

Effective 7/1/2015

Chapter 10
Navajo Trust Fund Act

Part 1
General Provisions

51-10-101 Title.

This chapter is known as the "Navajo Trust Fund Act."

Enacted by Chapter 319, 2015 General Session

51-10-102 Definitions.

As used in this chapter:

- (1) "Administrative expenditure" means:
 - (a) an expenditure for professional services;
 - (b) per diem and travel expenses for the board and the Diné Advisory Committee; and
 - (c) expense reimbursements, salaries, and benefits for the trust administrator and the trust administrator's staff.
- (2) "Blue Mountain Diné" means the off-reservation Navajo community organization known as the Blue Mountain Diné.
- (3) "Board" means the board of trustees created in Section 51-10-202.
- (4) "Business enterprise" means a sole proprietorship, partnership, corporation, limited liability company, or other private entity organized to provide goods or services for a profit.
- (5) "Diné Advisory Committee" means the committee created in Section 51-10-206.
- (6) "Fund" means the Navajo Trust Fund created in Section 51-10-201.
- (7) "Income" means the revenues from investments made by the state treasurer of the fund principal.
- (8) "Navajos" means San Juan County, Utah, Navajos.
- (9) "Office of Trust Administrator" means the office created in Section 51-10-203.
- (10) "Principal" means:
 - (a) the balance of the fund as of July 1, 2015; and
 - (b) the revenue to the fund from whatever source except income.
- (11) "Service provider" means any of the following that provides a good or service to Navajos:
 - (a) a business enterprise;
 - (b) a private nonprofit organization; or
 - (c) a government entity.
- (12) "Trust administrator" means the trust administrator selected as provided in Subsection 51-10-202(2).
- (13) "Utah Navajo Chapter" means one of the following chapters of the Navajo Nation:
 - (a) Aneth Chapter;
 - (b) Mexican Water Chapter;
 - (c) Naatsis'áán Chapter;
 - (d) Oljato Chapter;
 - (e) Dennehotso Chapter;
 - (f) Red Mesa Chapter; and
 - (g) Teec Nos Pos Chapter.

Enacted by Chapter 319, 2015 General Session

Part 2 Administration of Navajo Trust Fund

51-10-201 Fund created.

- (1) There is created a private-purpose trust fund entitled the "Navajo Trust Fund."
- (2) The fund consists of:
 - (a) revenue received by the state that represents the 37-1/2% of the net oil royalties from the Aneth Extension of the Navajo Indian Reservation required by Pub. L. No. 72-403, 47 Stat. 141, to be paid to the state;
 - (b) money received by the trust administrator from a contract executed by:
 - (i) the trust administrator; or
 - (ii) the board;
 - (c) appropriations made to the fund by the Legislature, if any;
 - (d) income;
 - (e) money related to litigation, including settlement of litigation, related to the royalties described in Subsection (2)(a);
 - (f) the balance of the Utah Navajo Royalties Holding Fund as of July 1, 2015, which shall be transferred to the fund; and
 - (g) other revenue received from other sources.
- (3) The trust administrator shall account for the receipt and expenditures of fund money in accordance with Subsection 51-10-204(1)(m) and the policies and guidance of the Division of Finance.
- (4)
 - (a)
 - (i) The state treasurer shall invest the fund money with the primary goal of providing for the stability, income, and growth of the principal.
 - (ii) Nothing in this section requires a specific outcome in investing.
 - (iii) The state treasurer may deduct any administrative costs incurred in managing fund assets from earnings before distributing them.
 - (iv)
 - (A) The state treasurer may employ professional asset managers to assist in the investment of assets of the fund.
 - (B) The state treasurer may only provide compensation to asset managers from earnings generated by the fund's investments.
 - (v) The state treasurer shall invest and manage the fund assets as a prudent investor would, by:
 - (A) considering the purposes, terms, distribution requirements, and other circumstances of the fund; and
 - (B) exercising reasonable care, skill, and caution in order to meet the standard of care of a prudent investor.
 - (vi) In determining whether or not the state treasurer has met the standard of care of a prudent investor, the judge or finder of fact shall:

- (A) consider the state treasurer's actions in light of the facts and circumstances existing at the time of the investment decision or action, and not by hindsight; and
 - (B) evaluate the state treasurer's investment and management decisions respecting individual assets not in isolation, but in the context of a fund portfolio as a whole as a part of an overall investment strategy that has risk and return objectives reasonably suited to the fund.
- (b)
- (i) The fund shall earn interest.
 - (ii) The state treasurer shall deposit the interest or other revenue earned from investment of the fund into the fund.
- (5) The state auditor shall:
- (a) conduct an annual audit of the fund's finances, internal controls, and compliance with statutes, rules, and policies in accordance with Title 67, Chapter 3, Auditor; and
 - (b) deliver a copy of the annual audit report to the:
 - (i) board;
 - (ii) trust administrator;
 - (iii) Diné Advisory Committee;
 - (iv) Office of Legislative Research and General Counsel for presentation to the Native American Legislative Liaison Committee, created in Section 36-22-1;
 - (v) governor's office;
 - (vi) Division of Indian Affairs;
 - (vii) Navajo Nation;
 - (viii) United States Bureau of Indian Affairs; and
 - (ix) United States Secretary of the Interior.

Enacted by Chapter 319, 2015 General Session

51-10-202 Board of trustees of the fund -- Trust administrator.

- (1)
- (a) There is created a board of trustees of the fund composed of the following three members:
 - (i) the state treasurer;
 - (ii) the director of the Division of Finance; and
 - (iii) the director of the Governor's Office of Planning and Budget or the director's designee.
 - (b) The state treasurer is chair of the board.
 - (c) Three members of the board is a quorum.
 - (d) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (2)
- (a) The board shall:
 - (i) contract with a person to act as trust administrator in accordance with Title 63G, Chapter 6a, Utah Procurement Code, and when not provided for by this chapter, define the trust administrator's duties; or
 - (ii) if unable to find a qualified person under Subsection (2)(a)(i) to act as trust administrator for a reasonable cost, hire a qualified person to act as trust administrator and, when not provided for in this chapter, define the trust administrator's duties.

- (b) If the board hires a trust administrator under Subsection (2)(a)(ii), the board may hire or authorize the trust administrator to hire other persons necessary to assist the trust administrator and the board to perform the duties required by this chapter.
- (3) The board shall:
 - (a) on behalf of the state, act as trustee of the fund and exercise the state's fiduciary responsibilities;
 - (b) meet at least once every other month;
 - (c) review and approve the policies, projections, rules, criteria, procedures, forms, standards, and performance goals established by the trust administrator;
 - (d) review and approve the fund budget prepared by the trust administrator;
 - (e) review the progress reports from programs financed by the fund;
 - (f) review financial records of the fund, including fund receipts, expenditures, and investments; and
 - (g) do any other thing necessary to perform the state's fiduciary obligations under the fund.
- (4) The attorney general shall:
 - (a) act as legal counsel and provide legal representation to the board; and
 - (b) attend or direct an attorney from the attorney general's office to attend each meeting of the board.
- (5) The board may consult with knowledgeable state personnel to advise the board on policy and technical matters.

Amended by Chapter 382, 2021 General Session

51-10-203 Office of Trust Administrator.

- (1) If the board hires a trust administrator under Subsection 51-10-202(2)(a)(ii), there is created an Office of Trust Administrator.
- (2) The trust administrator shall administer the office.

Enacted by Chapter 319, 2015 General Session

51-10-204 Trust administrator duties.

- (1) Under the direction of the board, the trust administrator shall:
 - (a) review the documents and decisions highlighting the history of the fund, including:
 - (i) the Nelson report, prepared as part of the Bigman v. Utah Navajo Development Council, Inc. C77-0031;
 - (ii) the November 1991 performance audit of the fund by the legislative auditor general;
 - (iii) Sakezzie v. Utah Indian Affairs Commission, 198 F. Supp. 218 (1961);
 - (iv) Sakezzie v. Utah Indian Affairs Commission, 215 F. Supp. 12 (1963);
 - (v) the September 8, 1977, consent decree, the stipulation dated November 29, 1984, modifying the consent decree, and the court's memorandum opinion dated September 25, 1978, in Bigman v. Utah Navajo Development Council, Inc. C77-0031; and
 - (vi) rulings related to Pelt v. Utah;
 - (b) review all potential sources of fund revenues;
 - (c) prepare annual projections of money that will be available for Navajo programs;
 - (d) identify the property owned by the fund;
 - (e) establish and maintain a record system and retention schedule to retain records relating to the fund's property and operations, including:
 - (i) records related to the ethics and conflict policy developed under Subsection (2)(c);

- (ii) requests for proposals and proposals received;
 - (iii) contracts awarded;
 - (iv) project progress and completion reports;
 - (v) invoices; and
 - (vi) purchasing records;
 - (f) review the existing and proposed programs financed by the fund;
 - (g) evaluate whether the programs described in Subsection (1)(f) are the most practical and cost-efficient means to provide the desired benefit to Navajos;
 - (h) consult regularly with the administrators of the programs financed by the fund to obtain progress reports on the programs;
 - (i) attend all meetings of:
 - (i) the Diné Advisory Committee; and
 - (ii) the board;
 - (j) certify that the expenditures of the fund:
 - (i) comply with the state's fiduciary responsibilities as trustee of the fund; and
 - (ii) are consistent with this section;
 - (k) make an annual report:
 - (i) to the:
 - (A) board;
 - (B) governor; and
 - (C) Native American Legislative Liaison Committee, created in Section 36-22-1; and
 - (ii) that:
 - (A) identifies the source and amount of the revenue received by the fund;
 - (B) identifies the recipient, purpose, and amount of the expenditures from the fund;
 - (C) identifies specifically each of the fund's investments and the actual return and the rate of return from each investment; and
 - (D) recommends any necessary statutory changes to improve administration of the fund or to protect the state from liability as trustee;
 - (l) submit a written annual report to the:
 - (i) Division of Indian Affairs;
 - (ii) Navajo Nation;
 - (iii) United States Bureau of Indian Affairs; and
 - (iv) United States Secretary of the Interior;
 - (m) establish, in conjunction with the state treasurer and the Division of Finance, appropriate accounting practices for the fund receipts, expenditures, and investments according to generally accepted accounting principles;
 - (n) provide summary records of fund receipts, expenditures, and investments to the board and to the Diné Advisory Committee at each of their meetings;
 - (o) pay administrative expenses from the fund;
 - (p) report monthly to the board about:
 - (i) the trust administrator's activities; and
 - (ii) the status of the fund; and
 - (q) call additional meetings of the Diné Advisory Committee when necessary.
- (2) In conjunction with the Diné Advisory Committee and under the direction of the board, the trust administrator shall:
- (a) before the beginning of each fiscal year, establish a list of the needs of Navajos for that year to be used for the annual budget;
 - (b) before the beginning of each fiscal year, develop and approve an annual budget for the fund;

- (c) develop an ethics and conflict of interest policy that emphasizes the need to avoid even the appearance of conflict of interest or impropriety that is to apply to:
 - (i) the trust administrator;
 - (ii) the trust administrator's staff; and
 - (iii) the Diné Advisory Committee;
 - (d) require the trust administrator, each of the trust administrator's staff, and each member of the Diné Advisory Committee to sign and keep on file written documentation that acknowledges:
 - (i) their receipt of the ethics and conflict of interest policy described in Subsection (2)(c); and
 - (ii) their willingness to abide by the ethics and conflict of interest policy described in Subsection (2)(c); and
 - (e) make expenditures from the fund:
 - (i) "for the health, education, and general welfare of the Navajo Indians residing in San Juan County" as required by:
 - (A) Pub. L. No. 72-403, 47 Stat. 1418 (1933);
 - (B) Pub. L. No. 90-306, 82 Stat. 121 (1968); and
 - (C) this chapter; and
 - (ii) including expenditure for roads and utilities.
- (3) The trust administrator, under direction of the board, may:
- (a) contract with public and private entities; and
 - (b) unless prohibited by law or this chapter, acquire and hold money and other property received in the administration of the fund.

Enacted by Chapter 319, 2015 General Session

51-10-205 Expenditures from the fund.

- (1)
 - (a) Under the direction of the board, the trust administrator may make expenditures from the fund in accordance with Subsection 51-10-204(2)(e).
 - (b) The board may enter into a cost sharing agreement with one or more governmental entities if the cost sharing agreement is recommended by at least four of the Utah Navajo Chapters.
- (2)
 - (a) Before making any expenditures from the fund to a service provider, the trust administrator shall:
 - (i) comply with Title 63G, Chapter 6a, Utah Procurement Code; and
 - (ii) review and approve the service provider's entire budget.
 - (b) The trust administrator may require that a service provider modify its budget or meet other conditions precedent established by the trust administrator before the service provider may receive expenditures from the fund.
- (3) The trust administrator shall make an expenditure from the fund that is not an administrative expenditure by:
 - (a) preparing a written document that:
 - (i) defines specifically how the expenditure from the fund may be used;
 - (ii) establishes any conditions precedent to use of the expenditure; and
 - (iii) requires the recipient of fund money to provide the trust administrator with progress reports detailing how the money has been expended; and
 - (b) obtaining the signature of the recipient on that document before releasing any money from the fund.
- (4) The trust administrator shall:

- (a) make rules in accordance with Subsection (6) that:
 - (i) establish policies and criteria for expenditure of fund money; and
 - (ii) establish performance evaluation criteria with which to evaluate the success of expenditures from the fund after they are made;
- (b) develop procedures, forms, and standards for persons seeking distribution of fund money that implement the policies and criteria established by rule;
- (c) evaluate the requests for expenditures of fund money against:
 - (i) the policies and criteria established by rule; and
 - (ii) the requestor's success in meeting performance evaluation criteria and goals in any prior receipt of fund money;
- (d) develop performance goals for each fund expenditure that implement the performance evaluation criteria established in rule; and
- (e) monitor and evaluate each fund expenditure based upon the performance goals and performance evaluation criteria created under this Subsection (4).
- (5) The trust administrator may expend fund money for per diem and expenses incurred by the Diné Advisory Committee in performance of official duties.
- (6) The trust administrator shall make a rule described in Subsection (4)(a):
 - (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (b) with the input and recommendation of the Diné Advisory Committee; and
 - (c) with the approval of the board.

Enacted by Chapter 319, 2015 General Session

51-10-206 Diné Advisory Committee.

- (1) There is created the Diné Advisory Committee.
- (2)
 - (a) The governor, with the advice and consent of the Senate, shall appoint nine members to the Diné Advisory Committee.
 - (b) In making an appointment under Subsection (2)(a), the governor shall ensure that the Diné Advisory Committee includes:
 - (i) two registered members of the Aneth Chapter of the Navajo Nation who reside in San Juan County, Utah;
 - (ii) one registered member of the Blue Mountain Diné who resides in San Juan County, Utah;
 - (iii) one registered member of the Mexican Water Chapter of the Navajo Nation who resides in San Juan County, Utah;
 - (iv) one registered member of the Naatsis'áán Chapter of the Navajo Nation who resides in San Juan County, Utah;
 - (v) subject to Subsection (4), two members who reside in San Juan County, Utah, one of whom is a registered member of the Oljato Chapter of the Navajo Nation, and one of whom is a registered member of either the Oljato Chapter or the Dennehotso Chapter of the Navajo Nation;
 - (vi) one registered member of the Red Mesa Chapter of the Navajo Nation who resides in San Juan County, Utah; and
 - (vii) one registered member of the Teec Nos Pos Chapter of the Navajo Nation who resides in San Juan County, Utah.
- (3)
 - (a)

- (i) Each chapter of the Utah Navajo Chapter, except the Aneth, Oljato, and Dennehotso chapters, shall submit to the governor the names of two nominees to the Diné Advisory Committee chosen by the chapter.
 - (ii) The governor shall appoint one of the two persons whose names are submitted under Subsection (3)(a)(i) as that chapter's representative on the Diné Advisory Committee.
- (b)
- (i) The Blue Mountain Diné shall submit to the governor the names of two nominees to the Diné Advisory Committee.
 - (ii) The governor shall appoint one of the two persons whose names are submitted under Subsection (3)(b)(i) as the Blue Mountain Diné representative on the Diné Advisory Committee.
- (c)
- (i) The Aneth Chapter shall submit to the governor the names of two nominees for each of the two positions to the Diné Advisory Committee representing the Aneth chapter.
 - (ii) The governor shall appoint two of the persons whose names are submitted under Subsection (3)(c)(i) to be the Aneth Chapter's representatives on the Diné Advisory Committee.
- (d)
- (i) Subject to Subsection (3)(d)(ii), the Oljato Chapter shall submit to the governor the names of two nominees for each of the two positions to the Diné Advisory Committee representing the Oljato Chapter and the Dennehotso Chapter.
 - (ii) The Dennehotso Chapter may submit one nominee for purposes of the governor appointing a representative of the Oljato Chapter and the Dennehotso Chapter.
 - (iii) The governor shall appoint two of the persons whose names are submitted under Subsection (3)(d)(i) or (ii) to be the representatives on the Diné Advisory Committee of the Oljato Chapter and the Dennehotso Chapter.
- (e) Before submitting a name to the governor, a Utah Navajo Chapter and the Blue Mountain Diné shall ensure that the individual's whose name is submitted:
- (i) is an enrolled member of the Navajo Nation;
 - (ii) resides in San Juan County, Utah;
 - (iii) is 21 years of age or older;
 - (iv) is not an officer of the chapter;
 - (v) has not been convicted of a felony; and
 - (vi) is not currently, or within the last 12 months has not been, an officer, director, employee, or contractor of a service provider that solicits, accepts, or receives a benefit from an expenditure of:
 - (A) the Division of Indian Affairs; or
 - (B) the fund.
- (4) If both members appointed under Subsection (2)(b)(v) are registered members of the Oljato Chapter, the two members shall attend Dennehotso Chapter meetings as practicable.
- (5)
- (a) Except as provided in Subsection (5)(b) and other than the amount authorized by this section for Diné Advisory Committee member expenses, a person appointed to the Diné Advisory Committee may not solicit, accept, or receive any benefit from an expenditure of:
 - (i) the Division of Indian Affairs;
 - (ii) the fund; or
 - (iii) the Division of Indian Affairs or fund as an officer, director, employee, or contractor of a service provider that solicits, accepts, or receives a benefit from the expenditure of:

- (A) the Division of Indian Affairs; or
- (B) the fund.
- (b) A member of the Diné Advisory Committee may receive a benefit from an expenditure of the fund if:
 - (i) when the benefit is discussed by the Diné Advisory Committee:
 - (A) the member discloses that the member may receive the benefit;
 - (B) the member physically leaves the room in which the Diné Advisory Committee is discussing the benefit; and
 - (C) the Diné Advisory Committee approves the member receiving the benefit by a unanimous vote of the members present at the meeting discussing the benefit;
 - (ii) a Utah Navajo Chapter requests that the benefit be received by the member;
 - (iii) the member is in compliance with the ethics and conflict of interest policy required under Subsection 51-10-204(2)(c);
 - (iv)
 - (A) the expenditure from the fund is made in accordance with this chapter; and
 - (B) the benefit is no greater than the benefit available to members of the Navajo Nation residing in San Juan County, Utah; and
 - (v) the member is not receiving the benefit as an officer, director, employee, or contractor of a service provider.
- (6)
 - (a)
 - (i) Except as required in Subsection (6)(a)(ii), as terms of current committee members expire, the governor shall appoint each new member or reappointed member to a four-year term.
 - (ii) The governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the Diné Advisory Committee is appointed every two years.
 - (iii) The terms of the Aneth Chapter's representatives appointed under Subsection (3)(c)(ii) shall be staggered in accordance with this Subsection (6) so that only one position is appointed by the governor in a year.
 - (iv) The terms of the Oljato Chapter's and the Dennehotso Chapter's representatives appointed under Subsection (3)(d) shall be staggered in accordance with this Subsection (6) so that only one position is appointed by the governor in a year.
 - (b) Except as provided in Subsection (6)(c), a committee member shall serve until the committee member's successor is appointed and qualified.
 - (c) If a committee member is absent from three consecutive committee meetings, or if the committee member violates the ethical or conflict of interest policies established by statute or the Diné Advisory Committee:
 - (i) the committee member's appointment is terminated;
 - (ii) the position is vacant; and
 - (iii) the governor shall appoint a replacement.
 - (d) When a vacancy occurs in the membership for any reason, the governor shall appoint a replacement for the unexpired term according to the procedures of this section.
 - (e) The governor may appoint an individual to more than one term on the Diné Advisory Committee.
- (7) When the governor makes a new appointment or reappointment under Subsection (6)(a)(i), or a vacancy appointment under Subsection (6)(d), the governor's new appointment, reappointment, or vacancy appointment shall be made with the advice and consent of the Senate.
- (8)

- (a) The committee members shall select a chair and vice chair from committee membership each two years subsequent to the appointment of new committee members.
- (b) Five members of the Diné Advisory Committee is a quorum for the transaction of business.
- (c) The Diné Advisory Committee shall:
 - (i) comply with Title 52, Chapter 4, Open and Public Meetings Act;
 - (ii) ensure that its meetings are held at or near:
 - (A) a chapter house or meeting hall of a Utah Navajo Chapter; or
 - (B) other places in Utah that the Diné Advisory Committee considers practical and appropriate; and
 - (iii) ensure that its meetings are public hearings at which a resident of San Juan County, Utah, may appear and speak.
- (9) A committee member may not receive compensation or benefits for the committee member's service, but may receive per diem and travel expenses in accordance with policy adopted by the board.
- (10) The trust administrator shall staff the Diné Advisory Committee.
- (11) The Diné Advisory Committee shall advise the trust administrator about the expenditure of fund money.

Amended by Chapter 529, 2024 General Session