

HCR011S01 compared with HCR011

~~text~~ shows text that was in HCR011 but was deleted in HCR011S01.

text shows text that was not in HCR011 but was inserted into HCR011S01.

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Representative Michael E. Noel proposes the following substitute bill:

**CONCURRENT RESOLUTION SUPPORTING THE TRANSFER
OF ADMINISTRATION OF THE UTAH NAVAJO ~~TRUST~~
~~FUND~~ OIL AND GAS ROYALTIES TO THE UTAH DINÉH
~~COMMITTEE~~ CORPORATION**

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: _____

LONG TITLE

General Description:

This concurrent resolution of the Legislature and the Governor expresses the Legislature's and the Governor's ~~intent to~~ support for the transfer of all ~~Utah Navajo Trust Fund~~ oil and gas royalties administrative and fiduciary obligations to the Utah Diné Corporation under specified conditions.

Highlighted Provisions:

This resolution:

- ▶ expresses the Legislature's and the Governor's ~~intent to~~ support for the transfer of

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- all ~~{Utah Navajo Trust Fund}~~oil and gas royalties administrative and fiduciary obligations to the Utah Dinéh Corporation subject to federal action;
- ▶ declares that any transfer pursuant to federal action of ~~{Utah Navajo Trust Fund}~~oil and gas royalties administrative and fiduciary obligations to the Utah Dinéh Corporation must also indemnify and hold harmless the state of Utah from any and all legal and equitable claims arising from future ~~{Utah Navajo Trust Fund}~~oil and gas royalties administration by the Utah Dinéh Corporation and for litigation costs related to any claims;
 - ▶ declares that transfer of ~~{Utah Navajo Trust Fund}~~oil and gas royalties administrative and fiduciary obligations to the Utah Dinéh Corporation should require that the value of fixed and monetary ~~{Utah Navajo Trust Fund}~~oil and gas royalties assets remain at least at current levels so that funds will be available to promote future generations of ~~{Utah Navajo Trust Fund}~~oil and gas royalties beneficiaries' health, education, and general welfare; and
 - ▶ declares that, if the foregoing objectives are ensured, the transfer of ~~{Utah Navajo Trust Fund}~~oil and gas royalties administrative and fiduciary obligations to the Utah Dinéh Corporation should occur by federal action.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, in 1933, Congress enacted 47 Stat. 1418, which expanded the boundaries of the Navajo Reservation north of the San Juan River, in San Juan County, Utah, referred to as the "Aneth Extension," and directed that 37.5% of all royalties from oil and gas extracted from certain portions of the Aneth Extension "shall be expended by the State of Utah in the Tuition of Indian children in white schools and/or in the building or maintenance of roads across the [Aneth Extension], or for the benefit of the Indians residing therein";

WHEREAS, in 1968, Congress enacted Public Law 90-306, 82 Stat. 121, which expanded the beneficiary class to include all Navajo residing in San Juan County, Utah, (Utah Dinéh), and which redefined the purposes of the Utah Navajo Trust Fund (UNTF) to include the beneficiaries' "health, education and general welfare";

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WHEREAS, the 1933 act and the 1968 expansion of the beneficiary (Federal Acts) class effectively created a common law discretionary trust whereby the United States is the settlor, Utah is the trustee, and all Utah Dinéh residing in San Juan County, Utah are beneficiaries;

WHEREAS, pursuant to the Federal Acts, Utah ~~{must}~~ is directed to administer the ~~{UNTF}~~ oil and gas royalties for the health, education, and general welfare of the Navajo Indians residing in San Juan County;

WHEREAS, oil and gas were first extracted in paying quantities from the Aneth Extension during or about the late 1950s;

WHEREAS, in 2008, the Legislature of the state of Utah enacted H.B. 352, Amendments Related to Monies Derived from Navajo Nation Reservation Lands in Utah, which in part declared, "It is the purpose of this chapter to provide for a transitional process until congressional action designates a new recipient of the Utah Navajo royalties";

WHEREAS, H.C.R. 4, Concurrent Resolution Encouraging Congressional Action to Designate a New Recipient of Royalties from Navajo Reservation Lands in Utah, also passed by the Utah Legislature in 2008, noted that "the state first received monies from the 37.5% of the oil and gas royalties in 1959 and litigation related to those royalties began almost immediately" and that "the litigious environment surrounding the state's administration of the oil and gas royalties harms the relationship between the state and the San Juan Navajos and complicates all parties' ability to meet the needs of the San Juan Navajos";

WHEREAS, H.B. 352 incrementally reduced expenditures under the trust duties;

WHEREAS, H.B. 352 resulted in the establishment of what became known as the Navajo Royalty Holding Fund (NRHF) no later than July 1, 2008, into which all ~~{UNTF}~~ oil and gas royalties monetary assets and future royalty payments would be placed;

WHEREAS, Utah law, established by H.B. 352, was amended in 2012 by S.B. 155, Transition for Repealed Navajo Trust Fund Act, to allow expenditures from the NRHF for the education of certain beneficiaries up to January 1, 2014;

WHEREAS, on June 30, 2010, net assets then being held by the state of Utah in the NRHF totaled \$51,352,590;

WHEREAS, this includes a \$33,000,000 court settlement, the final installment of which is to be paid by the state of Utah in 2013;

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WHEREAS, litigation is now pending in United States District Court seeking to force the state of Utah to resume active administration of the ~~{UNTF}~~oil and gas royalties for the health, education, and general welfare of the beneficiaries;

WHEREAS, the health, education, and general welfare of the beneficiaries would be improved by continuing projects previously funded, wholly or partially, with ~~{UNTF}~~oil and gas royalties funds, including housing, water development, range improvement, delivery of education, healthcare, and other social services;

~~{~~ WHEREAS, although funded in part with NRHF expenditures, the subsequent cutoff of funding has left nonmonetary assets, including partially built houses, exposed to the extreme elements of southeastern Utah;

~~}~~ WHEREAS, beneficiaries seeking secondary education are currently unsure whether college financial aid will continue to be available through the NRHF;

WHEREAS, in certain carefully selected instances, and in partnership with other governmental and private financial institutions, the beneficiaries would benefit from the expenditure of ~~{UNTF}~~oil and gas royalty money for economic development in San Juan County;

WHEREAS, the ~~{UNTF}~~oil and gas royalties should be actively administered in these areas of need for the health, education, and general welfare of the beneficiaries;

WHEREAS, the Federal Acts provide no mechanism for the state of Utah to resign as ~~{UNTF}~~ trustee of the oil and gas royalties;

WHEREAS, legislation to amend the Federal Acts to name a successor trustee was introduced in the 111th and 112th Congress, but did not become law;

WHEREAS, no legislation to amend the Federal Acts to name a successor trustee has been introduced in the 113th Congress;

WHEREAS, the Legislature of the state of Utah and the Governor stated in H.C.R. 4 that the "removal of the state as a go-between provides an opportunity for Navajos";

WHEREAS, the Utah Diné Corporation (UDC) is a nonprofit organization formed under the Utah Revised Nonprofit Corporation Act;

WHEREAS, the UDC is organized exclusively for charitable, religious, educational, and scientific purposes, including the making of distributions to organizations that qualify as exempt organizations under IRC Section 501(c) of the Internal Revenue Code;

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WHEREAS, UDC's proposed amended bylaws ensure transparency and accountability at every level of corporate administration and prohibits real and apparent conflicts of interest, including nepotism, at every level of corporate administration;

WHEREAS, the UDC's proposed amended bylaws position the Utah Diné to play important roles in ~~{UNTF}~~oil and gas royalties administration and oversight, require that the overall value of the ~~{UNTF}~~oil and gas royalties' assets, currently estimated at approximately \$55,000,000, be maintained and, if consistent with applicable law and ~~{UNTF}~~oil and gas royalties' purposes, grown;

WHEREAS, the UDC's proposed amended bylaws require that any ~~{UNTF}~~oil and gas royalties' assets made available for economic development be limited in amount, comprise only a minor portion of any single funding package, be partnered with loans from other chartered financial institutions, be offered only as loans at current market rates for any amount over \$300, and occur only after it is expressly determined that the expenditure will actually promote the beneficiaries' health, education, or general welfare;

WHEREAS, the UDC's proposed amended bylaws provide that if all ~~{Utah Navajo Trust Fund}~~oil and gas royalties administrative and fiduciary obligations are transferred to the Utah Diné Corporation, a Request For Proposal addressed to large, chartered financial institutions will be issued immediately, and every three years thereafter, for performing fund management, investing, and auditing services;

WHEREAS, the members of each Utah chapter of the Navajo Nation have previously resolved to support the UDC's effort to become the ~~{UNTF}~~ trustee of the oil and gas royalties;

WHEREAS, this support will again be ensured by means deemed reasonable and reliable prior to any transfer of ~~{UNTF}~~oil and gas royalties administration to the UDC;

WHEREAS, the San Juan County Board of Commissioners unanimously supports transfer of administrative and fiduciary obligations for the ~~{UNTF}~~oil and gas royalties to the UDC;

WHEREAS, the UDC Board of Directors will include representatives elected from each Utah chapter of the Navajo Nation and from one chapter organized to represent Utah Diné that currently ~~{does}~~do not reside within Navajo Reservation boundaries;

WHEREAS, the UDC intends to administer the ~~{UNTF}~~oil and gas royalties pursuant to all applicable laws and regulations, including the common law of Indian trusts that imposes

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strict and exacting fiduciary obligations upon any trustee administering the property of Native Americans; and

WHEREAS, any transfer of ~~{UNTF}~~oil and gas royalties administrative and fiduciary obligations to the UDC must ensure that the state of Utah is indemnified and held harmless for any liability, damages, or litigation costs resulting from ~~{UNTF}~~oil and gas royalties administration:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, expresses its ~~{intent to}~~support for the transfer of all ~~{Utah Navajo Trust Fund}~~oil and gas royalties administrative and fiduciary obligations to the Utah Dinéh Corporation conditioned on removal of the state as trustee, by an act of Congress or a federal court order that can then be used to encourage congressional action and that indemnifies and holds harmless the state of Utah from any and all legal and equitable claims.

BE IT FURTHER RESOLVED that the Legislature and the Governor declare that any transfer of ~~{Utah Navajo Trust Fund}~~the oil and gas royalties administrative and fiduciary obligations to the Utah Dinéh Corporation by Congressional act or federal court order must also indemnify and hold harmless the state of Utah from any and all legal and equitable claims arising from future ~~{Utah Navajo Trust Fund}~~oil and gas royalties administration by the Utah Dinéh Corporation and for litigation costs related to any claims.

BE IT FURTHER RESOLVED that the Legislature and the Governor declare that any transfer of ~~{Utah Navajo Trust Fund}~~oil and gas royalties administrative and fiduciary obligations to the Utah Dinéh Corporation should require that the value of fixed and monetary ~~{Utah Navajo Trust Fund}~~oil and gas royalties assets remain at least at current levels so that funds will be available to promote future generations of ~~{Utah Navajo Trust Fund}~~oil and gas royalties beneficiaries' health, education, and general welfare and that the Utah Dinéh Corporation should operate under bylaws that have the protections described in this resolution.

BE IT FURTHER RESOLVED that the Legislature and the Governor declare that, if the foregoing objectives are ensured, the Legislature and the Governor support action by Congress or federal court order to transfer the ~~{Utah Navajo Trust Fund's}~~oil and gas royalties administrative and fiduciary obligations to the Utah Dinéh Corporation.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Navajo Utah Commission, the President of the Navajo Nation, the Speaker of the Navajo Nation Council,

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the elected secretary of each Utah Dinéh chapter, the San Juan County Board of Commissioners, the current administrator of the Navajo Royalty Holding Fund, the secretary of the United States Department of the Interior, the United States Attorney General, and the members of Utah's congressional delegation.

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Legislative Review Note

~~as of 2-27-13 10:37 AM~~

~~Office of Legislative Research and General Counsel}~~