

THE NAVAJO NATION



JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT

September 28, 2020

Hon. Seth Damon
Office of the Speaker
Post Office Box 3390
Window Rock, AZ 86515

RE: CS-77-20, *An Action Relating to an Emergency; Adopting a Continuing Resolution for the Operations of the Navajo Nation Government; beginning October 1, 2020 and ending December 31, 2020; waiving 12 N.N.C. § 840(B) and the Navajo Nation Budget Instructing Manual*

Dear Speaker Damon,

Our August letter, in response to CJY-59-20, clearly stated we would agree to a partial Fiscal Year 2021 budget if it is absolutely necessary. A week ago, by letter, we urged the Council to complete the Fiscal Year 2021 budget as soon as possible so we could continue to provide services to the Nation. Now we are out of time. At this point, we cannot make a move without causing larger, more complex problems for the Nation. This rush to a temporary fix is not what we were taught by our parents and grandparents, instead we were taught to carefully plan for our future. Our shared responsibility is to act for the benefit of all. We said, in our August letter, there is plenty of overlooked responsibility for the delay in finishing the budget for the next fiscal year and a partial budget is the result of a collective failure of the budget process. As elected leaders we have a responsibility to care for all our People as best we can.

There are a number of concerns with CS-77-20. The first concern is CJY-59-20. This resolution from July 2020 put a continuing resolution in place and to this day it has not been challenged or rescinded. No debate took place on how CS-77-20 would affect CJY-59-20. We have no decision from lawmakers on these competing resolutions. The legislative process calls for adherence to resolutions passed and enacted, whether by Presidential approval or Council action, and not to ignore a duly enacted law because it no longer fits our purpose. Speaking of no debate, the second concern is the lack of justification for emergency legislation. We raised this point in every emergency legislation presented to Council and as a reminder we urge the legislative body to comply with the law when acting on emergency legislation. Taking a few minutes to explain the emergency situation before a vote will save hours of complications down the road. Third, it is troubling that we cannot complete a budget within the timeframe laid out in the Appropriations Act and to resort to questionable waivers of the law.

The Continuing Resolution, CS-77-20, will cause challenging issues for several programs across all branches of government with only one-fourth of an annual budget. These issues include such matters as personnel hired during the FY 2020 year that were not part of the FY 2020 Comprehensive Budget where programs in this situation will have to arrange to cover the cost of personnel for the first quarter of FY 2021, or arranging to cover the cost of programs funded by proprietary accounts where an annual budget is based on revenue generated during the year, or

the possibility of facing more layoffs in programs funded in FY 2020 with supplemental appropriations, and the larger funding issue for the Health Command Operations Center.


To answer all the potential questions for a continuing resolution it is proper to have information available for our government programs. This oversight is again a result of the rush to decide a matter without proper planning. At this late date in the budget process it is good management practice to let each program in each branch know what to expect come October 1. CS-77-20 is light on details. For this reason, we have attached information on what programs can expect with a continuing resolution for the first quarter of Fiscal Year 2021. Note, if the Council sponsor intended the continuing resolution to cover the first quarter; that quarter ends December 31, not December 30. At this point we are not sure what impact one day will have on logistics or reporting but we hope this inattention to detail will not cause too much trouble.

We were confident, by working together, we would have a comprehensive budget for Fiscal Year 2021. At the three Branch Chiefs meeting on September 23, we emphasized the need to complete the budget process and we made a commitment to have a completed budget ready for October 1. We firmly believe we will have a FY 2021 budget in place before the end of the first quarter of FY 2021. To extend the FY 2020 budget past the first quarter will be a testament to our failure as elected leaders to provide for our People.

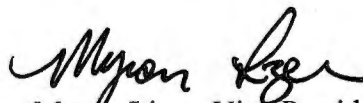
In the next few months the Executive Branch has an enormous responsibility to complete hundreds of projects to protect our People and to prepare for the potential second wave of the deadly virus. Our directors and managers should not be distracted by keeping their programs running on partial funding, preparing budgets for a new round of committee hearings, and reporting to committees for funds that should have been in place. More importantly, directors and managers are facing increased workloads with time slipping away so we urge Council committees to allow them to concentrate on this important work while not patiently waiting for hours to report to committees on CARES Act funded projects.

We have grave concerns with CS-77-20 and we strongly disagreed with CJY-59-20 but we need to act for the benefit of our People and the services they depend on, to remember the thousands of employees who work to provide those services, and to ensure our first responders continue to protect us. The constant delays over favoritism and partiality rather than true allocation based on available funds cannot continue. Managers understand the needs of their programs and have the knowledge to guide those programs; we need to allow these managers to run their programs without second guessing them. We will sign CS-77-20 and ask our legislative representatives to be mindful of the concerns and issues we raised here.

Sincerely,



Jonathan Nez, President
THE NAVAJO NATION



Myron Lizer, Vice President
THE NAVAJO NATION

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



September 28, 2020

MEMORANDUM

TO : Branch Chiefs and Division Directors

FROM : 
Dominic Beyer, Executive Director
Office of Management and Budget

SUBJECT : Implementation of Continuing Resolution CS-77-20

- A. **Background:** the Navajo Nation Council approved an emergency continuing budget resolution (CR), CS-77-20, for the continued operations of the Navajo government effective October 1, 2020. The resolution authorizes Navajo Nation government divisions, departments, offices, programs and Chapters to receive 1/4th of the FY 2020 budget for one quarter, October 1 to December 30 (31), 2020. Accordingly, the general fund budget allocations are as follows:

	<u>Base</u>	<u>CR Allocations</u>
Executive Branch	\$123,616,410	\$30,904,103
Legislative Branch	\$15,542,000	\$3,885,500
Judicial Branch	\$14,924,653	\$3,731,163
Fixed Costs	<u>\$16,065,144</u>	<u>\$4,016,286</u>
Total	\$170,148,207	\$42,537,052

Attached and marked as Exhibit "1" is a schedule showing the general fund, indirect cost allocations, and other funds for the Branches, Divisions, and Fixed Costs.

- B. **Budget Upload:** 1/4th of the FY 2020 budget as enacted in budget resolution CS-30-19 will be uploaded into the FMIS effective October 1, 2020 at Level of Detail 6. This is the simplest way to do this at this late hour in order to have budgets available for use on October 1. This will include other Navajo funds as well. It is acknowledged this may necessitate budget reallocations or transfers as needed.
- C. **Budget Rates and Schedules.** The FY 2020 rates, e.g. salaries, fringe benefits, mileage, vehicle rental, etc., will be used during the CR period.
- D. **Program Performance Criteria/Budget Form 2.** The FY 2020 4th quarter Budget Form 2 data will be used for the CR period.

- E. Fund Carryovers. Any carryover balances specifically authorized by law, such as for the Navajo Chapters, shall be done as soon as the FY 2020 budget is closed-out and the amounts are identified by the Office of the Controller. These may be at the 1/4th level as well.
- F. Conditions of Appropriation. The one FY 2020 COA will end at September 30, 2020.
- G. Other CR Matters. The CR further authorizes the Branch Chiefs, in collaboration with the Office of Management and Budget and Office of the Controller, to administratively address special budget situations, as necessary, with additional guidance. This may affect programs such as the Department of Personnel Management, Division of Social Services, Division of Community Development, Department of Dine' Education, and Division of General Services.

Your cooperation and understanding with this memorandum is appreciated.

xc: PChaco, COS, OPVP
LTso, COS, Ofc. of Speaker
SEtsitty, AD, Judicial Branch
PKirk, C, Ofc. of Controller
DMcPaul, AG, Dept. of Justice
DBobroff, CLC, Ofc. of Legislative Counsel
RToddy, HRD, Dept. of Personnel Management

Attachment "1"

Continuing Resolution - Navajo Nation Funds at 25%

A	B	C	D	E	F	G	H	I	J	K	L	M
Program	FY 2020 General Fund	25% of General Fund	FY 2020 Indirect Cost Fund	25% Indirect Cost Fund	FY 2020 Proprietary Fund	25% Proprietary Fund	FY 2020 Fiduciary Fund	25% Fiduciary Fund	FY 2020 Special Revenue Fund - Internal	25% Special Revenue Fund - Internal	FY 2020 Total	25% Total
LEGISLATIVE BRANCH:	15,542,000	3,885,500	1,291,833	322,958	2,500	625					16,836,333	4,209,083
JUDICIAL BRANCH:	14,924,653	3,731,163	150,104	37,526							15,074,757	3,768,689
1 Executive Offices	9,914,446	2,478,612	1,186,493	286,623	15,000	3,750	8,754,920	2,188,730			19,870,859	4,967,715
2 Department of Justice	7,002,050	1,750,513	1,365,765	341,441							8,367,815	2,091,954
3 Office of Management and Budget	1,431,153	357,788	1,093,640	273,410							2,524,793	631,198
4 Office of Navajo Tax Commission	1,508,404	377,351		0							1,508,404	377,351
5 Office of the Controller	4,134,452	1,033,613	3,025,385	756,346	1,151,450	287,863	22,072,085	5,518,021	6,207,040	1,551,760	36,590,412	9,147,603
6 Division of Community Development	4,649,024	1,162,256	1,062,757	265,689							5,711,781	1,427,945
7 Navajo Nation Chapters	26,152,028	6,538,007		0					2,169,700	542,425	28,321,728	7,080,432
8 Department of Dine' Education	8,184,500	2,046,125	290,157	72,539	2,000	500	624,637	156,159	8,923,080	2,230,770	18,024,374	4,506,094
9 Division of Economic Development	5,065,311	1,266,328	480,467	120,117	265,000	66,250			1,165,220	291,305	6,975,998	1,744,000
10 Environmental Protection Agency	1,312,945	326,236	123,868	30,967					3,436,652	859,163	4,873,465	1,218,366
11 Division of General Services	3,925,106	981,277	2,817,339	704,335	70,053,433	17,513,358					76,795,880	19,198,970
12 Department of Health	12,163,510	3,040,878	97,865	24,466			271,000	67,750			12,532,375	3,133,084
13 Division of Human Resources	2,421,886	605,472	1,776,348	444,087	50,000	12,500	47,183,000	11,795,750			51,431,234	12,857,809
14 Division of Natural Resources	19,645,878	4,911,470	218,302	54,576	12,295,000	3,073,750			5,951,100	1,487,775	38,110,280	9,527,570
15 Division of Public Safety	8,846,408	2,211,602	345,823	86,456	75,000	18,750			8,732,000	2,183,000	17,999,231	4,499,808
16 Division of Social Services	4,161,988	1,040,497	402,029	100,507	146,000	36,500					4,710,017	1,177,504
17 Office of Gaming Regulatory		0		0	400,000	100,000					400,000	100,000
18 Navajo Division of Transportation	3,096,319	774,080	179,228	44,807	50,000	12,500			7,183,200	1,795,800	10,508,747	2,627,187
OVERALL EXECUTIVE BRANCH:	123,616,410	30,904,103	14,465,466	3,616,367	84,502,883	21,125,721	78,905,642	19,726,411	43,767,992	10,941,998	345,258,393	86,314,598
TOTAL FOR 3 BRANCHES:	154,063,063	38,520,766	15,987,403	3,976,851	84,505,383	21,126,346	78,905,642	19,726,411	43,767,992	10,941,998	377,169,483	94,292,371
19 Fixed Cost	16,065,144	4,016,286	6,592,597	1,648,149	0	0	0	0	0	0	22,657,741	5,664,435
TOTAL INCLUDING FIXED COSTS:	170,148,207	42,537,052	22,500,000	5,625,000	84,505,383	21,126,346	78,905,642	19,726,411	43,767,992	10,941,998	399,827,224	99,956,806
20 Dine College	4,700,000	1,175,000	0	0	0	0	0	0	0	0	4,700,000	1,175,000
21 Navajo Technical College	4,200,000	1,050,000	0	0	0	0	0	0	0	0	4,200,000	1,050,000
22 Ofc of NN Scholarship Financial/Asst	3,500,000	875,000	0	0	0	0	0	0	0	0	3,500,000	875,000
SETASIDE TOTAL:	12,400,000	3,100,000	0	0	0	0	0	0	0	0	12,400,000	3,100,000
OVERALL TOTAL:	182,548,207	45,637,052	22,500,000	5,625,000	84,505,383	21,126,346	78,905,642	19,726,411	43,767,992	10,941,998	412,227,224	103,056,806

**RESOLUTION OF THE
NAVAJO NATION COUNCIL
24th NAVAJO NATION COUNCIL - SECOND YEAR, 2020**

AN ACTION

RELATING TO AN EMERGENCY; ADOPTING A CONTINUING RESOLUTION FOR THE CONTINUING OPERATIONS OF THE NAVAJO NATION GOVERNMENT; BEGINNING OCTOBER 1, 2020 AND ENDING DECEMBER 31, 2020; WAIVING 12 N.N.C. § 840(B) AND THE NAVAJO NATION BUDGET INSTRUCTION MANUAL

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A).
- B. The Navajo Nation Council shall have all powers to regulate the conduct of its members and have the authority to promulgate rules, regulations and procedures for the conduct of its meetings and that of its committees. 2 N.N.C. §§ 102 (D) and (E).
- C. Pursuant to 2 N.N.C. § 164 (A)(16) "[m]atters constituting an emergency shall be limited to the cessation of law enforcement services, and disaster relief services, fire protection services or other direct services required as an entitlement under Navajo Nation or Federal law, or which directly threaten the sovereignty of the Navajo Nation. Such an emergency matter must arise due to the pressing public need for such resolution(s) and must be a matter requiring final action by the Council."
- D. The continued provision of direct services to the Navajo people are dependent, in part, on appropriated and budgeted General Funds; if a FY 2021 Comprehensive Budget is not enacted and implemented by October 1, 2021, direct services to the Navajo people face interruption constituting an emergency to relieve a pressing public need.

SECTION TWO. FINDINGS

- A. The World Health Organization (WHO) declared a Public Health Emergency of International Concern related to the outbreak of coronavirus (COVID-19), a highly contagious and sometimes fatal respiratory virus, on January 30, 2020; the U.S. Department of Health and Human Services declared a Public Health Emergency related to the COVID-19 outbreak on January

31, 2020; and the WHO declared a global pandemic due to COVID-19 on March 11, 2020.

- B. 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 2020-025 are incorporated by reference into this resolution.
- C. As of September 23, 2020, the Navajo Nation Health Command Operations Center has confirmed 10,167 COVID-19 cases and 551 COVID-19 related deaths on the Navajo Nation. COVID-19 cases and COVID-19 related deaths on the Navajo Nation have not subsided and continue to rise.
- D. Additionally, the Speaker of the Navajo Nation issued a memo on June 19, 2020, extending the closure of the legislative branch through July 19, 2020.
- E. Navajo Nation law provides a choice of law provision wherein Navajo courts may, in the absence of Navajo statutory laws and regulations or Diné bi beenahaz'áaniis, apply federal laws or regulations as applicable. 7 N.N.C. § 204.
- F. Similarly, in the absence of a provision for a continuing resolution, the Navajo Nation Council may look to federal laws or regulations for guidance.
- G. The federal process for appropriations contains a provision for a continuing resolution, which is defined as "[a]n appropriation act that provides budget authority for federal agencies, specific activities, or both to continue in operation when Congress and the President have not completed action on regular appropriation acts by the beginning of the fiscal year." Principles of Federal Appropriations Law, Third Edition, General Accounting Office, Jan. 2004, Chapter 8.
- H. Based on the impracticability of maintaining the Center for Disease Control's recommendations on physical distancing during the Navajo Nation's budget hearings, the approval of a Continuing Resolution provides a means to allow for the continuing operations of the Navajo Nation government and a measure of protection for Navajo Nation employees.
- I. The Navajo Nation Council finds the need to conduct a thorough and complete budget process at a later date warrants the approval of a Continuing Resolution.

- J. The approval of a Continuing Resolution will allow for careful consideration of a Fiscal Year 2021 Comprehensive Budget, as well as a detailed examination of the needs of the Navajo Nation.

SECTION THREE. APPROVAL OF CONTINUING RESOLUTION

- A. The Navajo Nation Council hereby resolves that all Navajo Nation Government divisions, departments, offices, programs and Navajo Nation Chapters, with the exception of those special budget situations named in paragraph C of this section, shall receive 1/4th of their Navajo Nation FY 2020 general fund, indirect cost fund, proprietary fund, special revenue, and fiduciary fund allocations, as of September 30, 2020, for operation of the Navajo Nation Government beginning October 1, 2020 and ending no later than December 30, 2020 in accordance with the Navajo Nation Council Resolution CS-30-19. The Continuing Budget Resolution amounts shall be based on 100% (one hundred percent) of the final Navajo Nation approved Fiscal Year 2020 Budget amounts as approved in CS-30-19 and signed by the Navajo Nation President on September 13, 2019. In order to maintain consistency between this Continuing Budget Resolution amounts and the Fiscal Year 2020 General Revenue Fund projections, supplemental appropriations made in Fiscal Year 2020 shall not be included in this Continuing Resolution.
- B. In order for the continuing resolution budgets to be entered into the Financial Management and Information System (FMIS) as expeditiously as possible, the Office of Management and Budget shall enter the continuing resolutions for programs and Chapters at the level of funding stated in Paragraph A above.
- C. The Branch Chiefs, in conjunction with the Office of the Controller and the Office of Management and Budget are authorized to administratively address special budget situations and shall issue any necessary instructions for the proper implementation of this Continuing Budget Resolution, including all expenditures as required by statute, contract or government policy, including but not limited to Risk Management, scholarship, school clothing, employee insurance, retirement, match fund requirements and higher education.

SECTION FOUR. DIRECTIVE TO THE SPEAKER OF THE NAVAJO NATION

- A. The Navajo Nation Council directs the Speaker of the Navajo Nation Council to convene a special session no later than thirty (30) days before the end of the Continuing Resolution period (December 31, 2020) for the exclusive purpose of

consideration and adoption of the proposed Navajo Nation Fiscal Year 2021 Comprehensive Budget.

- B. If the COVID-19 pandemic has not abated, or if the Navajo Nation experiences another surge of the pandemic, this Continuing Resolution may be extended by the Navajo Nation Council.

SECTION FIVE. WAIVING 12 N.N.C. § 840 (B) AND THE NAVAJO NATION BUDGET INSTRUCTION MANUAL

The Navajo Nation Council hereby waives 12 N.N.C. § 840 (B) pertaining to the adoption of a comprehensive twelve-month budget in order that this Continuing Budget Resolution be adopted.

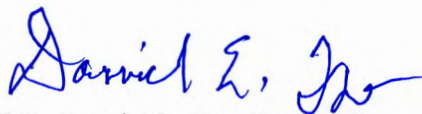
- A. The Navajo Nation Council hereby waives the provisions of the Navajo Nation Fiscal Year 2020 and 2021 Budget Instruction Manuals that would impede or prevent the Office of Management and Budget from entering the continuing resolution program and Chapter budgets without further authorization.
- B. These waivers shall cease to be in effect upon adoption of the Navajo Nation Comprehensive Budget for Fiscal Year 2021.

SECTION SIX. EFFECTIVE DATE

The action is effective upon its approval pursuant to 2 N.N.C. § 221(B).

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 19 in Favor, and 01 Opposed, on this 25TH day of September 2020.



Honorable Daniel E. Tso, Speaker Pro Tem
24th Navajo Nation Council

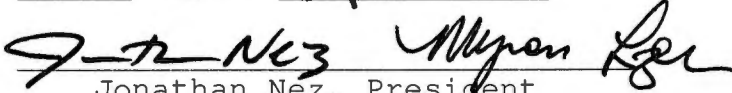
September 25, 2020
DATE

Motion: Honorable Pernell Halona
Second: Honorable Edmund Yazzie

Speaker Pro Tem Daniel E. Tso 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 28th day of September, 2020.


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 _____, 2020 for the reason(s) expressed in the attached letter to the Speaker.

Jonathan Nez, President
Navajo Nation

NAVAJO NATION

505

Navajo Nation Council Budget Session

9/25/2020
01:10:05 PM

Amd# to Amd#	Legislation No. 0232-20
MOT Halona, P	Adopting a Continuing resolution
SEC Yazzie	for the Continuing Operations of
	the Navajo Nation Government;

PASSED

Yeas : 19	Nays : 1	Excused : 1	Not Voting : 2
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Yea : 19

Begay, E	Daniels	Nez, R	Tso, E
Begay, K	Freeland, M	Smith	Wauneka, E
Begay, P	Halona, P	Stewart, W	Yazzie
Charles-Newton	Henio, J	Tso	Yellowhair
Crotty	James, V	Tso, C	

Nay : 1

Slater, C

Excused : 1

Damon

Not Voting : 2

Brown	Walker, T
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Presiding Speaker: Tso, D