MEMORANDUM

TO: Honorable Lorenzo Bates, Speaker Pro Tem
The 22nd Navajo Nation Council

FROM: Ben Shelly, President
THE NAVAJO NATION

DATE: December 1, 2014

SUBJECT: Legislation No. CN-56-14: RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, BUDGET AND FINANCE COMMITTEE, LAW AND ORDER COMMITTEE, NAABIK'IYATI' COMMITTEE AND NAVAJO NATION COUNCIL; AMENDING TITLE 5 N.N.C. §§ 3600, 3601 AND 3605 AND ADOPTING NEW 5 N.N.C. § 36020A IN THE NAVAJO NATION LIMITED LIABILITY COMPANY ACT TO AUTHORIZE THE FORMATION OF A LOW-PROFIT LIMITED LIABILITY COMPANY

Pursuant to 2 N.N.C. §1005(c)(10), the above titled Legislation CN-56-14 is being submitted to the Navajo Nation Council, through the Office of the Speaker, within the ten (10) day requirement. 2 N.N.C. §1005(c)(10) establishes the Navajo Nation President’s authority to veto legislation passed by the Navajo Nation Council. I hereby exercise my veto authority with this legislation.

I understand that this particular language authorizing creation of a Low-Profit Limited Liability Company (“L3C”) has been adopted by several states and two tribes, it is also my understanding that the State of North Carolina has abolished the structure from its code books. There is uncertainty and confusion if this structure benefits all involved this type of business structure within the Navajo Nation. Additionally, it is my understanding, the Internal Revenue code has not been amended to reflect the changes in businesses such as L3C structure, and therefore the charitable investors may find themselves at odd with the IRS.

I strongly suggest the Navajo Nation Department of Justice and Navajo Tax Commission Office do a legal and tax analysis on this structure and what the benefit and concerns the Nation should have in adding the L3C. For the reasons stated above, I hereby veto CN-56-14.

cc: Executive file
RESOLUTION OF THE
NAVAJO NATION COUNCIL

22nd NAVAJO NATION COUNCIL—FOURTH YEAR, 2014

AN ACT

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, BUDGET AND
FINANCE COMMITTEE, LAW AND ORDER COMMITTEE, NAABIK’IYÁTI’
COMMITTEE AND NAVAJO NATION COUNCIL; AMENDING TITLE 5 N.N.C. §§
3600, 3601 AND 3605 AND ADOPTING NEW 5 N.N.C. § 3620A IN THE
NAVAJO NATION LIMITED LIABILITY COMPANY ACT TO AUTHORIZE THE
FORMATION OF A LOW-PROFIT LIMITED LIABILITY COMPANY

BE IT ENACTED:

SECTION 1. FINDINGS

1. The Resources and Development Committee exercises oversight
authority over economic and community development and commerce
and trade. 2 N.N.C. § 500 (c).

2. The Resources and Development Committee reviews and makes
recommendations to the Navajo Nation Council for final approval
of resolutions requiring Navajo Nation Council approval to
accomplish or impact the Committee purposes. 2 N.N.C. § 501
(B)(4)(f).

3. The Resources and Development Committee serves as the
oversight committee of the Division of Economic Development. 2
N.N.C. § 501 (C)(1).

4. The Budget and Finance Committee has the oversight authority
to recommend to the Navajo Nation Council the adoption of
resolutions designed to strengthen the fiscal and financial
position of the Navajo Nation and to promote the efficient use
of the fiscal and financial resources of the Navajo Nation. 2
N.N.C. § 300 (C)(3).

5. The Law and Order Committee has the power to review and make
recommendations to the Navajo Nation Council on proposed
amendments to and enactments in the Navajo Nation Code. 2.
N.N.C. § 601 (B)(14).
6. The Naabik’íyáti’ Committee has the authority to determine whether a resolution shall proceed to the Council or be referred back to a standing committee. 2 N.N.C. § 700 (G).

7. A low-profit limited liability company is a new variation of the limited liability company (LLC).

8. A low-profit limited liability company combines the charitable purposes of a 501(c)(3) organization with the for-profit purposes of an LLC, in which its investors voluntarily accept a lower dividend on the net profits than would be considered appropriate for the financial risk of their investment.

9. A low-profit limited liability company is primarily focused on the achievement of a socially beneficial purpose, with recognition by its investors, and the community at large that it's profit making objectives are of secondary importance.

10. The Navajo Nation hereby finds that the authorization of the formation of a low-profit limited liability company in the Navajo Nation Limited Liability Company Act is in the best interests of the Navajo People.

SECTION 2. AMENDING 5 N.N.C. §§ 3600, 3601 AND 3605

The Navajo Nation Council hereby amends 5 N.N.C. §§ 3600, 3601, and 3605 as follows:

NAVajo NATION CODE ANNOTATED
TITLE 5. COMMERCE AND TRADE
CHAPTER 21. NAVajo NATION LIMITED LIABILITY COMPANY
ARTICLE 1. GENERAL PROVISIONS

§ 3600. Policy and purpose

The Navajo Nation Limited Liability Company Act is hereby enacted:

A. The purpose of this Act is to permit the formation of various limited liability entities, low-profit limited liability entities (L3C), and require registration of foreign limited liabilities; and to regulate such entities so as to promote economic growth and further exercise Navajo Nation sovereignty in the governance of its territory, and citizens.
§ 3601. Definitions

In this Chapter, unless the context otherwise requires:

A. "Articles of organization" means initial, amended, and restated articles of organization and articles of merger. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed in the Department or other official having custody of company records in the State, Indian Nation or country under whose law it is organized.

B. "At-will company" means a limited liability company other than a term company.

C. "Business" includes every trade, occupation, profession, and other lawful purpose, whether or not carried on for profit.

D. "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application or a comparable order under federal, state, or foreign law governing insolvency.

E. "Department" means the Business Regulatory Department within the Division of Economic Development or its designate successor.

F. "Distribution" means a transfer of money, property, or other benefit from a limited liability company to a member in the member's capacity as a member or to a transferee of the member's distributional interest.

G. "Distributional Interest" means all of a member's interest in distributions by the limited liability company.

H. "Entity" means a person other than an individual.

I. "Foreign limited liability company" means an unincorporated entity organized under laws other than the laws of the Navajo Nation which afford limited liability to its owners comparable to the liability under Section 3642 and is not required to obtain a certificate of authority to transact business under any law of the Navajo Nation other than this Act.
J. "Limited liability company" means a limited liability company organized and existing under this Act.

K. "Low-profit limited liability company" means a for-profit limited liability company that is organized and exists pursuant to this Act and that does not have as a significant purpose the production of income or the appreciation of property.

K L. "Manager" means a person, whether or not a member of a manager-managed company, who is vested with authority under Section 3640.

Lr. M. "Manager-managed company" means a limited liability company which is so designated in its articles of organization.

M. N. "Member-managed company" means a limited liability company other than a manager-managed company.

N. O. "Navajo Nation" means:

1. When referring to the body politic, the Navajo Nation government, including its Council and applicable standing committees and boards;

2. When referring to governmental territory, all land within the territorial boundaries of the Navajo Nation, including:

   a. All land within the exterior boundaries of the Navajo Indian Reservation, including the Navajo Partitioned Land, or of the Eastern Navajo portion of the Navajo Nation, including Alamo, Canoncito, and Ramah, or of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments;

   b. All lands held in trust by the United States for, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for, the use or benefit of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indian as such; and
c. All other land over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law.

Θ- P. "Operating agreement" means any written under Section 3603 concerning the relations among the members, managers, and limited liability company. The term includes amendments to the agreement.

Θ- Q. "Person" includes any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, government subdivision, government agency, or instrumentality, or any other legal or commercial entity.

Θ- R. "Principal office" means the office, whether or not in the Navajo Nation, where the principal executive office of a domestic or foreign limited liability company is located.

Θ- S. "Record" means information that is inscribed on a tangible medium or that it stored in an electronic or other medium and is retrievable in perceived form.

Θ- T. "Sign" means to identify a record by means of a signature, mark, or other symbol, with intent to authenticate it.

Θ- U. "State" means a state of the United States, a federally-recognized Indian Tribe, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

Θ- V. "Term company" means a limited liability company in which its members have agreed to remain members until the expiration of a term specified in the articles of incorporation.

Θ- W. "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, and gift.

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§ 3605. Name

The name of a limited liability company as set forth in its articles of organization shall:

A. Contain the words "limited liability company" or limited company" or the abbreviations "L.L.C.,” “LLC,” "L.C.,” or "LC" or, if organized as a low-profit limited liability company shall contain the term "L3C”, in upper or lower case letters. Limited may be abbreviated as “Ltd.”, and "company" may be abbreviated as “Co.”.

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SECTION 3. ADOPTING A NEW 5 N.N.C. § 3602A TO AUTHORIZE THE FORMATION OF A LOW-PROFIT LIMITED LIABILITY COMPANY

The Navajo Nation Council hereby adopts new 5 N.N.C. § 3620A:

NAVAJO NATION CODE ANNOTATED
TITLE 5. COMMERCE AND TRADE
CHAPTER 21. NAVAJO NATION LIMITED LIABILITY COMPANY
ARTICLE 2. ORGANIZATION

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§ 3620A. Low-profit limited liability company

A. A limited liability company that intends to qualify as a low-profit limited liability company pursuant to this section shall indicate the intention in its articles of organization and further state that:

1. No significant purpose of the company is the production of income or appreciation of property; however significant income or capital appreciation is not conclusive evidence of a significant purpose in the absence of other factors.

2. No purpose of the company is to accomplish one or more political or legislative purposes within the meaning of Section 170 (c) (2) (D) of the Internal Revenue Code of 1986, 26 U.S.C. § 170 (c) (2) (D), or its successor.
B. A low-profit limited liability company shall at all times significantly further the accomplishment of one or more charitable or educational purposes within the meaning of Section 170 (c) (2) (B) of the Internal Revenue Code of 1986, 26 U.S.C. § 170 (c) (2) (B) or its successor, and would not have been formed but for the relationship to the accomplishment of such charitable or educational purposes.

C. A company that no longer satisfies the requirements of this section continues to exist as a limited liability company and shall promptly amend its articles of organization so that its name and purpose no longer identify it as a low-profit limited liability company.

D. This section does not prevent a limited liability company that is not organized as a low-profit limited liability company from electing a charitable or educational purpose in whole or in part for doing business.

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SECTION 4. EFFECTIVE DATE

The amendments of the Navajo Nation Code enacted herein shall be effective pursuant to 2 N.N.C. § 221(B).

SECTION 5. CODIFICATION

The provisions of this Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

SECTION 6. 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 Supreme Court, those provisions of the Act not determined invalid shall remain the law of the 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 14 in favor and 0 opposed, this 14th day November 2014.

LoRenzo Bates, Pro Tem Speaker
Navajo Nation Council

11-21-14
Date

Motion: Honorable Alton Joe Shepherd
Second: Honorable Jonathan Hale

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 ________________ 2014.

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Ben Shelly, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this ____ day of ___ 2014, for the reason(s) expressed in the attached letter to the Speaker.

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Ben Shelly, President
Navajo Nation