TITLE: An Action Relating to Naabik’íyáti’ and Navajo Nation Council; Overriding the Navajo Nation President’s Veto of Navajo Nation Council Resolution CMY-44-20

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LEGISLATIVE SUMMARY SHEET
Tracking No. 0130-20

DATE: June 3, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO NAABIK’ÍYÁTI’ AND NAVAJO NATION COUNCIL; OVERRIDE THE NAVAJO NATION PRESIDENT’S VETO OF NAVAJO NATION COUNCIL RESOLUTION CMY-44-20

PURPOSE: This resolution, if approved, will override the President’s veto of Navajo Nation Council Resolution No. CMY-44-20.

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.

OLC No. 20-202-1
PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL -- Second Year, 2020
INTRODUCED BY

(Sponsor)

TRACKING NO. 0130-20

AN ACTION
RELATING TO NAABIK'ÍYÁTI' AND NAVAJO NATION COUNCIL;
OVERRIDING THE NAVAJO NATION PRESIDENT'S VETO OF NAVAJO NATION
COUNCIL RESOLUTION CMY-44-20

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. All resolutions enacting new law or amending existing laws are subject to veto by the
President of the Navajo Nation pursuant to 2 N.N.C. § 1005 (C)(10) and (11) and
override of the veto by two-thirds (2/3) vote of the membership by the Navajo Nation
Council. 2 N.N.C. §§ 164 (A)(17) and 1005 (C)(11).
C. A vetoed resolution shall first be submitted to Naabik'íyáti' Committee before
consideration by the Council. 2 N.N.C. § 164 (A)(17).

Section Two. Findings
A. Title One, Subchapter 2, of the Navajo Nation Code, titled Diné Bi Beehaz'áanii
Bitsé Siléi--Declaration of the Foundation of Diné Law, affirms the traditional Diné
teachings concerning the appropriate roles of each of the three branches of the Navajo
Nation:
1. The leader(s) of the Executive Branch (Aláají' Hózhjí Naat'ááh) shall represent the Navajo Nation to other peoples and nations and implement the policies and laws (Diné bibeehaz'ánii) enacted by the legislative branch;

2. The leader(s) of the Legislative Branch (Aláají' Naat'ájí Naat'ááh and Aláají' Naat'ájí Ndaanit’aii or Naat’aanii) shall enact policies and laws (Diné bibeehaz’ánii) in harmony with Diné bi beenahaz’áanii to address the immediate and future needs;

3. The leader(s) of the Judicial Branch (Aláají' Hashkéédí Naat'ááh) shall resolve disputes in the courts of the Navajo Nation and adopt rules of pleading, practice, procedure, and evidence by applying and interpreting Navajo Nation statutory laws and policies (Diné bibeehaz’ánii) enacted by the leaders of the Legislative Branch. The Peacemakers within the Peacemaking Program shall uphold the values and principles embodied in Diné bi beenahaz’áanii in the consensual practice of resolving disputes by peacemaking.

B. In 1989, the Navajo Tribal Council enacted Resolution No. CD-68-89 to reorganize the Navajo Nation government from a Chairmanship to a three Branch government; CD-68-89 recognized that the “[r]ecent controversy involving the leadership of the Navajo Nation has demonstrated that the present Navajo Nation Government structure allows too much centralized power without real checks on the exercise of power. Experience shows that this deficiency in the government structure allows for invites and has resulted in the abuse of power.” CD-68-89, Whereas Clause No. 2.

C. CD-68-89 also specifically recognized that “it is in the best interest of the Navajo Nation that the Navajo Nation Government be reorganized to provide for separation of functions into three branches and provide for checks and balances between the three branches . . .” CD-68-89, Whereas Clause No. 8.

D. In 2009, the Navajo People, through an initiative vote action, delegated the President the authority to line-item veto budget items contained in the annual Navajo Nation
Comprehensive Budget or supplemental appropriations approved by the Navajo Nation Council.

E. The ballot language, attached as Exhibit A, approved by the Navajo People on December 15, 2009, became the law of the Navajo Nation, specifically:

“The President of the Navajo Nation will be authorized to exercise line item veto authority over budget items contained in the annual Navajo Nation Comprehensive Budget or supplemental appropriations approved by the Navajo Nation Council. Budget line items vetoed by the President of the Navajo Nation will not be subject to Navajo Nation Council override. Upon approval of this initiative, the authority of the President of the Navajo Nation to exercise line item veto authority will become effective immediately.”

F. The 22nd Navajo Nation Council recognized the line-item veto law approved by the Navajo People by amending its own Title Two authorities to state that “[a]ll resolutions enacting new laws or amending existing laws are subject to veto by the President of the Navajo Nation pursuant to 2 N.N.C. § 1005(C)(10) and (11) and override by the Navajo Nation Council, except financial line-item vetoes are not subject to override.” 2 N.N.C. § 164 (A) (17).

G. On May 15, 2020, the Navajo Nation Council approved Resolution No. CMY-44-20, attached as Exhibit B, by a vote of 19 in favor and 4 opposed with the Speaker of the Council not voting.


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OLC No. 20-202-1
I. The purpose of CMY-44-20 was to enact the Navajo Nation CARES Fund Act which establishes the legal framework for subsequent approval of CARES Fund expenditures; CMY-44-20 does not include any budget documents and does not appropriate any funds.

J. After the Navajo Nation Council approved CMY-44-20, it was delivered to the President for signature or regular veto; however, notwithstanding that CMY-44-20 did not include any budget documents and did not appropriate any funds, the President struck out, i.e., line-item vetoed, policy language of the CARES Fund Act statute. President Veto Message dated May 30, 2020 attached as Exhibits C.

K. As set forth in the President Veto Message, Exhibit C, the President line-item vetoed the following policy lines:

1. On page 1, in the title:

   TO BE COMPRISED OF THE NATION’S SHARE OF THE CORONAVIRUS RELIEF FUND

2. On page 5:

   § 2602. Establishment

   There is established the “Navajo Nation CARES Fund (hereinafter “Fund”).

   A. The Navajo Nation hereby designates that the monies that the Navajo Nation has received and will receive from the United States from the Coronavirus Relief Fund pursuant to the Coronavirus Aid, Relief, and Economic-Security Act (the “CARES Act”), P.L. No. 116-136, at Title V, §5001 (the “Coronavirus Relief Fund”) shall be deposited into the Fund.

   B. Any monies deposited into the Fund shall be used exclusively and only as provided in this Chapter and in compliance with the permissible uses of the funds as set forth in the Coronavirus Relief Fund and CARES Act, the Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments issued by the U.S. Treasury on April 22, 2020, and any and all future rulemaking and regulations of the Department of the Treasury or the Department of the Interior.
C. The Fund shall be a continuing account and shall not lapse on an annual basis pursuant to 12 N.C.S. § 820(N).

3. On page 6:

§2604. Expenditures of the Fund

A. Any expenditure of the Fund shall be by an appropriation within the meaning of the Appropriations Act, 12 N.C.S. §§ 800 et seq., and accomplished through the approval of an Expenditure Plan(s) adopted by a two-thirds (2/3) vote of all members of the Navajo Nation Council, subject to final action of the President of the Navajo Nation pursuant to 2 N.C.S. § 1005(C) (10), (11), and (12).

B. Expenditures of the Fund shall only be for eligible uses of the Coronavirus Relief Fund as defined in Title V of the CARES Act, which includes only those costs that:

4. On page 8:

A. To be eligible to receive an appropriation of Coronavirus Relief Funds as defined in Title V of the CARES Act, Expenditure Plan(s) required by the Navajo Nation CARES Fund Act ("Act") shall, at a minimum, include provisions specifying the following:

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B. An Expenditure Plan may be approved by the Navajo Nation Council without detailed budget forms, provided the Navajo Nation division, department, program, chapter, or entity to which the appropriations are allocated complies with the expedited budget procedures developed by the Office of Management and Budget and approved by the Budget and Finance Committee; in the event the entity to which appropriation(s) are allocated fails to comply with and complete the expedited budget procedures within fifteen (15) days of the date the Expenditure Plan becomes law, the funds allocated to that entity will revert back to the Navajo Nation CARES Fund.
L. The President’s line-item vetoes are all to policy language and do not strike out “budget items contained in the annual Navajo Nation Comprehensive Budget or supplemental appropriations” as required by the 2009 initiative; the President’s line items, also do not strike out any financial line items as allowed by 2 N.N.C. § 164 (A) (17).

M. The President’s line item veto of CMY-44-20 was not limited to budget items contained in the Comprehensive Budget or supplemental appropriations as required by the 2009 initiative and failed to comply with 2 N.N.C. § 164 (A) (17); consequently, the President’s line item veto of CMY-44-20 exceeded the authority granted to him by the people and runs the risk of concentrating too much power into one branch without real checks on the exercise of that power, exactly what was cautioned against in 1989.

N. In summary, CMY-44-20 does not make any appropriations, nor does it take any financial actions that are subject to the line-item veto power; CMY-44-20 only establishes the Navajo Nation CARES Act Fund that creates policies and procedures for future appropriations of the fund; CMY-44-20 codifies these new policies and procedures under new provisions in Title 12 of the Navajo Nation code; amendments to the Navajo Nation Code are subject to the Navajo Nation President’s regular veto power pursuant to 2 N.N.C § 1005(C)(11) and not the line-item veto power pursuant to 2 N.N.C §164(A)(17) or the 2009 initiative.

O. The appropriate vehicle for Presidential veto of CMY-44-20 was a regular veto pursuant to 2 N.N.C. § 1005 (C)(11); because the President instead chose to line item veto CMY-44-20, he exceeded his lawful authority; consequently, his line item veto of CMY-44-20 is without effect.

P. Out of respect for the Navajo Nation government’s separation of powers and system of checks and balances, the Navajo Nation Council will treat the President’s veto of CMY-44-20 as a regular veto so that his action is not completely without effect.

Q. The Navajo Nation Council does not agree with the President’s reasoning for vetoing CMY-44-20 and continues to believe that CMY-44-22 is necessary to expeditiously and immediately distribute CARES Act funds to programs, entities, communities, and
non-government organizations to mitigate the devastating effects of COVID-19 on
the Navajo People.

Section Three. Override
The Navajo Nation Council hereby overrides the Navajo Nation President’s veto of
Resolution CMY-44-22.

Section Four. Effective
This action shall become effective when certified by the Speaker of the Navajo Nation
Council pursuant to 2 N.N.C. §§ 221 (A) and (B).