders resulted in the
14 closure of many Navajo Nation government programs and Chapters, and non-essential
15 businesses on the Navajo Nation, for prolonged periods of time. The shutdown of
16 government programs, especially the Division of Community Development/Capital Projects
17 Management Department (“CPMD”), created significant obstacles to the implementation
18 and completion of CAP-35-18 projects within the required 48-month timeframe.

19 I. Chapters certified under the Local Governance Act at 26 N.N.C. §102(B) (“LGA Chapters”),
20 and the Navajo Tribal Utility Authority (“NTUA”) have also been hampered in their
21 completion efforts regarding the projects under their responsibility.

22 J. The Executive Director of the Division of Community Development (“DCD”) has provided
23 a memorandum, dated January 30, 2023, explaining the delays in project implementation and
24 the need for a further deadline extension. **EXHIBIT 3**.

25 K. The previous DCD Director and the Executive Director of the Navajo Division of
26 Transportation (“NDOT”) have also provided memoranda requesting an extension of the
27 Síhasin funds reversion deadline. **EXHIBIT 4**.

28 L. In light of the above, the Navajo Nation finds it to be in the best interest of the Navajo Nation
29 and the Navajo People to amend CAP-35-18, as amended by CJA-03-21, to further extend
30 the Síhasin funds reversion deadline for projects and funds approved under CAP-35-18.

1 **SECTION THREE. AMENDING CAP-35-18, AS AMENDED BY CJA-03-21**

2 A. The Navajo Nation hereby amends the Sihasin funds reversion deadlines for all projects, as
3 originally set forth in CAP-35-18 (as amended by CJA-03-21), to allow a total of 72 months
4 for the reversion of all Sihasin funds and the completion of all projects approved and funded
5 in CAP-35-18.

6 B. The Navajo Nation hereby amends CAP-35-18, Section Two, Paragraph S(4), as amended
7 by CJA-03-21, as follows:

8 4. All of the proposed projects were vetted by CPMD and NTUA,
9 respectively, for project readiness before being apportioned into the three-
10 year plans based on project readiness status; therefore, if the funding for
11 a project is not spent or encumbered within ~~forty-eight (48)~~ seventy-two
12 (72) months of distribution to the designated recipient, the ~~project funds~~
13 ~~should for that project shall~~ revert to the Sihasin Fund account; and

14 C. The Navajo Nation hereby amends CAP-35-18, Section Four, Paragraph A(2)(d), as
15 amended by CJA-03-21, as follows:

16 d. Any individual Powerline or Waterline project funds that are not spent
17 or encumbered within ~~forty-eight (48)~~ seventy-two (72) months of
18 distribution to NTUA shall be returned to the Sihasin Funds account; and

19 D. The Navajo Nation hereby amends CAP-35-18, Section Four, Paragraph A(3)(g), as
20 amended by CJA-03-21, as follows:

21 g. Any individual Chapter or non-NTUA Powerline Project funds that are
22 not spent or encumbered within ~~forty-eight (48)~~ seventy-two (72) months
23 of distribution to CPMD or ~~transfer~~ to a LGA Certified Chapter shall be
24 returned to the Sihasin Fund account;

25 * * * *

26
27 **SECTION FOUR. DIRECTIVES**

28 A. CPMD, DCD, the Office of the Controller (“OOC”), the Office of Management & Budget
29 (“OMB”), affected LGA Chapters, NDOT, and NTUA, shall promptly take all steps
30 necessary to revise, if necessary, applicable Memoranda of Agreement or other legal

1 agreements to reflect the amendments approved herein.

2 B. All Síhasin funds recipients affected by the amendments approved herein shall be held
3 accountable for the continued progress of all activities and tasks under their responsibility
4 and control, and shall participate in work group meetings as necessary to promptly implement
5 and complete their approved projects by the new 72-month Síhasin funds reversion deadline.

6 C. All applicable Rules and Regulations affected by the amendments approved herein shall be
7 promptly revised, if necessary, to conform to said amendments, and the revised Rules and
8 Regulations shall be presented to the Resources and Development Committee and Budget
9 and Finance Committee within sixty (60) calendar days after the effective date of this Act.

10
11 **SECTION FIVE. EFFECTIVE DATE**

12 This Act shall become effective pursuant to 12 N.N.C. §2505 and 2 N.N.C. §221(B), and shall
13 apply retroactively and prospectively to all projects approved and funded under CAP-35-18.

14
15 **SECTION SIX. SAVING CLAUSE**

16 If any part of this Act is invalidated by the Supreme Court of the Navajo Nation, or by any
17 Navajo Nation District Court without appeal to the Navajo Nation Supreme Court, the
18 remainder of this Act shall be the law of the Navajo Nation.

CAP-35-18

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL -- Fourth Year, 2018

AN ACTION

RELATING TO HEALTH EDUCATION AND HUMAN SERVICES, RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; ADOPTING THE SÍHASIN FUND POWERLINE AND CHAPTER PROJECTS EXPENDITURE PLAN PURSUANT TO CD-68-14, AS AMENDED BY CJA-03-18, AND 12 N.N.C §§ 2501 - 2508, AS AMENDED; WAIVING 12 N.N.C. §§ 810 (F), 820 (I) AND (M) AND 860 (C) RELATING TO THE CAPITAL BUDGET AND CAPITAL IMPROVEMENT PROCESS

BE IT ENACTED:

Section One. Authority

- A. The Health Education and Human Services Committee of the Navajo Nation Council is empowered to provide legislative oversight on matters involving health, social services, education, general governmental services and human services. 2 N.N.C. §400 (C) (1).
- B. The Resource Development Committee of the Navajo Nation Council is empowered to exercise oversight authority on matters involving roads and transportation, communications and utilities, information technology, chapter activities, economic and community development, rights-of-way, public utilities and housing. 2 N.N.C. § 500 (C).
- C. 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 and to coordinate and review all fiscal, financial and investment activities of the Navajo Nation. 2 N.N.C. §§ 301 (B) (2) and (5).
- D. The Naabik'iyáti' 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).
- E. The Naabik'iyáti' Committee additionally has the authority to delegate its authority as appropriate for efficiency and streamlining of government process to appropriate entities

and to establish a subcommittee that consists of committee members which the committee selects. 2 N.N.C. §§ 186 and 701 (B). The Naabik'iyáti' Committee adopted NABIAP-20-15 establishing the Naabik'iyáti' Sihasin Fund Subcommittee to "recommend to the Naabik'iyáti' Committee and Navajo Nation Council financial support and/or financing plan(s) for the purposes designated in CD-68-14 [Navajo Nation Breach of Trust Settlement Act of 2014, establishing the Sihasin Fund]".

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

Section Two. Findings

- A. On November 1, 2006, the 20th Navajo Nation Council unanimously passed Resolution No. CN-57-06 authorizing the Navajo Nation Attorney General to file a lawsuit against the United States for the alleged breach of its fiduciary duties to the Nation arising under treaties, executive orders, public laws, statutes, regulations and contracts due to its mismanagement of the Nation's tribal trust assets, including tribal trust funds and select tribal resources, specifically excluding water and assets held in trust for individual Navajo members. Resolution No. CN-57-06 was signed into law by the President of the Navajo Nation on November 13, 2006.
- B. On September 26, 2013, the Naabik'iyáti' Committee of the Navajo Nation Council passed NABIS-42-13 creating a Trust Mismanagement Litigation Task Force ("Task Force"), composed of Council Delegates, from each agency and each standing committee, as well as Presidential appointees, to assist and consult with the Navajo Nation Office of the Attorney General, Department of Justice, outside legal counsel and the Office of the Navajo Nation President & Vice-President in evaluating whether any proposals put forth by the United States to settle the lawsuit, *Navajo Nation v. United States*, No. 06-945L, (United States Court of Federal Claims) were in the best interests of the Nation.
- C. On May 16, 2014, the United States made a settlement offer that was acceptable to the Nation's Attorney General, outside legal counsel, the Task Force and the Office of the President & Vice-President as being in the best interests of the Navajo Nation and on May 30, 2014, the 22nd Navajo

- Nation Council adopted Resolution No. CMY-28-14 accepting a settlement of the Navajo Nation's lawsuit, *Navajo Nation v. United States*, No. 06-945L, against the United States for its historical mismanagement of the tribe's trust assets and its failure to ensure that the Navajo Nation received all funds due and owed under the United States' trust obligations and fiduciary duties. Resolution No. CMY-28-14 was signed into law by the President of the Navajo Nation on June 4, 2014.
- D. The 22nd Navajo Nation Council recognized that during the many decades that the United States was in breach of its trust obligations and fiduciary duties to the Nation and engaged in the mismanagement of the Nation's tribal trust assets and resources, the tribal government was without sufficient funds to provide basic services and amenities to the Diné of past generations. The tribal government was also without funds to develop an infrastructure within the four sacred mountains that would support the growth and development of opportunities crucial for the prosperity of future generations of Diné. See Resolution No. CMY-28-14.
- E. Between October 6, 2014 and November 8, 2014, the Office of the Speaker held seven (7) Public Hearings, as directed by the Navajo Nation Council's Naabik'iyati' Committee, to receive input from Navajo Nation members on how the net proceeds from *Navajo Nation v. United States*' should be used. During that same time period, the Office of the President & Vice-President also held five (5) town hall meetings for a similar purpose.
- F. On December 13, 2014, in the best interests of the Nation and consistent with the collective wishes expressed by its members, the 22nd Navajo Nation Council adopted Resolution No. CD-68-14 enacting the Navajo Nation Breach of Trust Settlement Act of 2014 (hereinafter "2014 Act") and establishing the Navajo Nation Sihasin Fund at 12 N.N.C. § 2501 et seq. The President of the Navajo Nation signed Resolution No. CD-68-14 into law on December 31, 2014.
- G. On January 31, 2018, the 23rd Navajo Nation Council adopted Resolution No. CJA-03-18 enacting amendments to CD-68-14 clarifying the intent of the 22nd Navajo Nation Council, including that Sihasin Fund infrastructure projects were not to be limited by 12 N.N.C. § 1310(F) (Navajo Nation Bond Financing Act) or by TCDCJY-77-99 (Capital Improvement Projects Guidelines Policies and Procedures).

Resolution No. CJA-03-18 was signed into law by the President of the Navajo Nation on February 8, 2018.

- H. The 2014 Act, as amended by CJA-03-18, mandates that the net proceeds and earnings thereon received by the Navajo Nation from the settlement of *Navajo Nation v. United States*, No. 06-945L, be deposited into the Sihasin Fund and managed and invested to provide financial support and/or financing for (1) the planning and development of economic development and regional infrastructure supporting economic development and community development, including such infrastructure as, but not limited to, housing, commercial and government buildings, waterlines, solid waste management development, powerline projects, transportation and communication systems, within the Navajo Nation; and/or (2) education opportunities for members of the Navajo Nation. See 12 N.N.C § 2501 and § 2502 (A), as amended.
- I. The 2014 Act, as amended, also established that "leveraging of the [Sihasin] Fund by way of guaranteeing loans, match funding, direct funding in part and other weighted uses of the Fund, including loan financing from the Fund for the purposes in § 2502 (A)(1), shall be favored over direct funding in whole". 12 N.N.C § 2502 (C), as amended.
- J. The 2014 Act further established that with the exception of outstanding and accrued litigation costs, Sihasin Fund Principal and Income shall only be expended pursuant to a Fund Expenditure Plan consistent with the purposes set forth in the 2014 Act, as amended, at 12 N.N.C. §2502 and adopted by a two-thirds (2/3) vote of all members of the Navajo Nation Council. See 12 N.N.C. § 2505 (A).
- K. On April 9, 2015, the Naabik'iyáti' Committee adopted NABIAP-20-15 establishing the Naabik'iyáti' Sihasin Fund Subcommittee to "recommend to the Naabik'iyáti' Committee and Navajo Nation Council financial support and/or financing plan(s) for the purposes designated in CD-68-14 [Navajo Nation Breach of Trust Settlement Act of 2014, establishing the Sihasin Fund]".
- L. Between April 2015 and March 2018, the Subcommittee, assisted by the Office of Legislative Services, Office of the Speaker, Office of Legislative Counsel and outside legal counsel, met on more than thirty (30) occasions in either work sessions or official meetings to review and evaluate comments and recommendations from the Navajo

- People; hear proposals from Navajo Nation entities, Chapters, programs and officials; and develop expenditure plan(s) for the Sihasin Fund Principal and Income consistent with the purposes set forth in the 2014 Act, as amended.
- M. After reviewing the comments and recommendations submitted during the Public Hearings and town hall meetings, as well as the reports and comments made during Sihasin Fund Subcommittee meetings, the Subcommittee determined that powerline projects and Chapter capital and economic development projects were a high priority for Navajo communities and that the funding of such projects would afford Navajo communities the opportunity to start and complete local projects currently stalled by the lack of sufficient funds, apply for additional state and federal funds requiring an identified match, as well as support CMY-28-14's intent to expand infrastructure(s) on the Navajo Nation, spur economic development at the local level and provide amenities to Navajo communities.
- N. In November of 2017, the Subcommittee issued a directive to the Speaker of the Navajo Nation Council to develop a nationwide powerline projects expenditure plan combining Undesignated Unreserved Fund Balance ("UUFB") and Sihasin Funds to total one hundred million dollars (\$100,000,000.00) divided equally amongst the twenty-four Council Delegate Districts equaling \$4,166,666.67 per District. On February 15, 2018, the Navajo Nation Council issued a further directive to the Speaker to have his staff meet with Navajo Nation Council Delegates and the Chapters they represent to develop a nationwide powerline and chapter projects expenditure plan for one hundred million dollars (\$100,000,000.00) divided equally amongst the twenty-four Council Delegate Districts with the Sihasin Fund as the intended funding source.
- O. Between March 5, 2018 and March 16, 2018, Office of the Speaker staff, contract legal counsel, Capital Projects Management Department ("CPMD") staff, and Navajo Tribal Utilities Authority ("NTUA") staff, met twice with each Council Delegate and their Chapter representatives, including but not limited to Chapter Officials, Chapter Managers and Community Service Coordinators, to review each District's proposed projects for (1) compliance with the 2014 Act's, as amended, purpose of "the planning and development of economic development and regional

infrastructure supporting economic development and community development, including such infrastructure as, but not limited to, housing, commercial and government buildings, waterlines, solid waste management development, powerline projects, transportation and communication systems, within the Navajo Nation"; and (2) readiness status, e.g., project ready, construction ready or shovel ready, as applied by CPMD.

- P. Powerline, economic development and infrastructure projects were proposed at the March meetings including, but not limited to, Head Start facilities, senior and veteran centers, and road improvements. A listing of the proposed projects, including match and contribution funding, is included on attached Exhibits A through E.
- Q. To ensure that Sihasin Funds are not prematurely withdrawn and continue to earn investment earnings for as long as possible, CPMD, with the assistance of the Office of the Speaker and NTUA, compiled the proposed projects into nationwide three-year funding plans, i.e., Chapter Projects, NTUA Powerlines, Non-NTUA Powerlines, and Waterlines, attached as Exhibits A through E, based on individual project readiness status.
- R. On March 23, 2018, contract legal counsel and CPMD updated the Sihasin Subcommittee on the Office of the Speaker's efforts to develop the powerline and Chapter projects expenditure plan, including the identification of almost twenty million dollars (\$20,000,000.00) in already secured project matching funds.
- S. During the update to the Sihasin Subcommittee, the following accountability and implementation measures were discussed:
1. Due to their experience and expertise, as well as economies of scale, the funding and responsibility for implementing Chapter projects and Non-NTUA Powerline projects should be allocated to CPMD with a template in place, e.g., Memorandum of Agreement or other form of grant agreement, for CPMD to transfer the project funds and responsibilities to Local Governance Act Certified Chapters at their request;
 2. Due to their experience and expertise, as well as community need to lock-in project pricing, the funding

and responsibility for NTUA Powerline and waterline projects should be allocated directly to NTUA;

3. If the funding for NTUA Powerline and Waterline projects is disbursed directly to NTUA and the funding for Chapter and non-NTUA Powerline projects is disbursed directly to CPMD, the funding for projects at Chapters sanctioned pursuant to 12 N.N.C. § 9 should not be subject to § 9 (B)'s ten percent (10%) withholding;
 4. All of the proposed projects were vetted by CPMD and NTUA, respectively, for project readiness before being apportioned into the three-year plans based on project readiness status; therefore, if the funding for a project is not spent or encumbered within twenty-four (24) months of distribution, the project funds should revert to the Sihasin Fund; and
 5. To support expeditious administration and implementation of the more than two hundred (200) Chapter projects, CPMD operations should be supplemented with administrative costs.
- T. In addition, during the District meetings with Delegates and their Chapter officials and community representatives to select and vet powerline and Chapter projects, concerns were raised that the President's line-item veto of even a single project would disrupt the equal distribution of funds among the Districts, as well as, negate local choice in project selection and impair Chapter and community efforts to procure additional matching funds from federal and state sources.
- U. The Navajo Nation Council finds that the Powerline and Chapter Projects Expenditure Plan proposal, attached as Exhibits A through E, meets the purposes of the 2014 Act, as amended, i.e., "the planning and development of economic development and regional infrastructure supporting economic development and community development, including such infrastructure as, but not limited to, housing, commercial and government buildings, waterlines, solid waste management development, powerline projects, transportation and communication systems, within the Navajo Nation"; as well as the leveraging preference criteria of the 2014 Act, as Sihasin Funds will only fund a portion of the overall total cost of the projects with at least \$19,440,279.45, as

set forth on Exhibits A through E, of projects' costs covered by other Navajo Nation funds or federal, state or private entities through match funding, joint funding, contribution funding, cost-share funding or similar arrangements and agreements.

- V. The Navajo Nation Council also finds that the proposed Powerline and Chapter Projects Expenditure Plan proposal, attached as Exhibits A through E, supports community choice and addresses CMY-28-14's intent to expand infrastructure(s) on the Navajo Nation, provide economic development at the local level and provide amenities to Navajo communities.
- W. The Navajo Nation Council hereby determines that allocating Sihasin Funds to implement the Powerline and Chapter Projects Expenditure Plan, as set forth in Exhibits A through E, fits within the priorities established under the July 20, 2015 One Nation, One Voice Navajo Nation Three Branch Agreement and that it is in the best interests of the Navajo Nation, as well as in the best interests of community development, the expansion of infrastructure(s) on the Navajo Nation, economic development at the local level and the provision of amenities to Navajo communities, to adopt the Sihasin Fund Powerline and Chapter Projects Expenditure Plan, attached as Exhibits A through E.

Section Three. Approval and Adoption of Expenditure Plan

- A. The Navajo Nation hereby approves and adopts the Sihasin Fund Powerline and Chapter Projects Expenditure Plan, attached and incorporated herein as Exhibits A through E.
- B. The Navajo Nation hereby approves and adopts total funding from the Sihasin Fund in the amount of one hundred million six hundred thousand dollars (\$100,600,000.00) with \$18,696,787.92 allocated to Navajo Tribal Utility Authority ("NTUA") for powerline projects; \$4,242,192.99 allocated to NTUA for waterline projects; \$74,076,413.86 allocated to Captial Projects Management Depart ("CPMD") for Chapter projects; \$3,584,605.24 allocated to CPMD for Non-NTUA powerline projects; as summarized in Exhibit A, to implement the Sihasin Fund Powerline and Chapter Projects Expenditure Plan as follows:
1. Year 1: The distribution of \$42,294,332.87 of Sihasin Funds in Navajo Nation Fiscal Year 2018 allocated as

follows: \$2,866,370.94 to NTUA for the first year of NTUA Powerline projects, as set forth in Exhibit B; \$560,557.00 to NTUA for the first year of Waterline projects, as set forth in Exhibit E; \$37,423,205.14 to CPMD for the first year of Chapter projects and administrative costs (\$200,000.00), as set forth in Exhibit D; and \$1,444,199.79 to CPMD for the first year of Non-NTUA Powerline projects, as set forth in Exhibit C.

2. Year 2: The distribution of \$46,203,956.06 of Sihasin Funds in Navajo Nation Fiscal Year 2019 allocated as follows: \$12,154,756.58 to NTUA for the second year of NTUA Powerline projects, as set forth in Exhibit B; \$1,068,666.66 to NTUA for the second year of Waterline projects, as set forth in Exhibit E; \$31,124,968.21 to CPMD for the second year of Chapter projects and administrative costs (\$200,000.00), as set forth in Exhibit D; and \$1,855,564.61 to CPMD for the second year of Non-NTUA Powerline projects, as set forth in Exhibit C.
3. Year 3: The distribution of \$12,101,711.08 of Sihasin Funds in Navajo Nation Fiscal Year 2020 allocated as follows: \$3,675,660.40 to NTUA for the third year of NTUA Powerline projects, as set forth in Exhibit B; \$2,612,969.33 to NTUA for the third year of Waterline projects, as set forth in Exhibit E; \$5,528,240.51 to CPMD for the third year of Chapter projects and administrative costs (\$200,000.00), as set forth in Exhibit D; and \$284,840.84 to CPMD for the third year of Non-NTUA Powerline projects, as set forth in Exhibit C.

- C. The Sihasin Funds allocated for the Sihasin Fund Powerline and Chapter Projects Expenditure Plan may be further leveraged by the Navajo Nation through bond or loan financing pursuant to the Navajo Nation Bond Financing Act, 12 N.N.C. § 1300 et seq., as amended, using Sihasin Fund Earnings for repayment and financing costs upon the recommendation of the Budget & Finance Committee and approval by a two-thirds (2/3) vote of all members of the Navajo Nation Council.

Section Four: Approval and Adoption of Expenditure Plan Administration

- A. The Navajo Nation hereby approves administration of the Sihasin Fund Powerline and Chapter Projects Expenditure Plan as follows:
1. The Navajo Nation Controller shall determine whether the source(s) of the annual distributions of the \$100,600,000.00 will be Sihasin Fund Principal or Income or a combination of both;
 2. NTUA Powerline and Waterline Projects. The annual distributions for NTUA Powerline and Waterline Projects, as set forth in Exhibits B and E, shall be released to NTUA through Grant Agreement(s), executed pursuant to 2 N.N.C. §164 (B), as amended, as follows:
 - a. The First Year (Fiscal Year 2018) distributions shall be released to NTUA by no later than the end of Navajo Nation Fiscal Year 2018;
 - b. The Second and Third Year (Fiscal Years 2019 and 2020) distributions shall be released to NTUA by no later than the end of the first quarter of the respective Navajo Nation Fiscal Year;
 - c. NTUA shall not require the Navajo Nation, including its Chapters, nor Navajo individuals, to contribute more funding to complete any project listed in Exhibits B and E, regardless of year funded;
 - d. Any individual Powerline or Waterline project funds that are not spent or encumbered within twenty-four (24) months of distribution to NTUA shall be returned to the Sihasin Fund; and
 - e. NTUA shall account for the Sihasin Funds spent and such accounting or expenditure report, including project status, shall be submitted to CPMD, the Office of President & Vice-President, and the Resources and Development Committee on a quarterly basis.
 3. Chapter and Non-NTUA Powerline Projects. The annual distributions for Chapter and Non-NTUA Powerline Projects, as set forth in Exhibits C and D, shall be released to CPMD as follows:

- a. The First Year (Fiscal Year 2018) distributions, including administration costs, shall be released to CPMD by no later than the end of the third quarter of Navajo Nation Fiscal Year 2018;
- b. The Second and Third Year (Fiscal Years 2019 and 2020) distributions, including administration costs, shall be released to CPMD by the end of the first quarter of the respective Navajo Nation Fiscal Year;
- c. Annual distributions to CPMD for administration costs shall not lapse on an annual basis pursuant to 12 N.N.C. §820 (N) or otherwise be returned to or deposited in the Sihasin Fund principal or Navajo Nation General Fund until such time as all Chapter Projects listed on Exhibit C are fully completed;
- d. 12 N.N.C. § 9 (B) is hereby waived and individual Chapter and non-NTUA Powerline Projects implemented and administered by CPMD shall not be subject to 12 N.N.C. § 9 (B)'s ten percent (10%) withholding;
- e. Individual Chapter and non-NTUA Powerline Projects shall be implemented and administered by CPMD consistent with the Navajo Nation Budget Instruction Manual, as amended, unless inconsistent with other provisions of this resolution;
- f. If requested, CPMD may transfer individual Chapter Project funds, accountability, and responsibility to a Local Governance Act ("LGA") Certified Chapter pursuant to a Memorandum of Agreement or other form of grant agreement executed pursuant to 2 N.N.C. § 164 (B), as amended;
- g. Any individual Chapter or non-NTUA Powerline Project funds that are not spent or encumbered within twenty-four (24) months of distribution to CPMD or transfer to a LGA Certified Chapter shall be returned to the Sihasin Fund;

- h. With the exception of project funds and responsibilities transferred to LGA Certified Chapters, CPMD shall account for the Sihasin Funds spent and such accounting or expenditure report shall be included as part of the Executive Branch's quarterly program report submitted to the Resources and Development Committee; and
 - i. LGA Certified Chapters that have been granted Sihasin Fund project funds and responsibilities, shall account for the money spent and such accounting or expenditure report, including project status, shall be submitted to CPMD, the Office of President & Vice-President, and the Resources and Development Committee on a quarterly basis.
- B. NTUA, CPMD and LGA Certified Chapters shall have the authority to enter into match, funding, partnership, cooperative and other cost saving or cost sharing arrangements or leveraging agreements with Navajo Nation entities and enterprises, Navajo Nation Chapters and other political subdivisions, other Navajo Nation programs and federal and state agencies and such agreements shall not be deemed procurement contracts subject to the Navajo Nation Procurement Act, 12 N.N.C. §§ 301 - 371 or Navajo Business Opportunity Act 5 N.N.C. §§ 201 - 215.
1. Notwithstanding the above, all Chapters, working in conjunction with NTUA and/or CPMD, shall have the continuing responsibility to identify ways to further leverage the allocated Sihasin Funds;
 2. NTUA and CPMD shall each present an annual leveraging report to the Resource & Development Committee and Budget & Finance Committee during the first quarter of each Navajo Nation Fiscal Year identifying the efforts and success of Chapter(s) in securing additional matching or contribution funding; and
 3. With the approval of the Resources & Development Committee, any project costs saved or reduced through leveraging or otherwise shall be available for expenditure on any other project within the respective Chapter deemed construction-ready by CPMD; if there are no construction-ready projects within the respective Chapter, then, with the approval of the

Resources & Development Committee, the saved or reduced costs shall be available for expenditure on any other project within the respective District.

- C. A chapter project, powerline, or waterline project may be changed, including the year funded, or added to Exhibits A through E with the concurrence of the Delegate representing the chapter's Council District and the approvals of the Resources and Development Committee and Budget and Finance Committee, as long as such project has been certified as construction-ready by CPMD or NTUA and the total Sihasin Funding for the District does not exceed \$4,166,666.67.
- D. NTUA, CPMD and LGA Certified Chapters shall report the status of the Sihasin Funds allocated or transferred to them to implement the Powerline and Chapter Projects Expenditure Plan, specifically including the use and status of the Sihasin Funds and the status of projects for which they are responsible, to the Resources & Development, Budget & Finance and Naabik'iyáti' Committees and Office of the President & Vice-President on a quarterly basis.

Section Five. Waiving Navajo Nation Code Provisions Regarding the Capital Budget and Capital Improvement Process Effective Date

Notwithstanding that Sihasin Fund projects are specifically not subject to the Capital Improvement Projects Guidelines Policies and Procedures set forth by TCDCJY-77-99, the Navajo Nation hereby waives the application of 12 N.N.C. § 810 (F), §§ 820 (I) and (M) and § 860 (C) regarding the Capital Budget and Improvement processes to the Powerline and Chapter Projects Expenditure Plan.

Section Six. Effective Date

The Sihasin Fund Powerline and Chapter Projects Expenditure Plan, as set forth above, shall become effective pursuant to 12 N.N.C. § 2505.

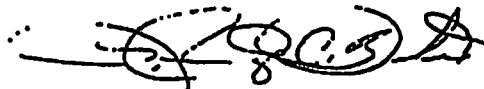
Section Seven. Directives

- A. All Navajo Nation programs, specifically including, but not limited to, the Office of Controller, Office of Management & Budget, CPMD, and Chapters, as well as NTUA, shall take all steps necessary to expeditiously implement the Sihasin Fund Powerline and Chapter Projects Expenditure Plan.

- B. All Navajo Nation programs, as well as NTUA, named in this legislation shall be held accountable for the progress of tasks under their responsibility and control and shall participate in work group meetings, if any, necessary to expeditiously implement the Sihasin Fund Powerline and Chapter Projects Expenditure Plan.
- C. Office of Legislative Services will adjust all figures throughout the legislation and exhibits to reflect amendment totals, with the concurrence of the sponsor. The Navajo Nation directs the Office of Legislative Services to recalculate the final monetary totals such that the figures conform to the amendments passed by the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 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 21 in favor and 00 opposed, on this 17th day of April 2018.



LoRenzo C. Bates, Speaker
Navajo Nation Council

4-27-18

Date

Motion: Honorable Seth Damon
Second: Honorable Steven Begay

Speaker Bates not voting

ACTION BY THE NAVAJO NATION PRESIDENT:


1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (c) (10), on this _____ day of _____ 2018.

Russell Begaye, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (c) (11), on this _____ day of _____ 2018 for reason(s) expressed in the attached letter to the Speaker

Russell Begaye, President
Navajo Nation

3. I hereby exercise line item veto pursuant to the 2010, certified Initiative, over the supplemental appropriations approved herein by the Navajo Nation Council; on this 7th day of May 2018.



Russell Begaye, President
Navajo Nation

CJA-03-21

**RESOLUTION OF THE
NAVAJO NATION COUNCIL
24th NAVAJO NATION COUNCIL - THIRD YEAR, 2021**

AN ACTION

RELATING TO LAW AND ORDER, HEALTH EDUCATION AND HUMAN SERVICES, RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; AMENDING CAP-35-18, SÍHASIN FUND POWERLINE AND CHAPTER PROJECTS EXPENDITURE PLAN, TO EXTEND PROJECT COMPLETION DEADLINES TO FORTY-EIGHT MONTHS

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Law and Order Committee of the Navajo Nation Council is empowered to provide legislative oversight on matters involving public safety programs and to enable the Navajo Nation to more effectively provide efficient public safety services on the Navajo Nation. 2 N.N.C. § 600(C)(6).**
- B. The Health Education and Human Services Committee of the Navajo Nation Council is empowered to provide legislative oversight on matters involving health, social services, education, general governmental services and human services. 2 N.N.C. § 400(C)(1).**
- C. The Resource Development Committee of the Navajo Nation Council is empowered to exercise oversight authority on matters involving roads and transportation, communications and utilities, information technology, chapter activities, economic and community development, rights-of-way, public utilities and housing. 2 N.N.C. § 500(C).**
- D. 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 and to coordinate and review all fiscal, financial and investment activities of the Navajo Nation. 2 N.N.C. §§ 301(B)(2) and (5).**
- E. The Naabik'iyáti' 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).**
- F. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A).**

SECTION TWO. FINDINGS

- A. In May of 2018, the 23rd Navajo Nation Council enacted Resolution No. CAP-35-18, attached as Exhibit 1, establishing the Sihasin Fund Powerline and Chapter Projects Expenditure Plan to fund 229 powerline, waterline and capital projects throughout the Navajo Nation.
- B. The total cost of the 229 projects funded by the 23rd Navajo Nation Council through CAP-35-18 was one hundred million dollars (\$100,000,000); however, the President of the Navajo Nation line-item vetoed four (4) projects totaling eight hundred eighty-nine thousand three hundred fifty dollars (\$889,350). See Exhibit 2.
- C. The CAP-35-18 projects, depending on their readiness, were grouped into three (3) funding cycles: (1) Year One projects were to receive funding by the end of Fiscal Year 2018 (NTUA powerline projects) or the end of the third quarter of Fiscal Year 2018 (Non-NTUA powerline projects); (2) Year Two projects were to receive funding by the end of the first quarter of Fiscal Year 2019; and (3) Year Three projects were to receive funding by the end of the first quarter of Fiscal Year 2020. Exhibit 1.
- D. All CAP-35-18 project funds, regardless of the year funded, were required to be spent or encumbered within twenty-four months of distribution by the Office of the Controller to the Capital Projects Management Department (CPMD), LGA Certified Chapter, or Navajo Tribal Utility Authority (NTUA); any project funds not spent or encumbered within twenty-four months of distribution are to be reverted or reallocated to the Sihasin Fund. See also, Exhibit 4 (memo from Controller dated May 13, 2019).
- E. The World Health Organization (WHO) declared a Public Health Emergency of International Concern related to the outbreak of coronavirus (COVID-19) on January 30, 2020, the U.S. Department of Health and Human Services declared a Public Health Emergency related to COVID-19 on January 31, 2020 and the WHO declared a global pandemic on March 11, 2020.
- F. The Navajo Nation Commission on Emergency Management, with the concurrence of Navajo Nation President Jonathan Nez, declared a Public Health State of Emergency on the Navajo Nation on March 11, 2020 due to COVID-19. Resolution No. CEM 20-03-11. The Navajo Nation Department of Health subsequently issued numerous Public Health Emergency Orders. Public Health Orders

2020-001 through 2020-029 are incorporated by reference into this resolution.

- G. As of November 15, 2020, the Navajo Nation Health Command Operations Center has confirmed 13,373 COVID-19 cases and 602 COVID-19-related deaths on the Navajo Nation; confirmed COVID-19 cases and COVID-19-related deaths on the Navajo Nation have not subsided and continue to rise at an alarming rate.
- H. The Public Health Emergency Orders and related Executive Orders closed Navajo Nation government programs and Chapters and non-essential businesses on the Navajo Nation for prolonged periods of time on different occasions; the shutdown of government programs, like CPMD and Chapters, combined with the closure of non-essential businesses created unavoidable, but still substantial, obstacles to the timely implementation and completion of CAP-35-18 projects within the required twenty-four month time frame.
- I. The COVID-19 pandemic is not expected to subside in the near future and the Public Health Emergency Orders are predicted to remain in place for the foreseeable future.
- J. CPMD has informed Navajo Nation leadership that it cannot overcome the COVID-19 obstacles in time to meet CAP-35-18's requirement that project funds be spent or encumbered within twenty-four (24) months of distribution; CPMD has requested that the time frame for project funds to be spent or encumbered be extended. Exhibit 3.
- K. The Navajo Nation finds it to be in the best interests of its Chapters, as well as the Navajo people, to amend CAP-35-18 to extend the time frame to spend or encumber project funds to forty-eight months.

SECTION THREE. AMENDING CAP-35-18

- A. The Navajo Nation hereby extends the project completion deadline and time frames set forth in CAP-35-18, Exhibit A, from twenty-four (24) months to forty-eight (48) months.
- B. The Navajo Nation also hereby amends CAP-35-18, Section Two, Paragraph S (4), as follows:
 - 4. All of the proposed projects were vetted by CPMD and NTUA, respectively, for project readiness before being apportioned into the three-year plans based on project readiness status; therefore, if the funding for a project is not spent or encumbered within ~~twenty-four~~

~~(24)~~ forty-eight (48) months of distribution, the project funds should revert to the Sihasin Fund; and

C. The Navajo Nation also hereby amends CAP-35-18, Section Four, Paragraph A (2) (d), as follows:

d. Any individual Powerline or Waterline project funds that are not spent or encumbered within ~~twenty-four~~ (24) forty-eight (48) months of distribution to NTUA shall be returned to the Sihasin Funds; and

D. The Navajo Nation hereby also amends CAP-35-18, Section Four, Paragraph A (3) (g), as follows:

g. Any individual Chapter or non-NTUA Powerline Project funds that are not spent or encumbered within ~~twenty-four~~ (24) forty-eight (48) months of distribution to CPMD or transfer to a LGA Certified Chapter shall be returned to the Sihasin Fund;

E. The Navajo Nation hereby also amends CAP-35-18, Section Four, Paragraph C, as follows:

C. A chapter project, powerline, or waterline project may be changed, including the year funded, or added to Exhibits A through E with concurrence of the Delegate representing the Chapter's Council District and the approvals of the Resources and Development Committee and Budget and Finance Committee, or through Rules and Regulations duly delegated and adopted thereby, as long as such project has been certified as construction-ready by CPMD or NTUA and the total Sihasin Funding for the District does not exceed \$4,166.666.67.

SECTION FOUR. EFFECTIVE DATE

This Action shall become effective pursuant to 2 N.N.C. § 221(B) and apply retroactively to CAP-35-18 Year One projects, as well as prospectively to Year Two and Year Three projects.

SECTION FIVE. DIRECTIVES

A. CPMD, Office of the Controller (OOC), Office of Management & Budget (OMB), and LGA Certified Chapters, as well as NTUA, shall take all steps necessary to expeditiously revise, if necessary, applicable Memorandum of Agreements to reflect these amendments to CAP-35-18.

- B. All Navajo Nation programs named in this legislation, as well as NTUA and LGA Certified Chapters, shall be held accountable for the implementation of these amendments to CAP-35-18 and the continued progress of tasks under their responsibility and control and shall participate in work group meetings, if any, necessary to expeditiously implement the Sphasin Fund Powerline and Chapter Projects Expenditure Plan.
- C. CPMD, OOC and OMB shall work with the Department of Justice to develop Rules and Regulations that conform with CAP-35-18 to administratively approve project changes that are currently approved through Committee legislation. Such Rules and Regulations shall be presented to the Resources and Development Committee and Budget and Finance Committee within sixty (60) days after enactment of this legislation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 24th 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 22 in Favor, and 00 Opposed, on this 27th day of January 2021.


Honorable Seth Damon, Speaker
24th Navajo Nation Council

02/03/2021

DATE

Motion: Honorable Daniel E. Tso
Second: Honorable Jamie Henio

Speaker Seth Damon not voting

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I, hereby, sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C) (10), on this 11th day of February, 2021.


Jonathan Nez, President
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C) (11), on this _____ day of _____, 2021 for the reason(s) expressed in the attached letter to the Speaker.

Jonathan Nez, President
Navajo Nation




DR. BUU NYGREN *PRESIDENT*
RICHELLE MONTOYA *VICE PRESIDENT*

The Navajo Nation | Yideeskáądi Nitsáhákees

MEMORANDUM

TO : Resources and Development Committee
25th Navajo Nation Council

FROM : 
Calvin Castillo, Executive Director
Division Community Development

DATE : January 30, 2023

SUBJECT : **AMENDMENT TO SIHASIN RESOLUTION CJA-03-21 AND LEGISLATION -
CAP-35-18**

The Division of Community Development – Capital Projects Management Department (CPMD) is requesting for amendment to the Sihasin Legislation CJA-03-21 for a two-year extension for Sihasin Funding Years 1, 2, and 3 from the Navajo Nation Council. The request for the extension of the Sihasin funding are for the following reasons.

1. The Navajo Nation Office of the President and Vice President issued several Executive Orders closing government offices and schools since March 13, 2020. A Majority of CPMD staff stayed home to protect their health and safety. Only a few essential staff were available for limited operation at the office. However, they were redirected to concentrate on COVID-19 related assignments and projects. Similar action was executed by surrounding states affecting Capital and Infrastructure Projects. In addition, the Public Health Orders issued for COVID-19 Pandemic Emergency impacted all aspects of project progress – planning, assessment, coordination, execution, construction and closing out projects. The emergency declarations and public health orders caused all projects to lag behind, projects funded from the Navajo Nation, States of Arizona, New Mexico, and Utah.
2. The Navajo Nation government offices closures adversely impacted all capital projects schedule. Offices such as OMB, OOC, RBDO, and chapters had only essential workers providing minimal services, or work related to COVID-19. As a result, CPMD was not able to hold bid openings,

contract development, and project coordination meetings to move Year 1, Year 2 and Year 3 projects forward.

3. The Sihasin and related legislation time frames have been adversely impacted by the pandemic emergency and related complications especially Year One projects expired on November 2022 and Year Two projects which are still pending issuance of Business Unit numbers. Some Year Three projects are connected with Year Two projects, and some do not have Business Units assigned by OMB.
4. DCD submitted a similar request to DOJ, OLC, RDC and NN Council on September 15, 2022. The OLC drafted Legislation 157-22 to approve this request but the 24th NN Council ran out of time during its Specialist Session on December 29, 2022 to approve Legislation 157-22 which authorized the amendment to the Sihasin Legislation CJA-03-21 (Original Legislation CAP-35-18) for a two-year extension for Sihasin funds Year 1, 2, and 3.
5. As the number of COVID-19 positive cases continues to rise, there is an uncertainty of when DCD/CPMD will resume normal operations and capacity.

Therefore, the Division of Community Development is respectfully requesting the Department of Justice and the Office of Legislative Counsel to start drafting a legislation for the extension of Sihasin Funds timeline for two years as described above.

I appreciate your support to amend the Sihasin Legislation. If you have any questions, please contact my office, or Mr. James Adakai at (928) 871-6211 or james_adakai@nndcd.org.

Ahe'hee'

xc: James Adakai, Delegated Manager II, Capital Projects Management Department
Dana Bobroff, Chief Legislative Counsel, Office of Legislative Counsel


THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



MEMORANDUM

TO : Rickie Nez, Chairperson & Committee Members
Resources and Development Committee
24th Navajo Nation Council

FROM : 
Pearl Yellowman, Executive Director
Division of Community Development

DATE : May 27, 2020

SUBJECT : **RECOMMENDING AMENDMENT TO SIHASIN
LEGISLATION #CAP-35-18**

The Division of Community Development - Capital Projects Management Department (CPMD) is requesting for amendment to the Sihasin Legislation #CAP-35-18 for a two-year extension for Sihasin Funding Years 1, 2, and 3 from the Navajo Nation Council. The request for the extension of the Sihasin Funding are for the following reasons:

1. The Navajo Nation Office of the President and Vice President issued an Executive Order (#001-20) closing government offices and schools on March 13, 2020. A majority of CPMD staff stayed home to protect their health and safety. Only a few essential staff were available for limited operation at the office. However, they were redirected to concentrate on COVID-19 related assignments and projects. The closure has been extended by Executive Orders 002-20, 003-20 and 004-20. Similar action were executed by surrounding states, affecting commercial activity. In addition, the Public Health Orders issued for COVID-19 Pandemic Emergency impacted all aspects of project progress - planning, assessment, coordination, execution, construction and closing out projects. The emergency declarations and public health orders caused all projects to lag behind, projects funded from the Navajo Nation, States of Arizona, New Mexico, and Utah.
2. The Navajo Nation government offices closures adversely impacted all capital

MEMORANDUM TO HONORABLE RICKIE NEZ

May 27, 2020

Page 2 of 2

projects schedule. Offices such as OMB, OOC, RBDO, and chapters had only essential workers providing minimal services, or work related to COVID-19. As a result, CPMD was not able to hold bid openings, contract development, and project coordination meetings to move Year 1 and Year 2 projects forward. Payments for services rendered are also at a standstill, affecting the drawdown and extending project timelines forward.

3. The Sihasin legislation timeframes have been adversely impacted by the pandemic emergency especially Year One projects which expires November 2020 and Year Two projects which are still pending issuance of Business Unit numbers. Some Year Three projects are connected with Year Two projects, and some do not have business units assigned by OMB.
4. As the number of COVID-19 positive cases continues to rise, there is an uncertainty of when DCD/CPMD will resume normal operations and capacity.

Therefore, the Division of Community Development is respectfully requesting the Department of Justice and the Office of Legislative Counsel to start drafting a legislation for the extension of Sihasin Funds timeline for two years as described above.

I appreciate your support to amend the Sihasin Legislation. If you have any questions, please contact my office, or Mr. James Adakai at 871-6211 or james_adakai@nndcd.org.

Ahéhee'

c. James Adakai, Department Manager II, Capital Projects Management Department



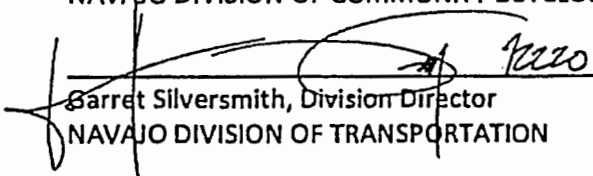
NAVAJO DIVISION OF TRANSPORTATION
POST OFFICE BOX 4620, WINDOW ROCK, AZ 86515
TEL: 505-371-8300/8301 FAX: 505-371-8399

MEMORANDUM

DATE : May 15, 2020

TO : Seth Damon, Speaker,
Presiding Chair of NAABIK'I'YATI' COMMITTEE
24TH NAVAJO NATION COUNCIL

FROM : _____
Dr. Pearl Yellowman, Division Director
NAVAJO DIVISION OF COMMUNITY DEVELOPMENT

FROM : _____

Garret Silversmith, Division Director
NAVAJO DIVISION OF TRANSPORTATION

SUBJECT : Request for Sihasin Project Timeline/Business Unit Extension

The Navajo Division of Transportation (Navajo DOT) requests for *Project Timeline and Business Unit* extension for 20 Sihasin (Transportation) projects. Specifically, to extend each project by two years, for each funding year:

Year 1 Projects	Extend to September 30, 2022	\$ 7,630,332.21
Year 2 Projects	Extend to September 30, 2023	\$ 1,203,677.00
Year 3 Projects	Extend to September 30, 2024	<u>\$ 1,194,687.63</u>
	TOTAL	\$10,028,696.84

There are four project managers with Navajo DOT, and they are working with Chapters, Division of Community Development (DCD) and Capital Projects Management Department (CPMD) staff in the development of the projects. The Project Managers are also preparing and submitting budgets to CPMD and the Office of Management and Budget (OMB) staff in getting the business unit issued.

Each 20 Sihasin/Transportation Projects are at different phases of project development and they are outlined in attached Exhibit "A" Matrix. The phases include one or more of the following: preliminary studies (archaeological, biological, etc.), plan and design, 401 permitting process, procurement, contracting, and construction. All the projects have activities, but we need additional time to complete the projects.

Below are additional reasons for our request:

- 1) A few projects have multiple funding from Sihasin, Capital Outlay, and/or Road Fund (a.k.a. Fuel Excise Tax). Multiple funding requirements has posed a challenge in issuing contracts in accordance to each of the funding requirements and it takes additional time to complete the process.

Page 2 of 2: Request for Sihasin Project Timeline/Business Unit Extension

- 2) Most project still require drainage studies and design development.
- 3) Two Chapters selected routes going through Allotment Land, but after Navajo DOT met with Chapter representatives, Chapter decided to change the location of road Improvement to Tribal Trust Land only. This process took some time to address.
- 4) Mostly importantly, the progress of the projects has been significantly delayed due to the COVID-19 pandemic. Although the Navajo DOT Project Managers have been diligently working with CPMD and OMB Staff, the partial Navajo Nation government shut down has slowed the process even more.
- 5) There are sixteen (16) projects in Year 1 and the funding will end on September 30, 2020. This is not enough time to complete the projects because Year 1 funding have not been obligated yet. Most contracts are still pending approval. This will become a domino effect in trying to spend the funds for Year 2 and year 3.
- 6) It takes time to complete the preliminary studies including the 401 and 404 permitting process. Again, these processes have been delayed due to the COVID-19 pandemic and the National Government-shut down. There are limited services from regulatory offices such as Bureau of Indian Affairs, Historic Preservation Department, Environmental Protection Agency, United States Army Corps of Engineering, etc. Once the regulatory offices are back in full operation, Navajo DOT will complete the processes; however, additional time is still needed to complete the actual "construction" or the road/transportation improvements.

Navajo DOT staff are committed in completing the projects, and we do not want the funds to be reverted to the fund balance. Project Managers have already invested time and effort in moving the projects along. Navajo DOT needs additional time to complete the projects and therefore, requesting to extend the project timeline and business unit numbers by two years, respectively by each funding year.

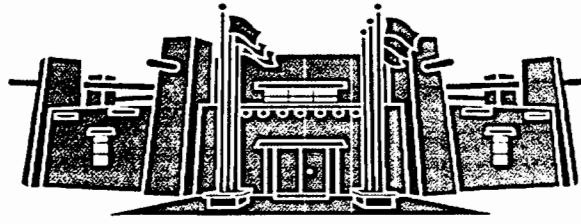
If you have any questions, please contact me at (505) 371-8300, or you may contact the following Navajo DOT staff members:

Ardaniel Begay abegay@navajodot.org
Joseph Peterman jpeterman@navajodot.org
Marlinda Littleman mlittleman@navajodot.org
Priscilla Lee plee@navajodot.org

Max Bighorse mbighorse@navajodot.org
Donald Jackson djackson@navajodot.org
Wayne Williams wwilliams@navajodot.org

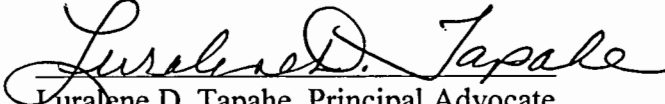
Thank you.

xc: File
DCD and CPMD Staff
OMB Staff
Navajo DOT Managers
Navajo Nation Council Members



MEMORANDUM

To: Hon. Danny Simpson, Member
Resources & Development Committee
25th Navajo Nation Council

From: 
Luralene D. Tapahe, Principal Advocate
Office of Legislative Counsel

Date: February 13, 2023

Subject: **AN ACT RELATING TO THE LAW & ORDER, HEALTH, EDUCATION & HUMAN SERVICES, RESOURCES & DEVELOPMENT, BUDGET & FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; AMENDING CAP-35-18, AS AMENDED BY CJA-03-21, TO EXTEND SÍHASIN FUNDS REVERSION DEADLINES FOR ALL PROJECTS TO 72 MONTHS**

Per your request, the Office of Legislative Counsel has prepared the above-referenced proposed Legislation and related summary sheet. Based on existing Navajo Nation law and other applicable laws, and upon OLC's review of all supporting documents submitted, this legislation as drafted is legally sufficient. However, as with any action of government, this legislation may be subject to judicial review in the event of a legal challenge.

Please review this legislation to make sure it is drafted to your satisfaction, and that all necessary and appropriate supporting documents have been provided and all attached Exhibits are correct.

OLC has reviewed the appropriate standing committees' authorities to consider this legislation, based on the standing committees' powers and responsibilities set forth in Title 2 of the Navajo Nation Code. Based on its review, OLC has listed those committees in the title of this legislation. However, the Speaker may assign this legislation to any committee(s) other than those shown in the title, pursuant to his authority under 2 N.N.C. §164(A)(5).

If you find anything unacceptable, please let me know immediately and advise me of your desired changes. I can be reached at phone no. (928)871-7166 or by email at: LuraleneTapahe@navajo-nsn.gov

Thank you for your cooperation.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0026-23__

SPONSOR: Danny Simpson

TITLE: An Act Relating to the Law and Order, Health, Education and Human Services, Resources and Development, Budget and Finance and Naabik'iyáti' Committees, and the Navajo Nation Council; Amending CAP-35-18, as Amended by CJA-03-21, to Extend Síhasin Funds Reversion Deadlines for all Projects to 72 Months

Date posted: February 22, 2023 1:10 PM

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**

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