

RESOLUTION OF THE
NAVAJO NATION COUNCIL

21st NAVAJO NATION COUNCIL - Fourth Year 2010

AN ACT

RELATING TO GOVERNMENT SERVICES AND ECONOMIC DEVELOPMENT;
AMENDING THE PLAN OF OPERATION FOR THE NAVAJO TRIBAL UTILITY
AUTHORITY AT 21 N.N.C. § 7(B)(14); AUTHORIZING THE NAVAJO
TRIBAL UTILITY AUTHORITY MANAGEMENT BOARD TO GRANT WAIVERS OF
THE AUTHORITY'S SOVEREIGN IMMUNITY

BE IT ENACTED:

Section One. Findings

A. The current national economic environment has made it more difficult for the Navajo Tribal Utility Authority to continue to provide services without the ability of the Authority to waive its own sovereign immunity from suit.

B. It is the Navajo Tribal Utility Authority's experience that counterparties in complex transactions are requiring the Authority to seek specific waivers of its sovereign immunity from the Navajo Nation Council which, due to timing difficulties, can jeopardize such transactions.

C. The Management Board of the Navajo Tribal Utility Authority recommends that the Navajo Nation Council approve amendments to the plan of operation for the Navajo Tribal Utility Authority at 21 N.N.C. § 7(B)(14) authorizing the Management Board to grant waivers of the Authority's sovereign immunity from suit. Resolution NTUA-26-09 is attached hereto as Exhibit A.

**Section Two. Amending Title 21 of the Navajo Nation Code,
21 N.N.C. §7(B)(14)**

The Navajo Nation hereby amends Title 21 of the Navajo Nation Code, as follows:

NAVAJO NATION CODE ANNOTATED
TITLE 21. PUBLIC UTILITIES AND COMMUNICATIONS

CHAPTER 1. NAVAJO TRIBAL UTILITY AUTHORITY
SUBCHAPTER 1. GENERALLY

* * * *

§ 7. Management Board; purpose; duties and powers

* * * *

B. Enumerated powers. Subject to Navajo Nation Council approval where required, and applicable Navajo Nation and federal laws and regulations, and solely in furtherance of the limited purposes set forth in 21 N.N.C. § 5, the Management Board shall have the following powers:

* * * *

14. To sue or be sued. To bring suit in its name and, notwithstanding any legal limitations under the Navajo Sovereign Immunity Act, to participate in enforceable arbitration proceedings and to contractually waive immunity to suit in the courts of the Navajo Nation and any state or federal court having jurisdiction, provided that notwithstanding any other provision of law, including but not limited to the Navajo Sovereign Immunity Act, the Management Board, upon 30 days written notice to the Speaker of the Navajo Nation Council of the intention of the Management Board to waive the Authority's sovereign immunity, may by resolution duly adopted waive the Authority's immunity from suit. Any such waiver shall be limited to the assets, revenue and income of the Authority, and shall not waive the sovereign immunity of the Navajo Nation nor extend liability to any assets, revenue, or income of the Navajo Nation.

* * * *

Section Three. Effective Date

The provisions of this Act shall become effective in accord with 2 N.N.C. § 221(B).

Section Four. Codification

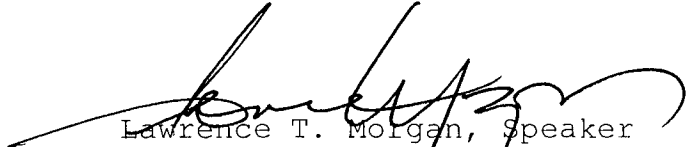
The provisions of this Act which amend sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel.

Section Five. Savings Clause

Should any provision of this Act be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, those portions of this Act which are not determined invalid shall remain the law of the Navajo Nation.

CERTIFICATION

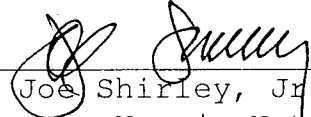
I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 59 in favor and 19 opposed, this 21st day of April 2010.


Lawrence T. Morgan, Speaker
Navajo Nation Council
24 May 10
Date

Motion: Amos Johnson
Second: GloJean Todacheene

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 MAY 14 2010 2010.



Dr. Joe Shirley, Jr., President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2010 for the reason(s) expressed in the attached letter to the Speaker.

Dr. Joe Shirley, Jr., President
Navajo Nation



**RESOLUTION OF THE
MANAGEMENT BOARD OF THE
NAVAJO TRIBAL UTILITY AUTHORITY**

NTUA-26-09

**Approving Amendments to the Plan of Operation of the
Navajo Tribal Utility Authority and Requesting Approval
of the Same by the Navajo Nation Council**

WHEREAS:

1. Pursuant to 21 N.N.C. § 7(A)(1), the Management Board of the Navajo Tribal Utility Authority (“the Authority”) is authorized and responsible for the management and operation of the Authority; and

2. NTUA Management has recommended that the Authority’s Plan of Operation codified at 21 N.N.C. § 1, *et seq.*, to authorize the NTUA Management Board to waive the Authority’s sovereign immunity from suit; and

3. The current national economic environment has made it more difficult for the Authority to continue to provide its services without the ability of the Authority to waive its own sovereign immunity from suit. It is the Authority’s experience that counterparties in complex transactions are requiring the Authority to seek specific waivers of its sovereign immunity from the Navajo Nation Council, which due to timing difficulties jeopardizes such transactions.

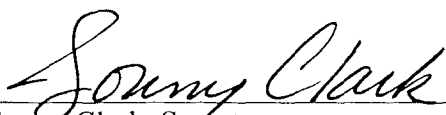
NOW THEREFORE BE IT RESOLVED THAT:

1. The Management Board of the Navajo Tribal Utility Authority hereby approves amendments to the Plan of Operation of the Navajo Tribal Utility Authority, codified at 21 N.N.C. § 1, *et seq.* The proposed amendments are attached hereto as Exhibit 1.

2. The Management Board further requests approval of the Authority’s proposed Plan of Operation amendments set forth in Exhibit 1 by the Navajo Nation Council.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered at a meeting of the Management Board of the Navajo Tribal Utility Authority in Dilkon, Arizona, at which a quorum was present and the same was duly approved by a vote of 4 in favor, 0 opposing, and 0 abstaining this 25th day of June 2009.



Sonny Clark, Secretary

EXHIBIT 1

14. To sue or be sued. To bring suit in its name and, notwithstanding any legal limitations under the Navajo Nation Sovereign Immunity Act, to participate in enforceable arbitration proceedings and to contractually waive immunity to suit in the courts of the Navajo Nation and any State or Federal court having jurisdiction, provided that notwithstanding any other provision of law, including but not limited to the Navajo Sovereign Immunity Act, the Management Board, upon thirty days written notice to the Speaker of the Navajo Nation Council of the intention of the Management Board to waive the Authority's sovereign immunity, may by resolution duly adopted waive the Authority's immunity from suit. Any such waiver shall be limited to the assets, revenue and income of the Authority, and shall not waive the sovereign immunity of the Navajo Nation nor extend liability to any assets, revenue, or income of the Navajo Nation.



*1/8/10 10:50 am
R. Laughter*

NAVAJO TRIBAL UTILITY AUTHORITY
AN ENTERPRISE OF THE NAVAJO NATION

January 7, 2010

Honorable Roy Laughter
Council Delegate
Chilchinbeto Chapter

Re: Navajo Tribal Utility Authority ~ Sponsorship of Legislations

Dear Mr. Laughter:

We are respectfully requesting your assistance in sponsoring the attached hereto two pieces of legislation on behalf of the Navajo Tribal Utility Authority. The co-sponsors are Ervin Keeswood and Mel R. Begay.

The first legislation seeks to amend NTUA's plan of operation to authorize the NTUA Management Board to approve limited waivers of NTUA's sovereign immunity.

The second legislation seeks to increase NTUA's borrowing authority from \$200 million to \$500 million.

NTUA would like to seek approval of the attached legislations at the 2010 Winter Session of the Navajo Nation Council. Should you have any questions, please contact our office at 729-6204.

Sincerely,

Bernice Tsosie
Government Liaison

xc: Ervin Keeswood
Mel R. Begay
Walter W. Haase, NTUA General Manager



NAVAJO TRIBAL UTILITY AUTHORITY
AN ENTERPRISE OF THE NAVAJO NATION

January 6, 2010

Honorable President Joe Shirley, Jr.
The Navajo Nation
P.O. Box 9000
Window Rock, AZ 86515

Re: Navajo Tribal Utility Authority
Administrative Review of Proposed Legislation
Amending NTUA's Plan of Operation

Dear Honorable President Shirley:

Enclosed for administrative review are two pieces of draft legislation seeking to amend the Plan of Operation of the Navajo Tribal Utility Authority (NTUA) such that (1) its Management Board would be authorized to grant limited waivers of NTUA's sovereign immunity and (2) NTUA's borrowing authority will be increased.

With respect to several projects that NTUA has undertaken and plans to undertake, including the Big Boquillas Wind Project, other wind generation projects, its New Markets Tax Credits financings, among numerous other day-to-day business transactions, NTUA has been requested by counterparties to seek a waiver of its sovereign immunity for enforcement of contractual obligations.

NTUA has had to forego valuable business opportunities in the past due to its inability to quickly obtain a sovereign immunity waiver. The NTUA Management Board is well aware of the situation and has therefore approved a Board Resolution, NTUA-26-09, requesting amendment of the NTUA Plan of Operation to authorize the Management Board to grant limited waivers of NTUA's sovereign immunity on case-by-case basis.

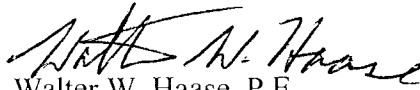
NTUA also plans to make significant investments intended to improve and expand NTUA's utility facilities as well as acquire new facilities to serve customers in Utah and the Western portions of the Navajo Reservation. NTUA's current outstanding borrowing plus new borrowing will easily exceed \$200 million, which is NTUA's current borrowing authority. NTUA wishes to increase its borrowing authority to \$500 million.

Honorable President Joe Shirley, Jr.
Page Two
January 6, 2010

Expedited review by the Executive Branch of the Navajo Nation is appreciated. NTUA would like to seek approval of the enclosed legislation at the 2010 Winter Session of the Navajo Nation Council.

Sincerely,

NAVAJO TRIBAL UTILITY AUTHORITY


Walter W. Haase, P.E.
General Manager

WWH/mar

Enclosure

xc: Sidney Bob Dietz II, NTUA Management Board Chairperson
Warren Denetsosie, NTUA Legal Counsel
Bernice Tsosie, Government Liaison

21st Navajo Nation Council

Fourth Year 2010

Mr. Speaker,

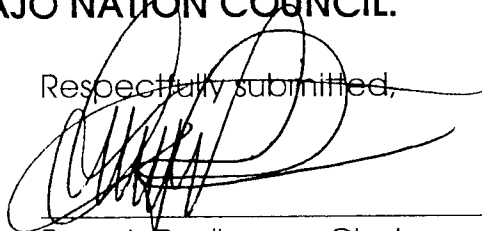
The **ETHIC AND RULES COMMITTEE**, to whom has been assigned

NAVAJO LEGISLATIVE BILL 0032-10

Has had it under consideration and reports the same with a **DO PASS** with **NO AMENDMENTS**.

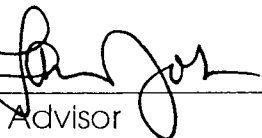
And therefore referred to the **21ST NAVAJO NATION COUNCIL**.

Respectfully submitted,



Francis Redhouse, Chairperson

Adopted: _____


Advisor

Not Adopted: _____

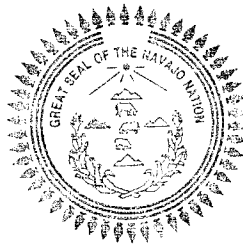
Advisor

Date: **February 19, 2010**

The vote was 6 in favor and 0 opposed

Excused:

Absent:



21st Navajo Nation Council - Third Year

Mr. Speaker

The **GOVERNMENT SERVICES COMMITTEE** to whom has been assigned

NAVAJO NATION LEGISLATIVE BILL #0032-10

Relating Government Services and Economic Development; Amending the Plan of Operation for the Navajo Tribal Utility Authority at 21 N.N.C. § 7 (B) (14); Authorizing the Navajo Tribal Utility Authority Management Board to Grant Waivers of the Authority's Sovereign Immunity

Has had it under consideration and reports the same with the following recommendation that it **DO PASS** with no amendments.

And therefore referred to **ECONOMIC DEVELOPMENT COMMITTEE** respectfully submitted



Ervin M. Keeswood, Sr, Chairman
GOVERNMENT SERVICES COMMITTEE

GSC SUMMARY:

Date: January 21, 2010

Adopted :



Mike Martinez, Legislative Advisor

Main Motion: Leonard Teller ^{2nd} Charles Damon

Vote 5 - 0

**ECONOMIC DEVELOPMENT COMMITTEE REPORT
21st NAVAJO NATION COUNCIL – Fourth Year, 2010**

Mr. Speaker:

The **ECONOMIC DEVELOPMENT COMMITTEE**, to whom has been assigned:

LEGISLATION NO. 0032-10

Introduced by Hon. Roy Laughter

AN ACTION

Relating to Government Services and Economic Development; Amending the Plan of Operation for the Navajo Tribal Utility Authority at 21 NNC §7(B) (14); Authorizing the Navajo Tribal Utility Authority Management Board to Grant Waivers of the Authority's Sovereign Immunity

has had it under consideration and reports the same with a **DO PASS** with **NO AMENDMENTS**.

And thence referred to the **Ethics and Rules Committee**.

CERTIFICATION

I, hereby certify that the foregoing legislation was duly considered by the Economic Development Committee of the Navajo Nation Council at a duly called meeting at St. Michaels, Navajo Nation (Arizona), at which a quorum was present and that the same was passed with a vote of **7 in favor and 0 opposed** this 3rd day of February 2010.



Mr. Lawrence R. Platero, Chairperson
Economic Development Committee .

MOTION: GloJean Todacheene

SECOND: Tom LaPahe