

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
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LEGISLATION NO: \_0130-20\_\_

SPONSOR: Daniel Tso

**TITLE: An Action Relating to Naabik'iyáti' 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; OVERRIDING 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

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION  
2 24th NAVAJO NATION COUNCIL -- Second Year, 2020

3 INTRODUCED BY

4 \_\_\_\_\_  
5  
6 (Sponsor)

7  
8 TRACKING NO. 0130-20  
9



10  
11 AN ACTION

12 RELATING TO NAABIK'ÍYÁTI' AND NAVAJO NATION COUNCIL;  
13 OVERRIDING THE NAVAJO NATION PRESIDENT'S VETO OF NAVAJO NATION  
14 COUNCIL RESOLUTION CMY-44-20  
15

16 **BE IT ENACTED:**

17 **Section One. Authority**

- 18 A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102 (A).  
19 B. All resolutions enacting new law or amending existing laws are subject to veto by the  
20 President of the Navajo Nation pursuant to 2 N.N.C. § 1005 (C)(10) and (11) and  
21 override of the veto by two-thirds (2/3) vote of the membership by the Navajo Nation  
22 Council. 2 N.N.C. §§ 164 (A)(17) and 1005 (C)(11).  
23 C. A vetoed resolution shall first be submitted to Naabik'iyáti' Committee before  
24 consideration by the Council. 2 N.N.C. § 164 (A)(17).  
25

26 **Section Two. Findings**

- 27 A. Title One, Subchapter 2, of the Navajo Nation Code, titled Diné Bi Beehaz'áanii  
28 Bitsé Siléí--Declaration of the Foundation of Diné Law, affirms the traditional Diné  
29 teachings concerning the appropriate roles of each of the three branches of the Navajo  
30 Nation:

- 1           1. The leader(s) of the Executive Branch (Ałáají' Hózhjí Naat'ááh) shall  
2           represent the Navajo Nation to other peoples and nations and implement  
3           the policies and laws (Diné bibeeshaz'ánii) enacted by the legislative  
4           branch;
- 5           2. The leader(s) of the Legislative Branch (Ałáají' Naat'ájí Naat'ááh and  
6           Ałáají' Naat'ájí Ndaanit'áii or Naat'aanii) shall enact policies and laws  
7           (Diné bibeeshaz'ánii) in harmony with Diné bi beenahaz'ánii to address  
8           the immediate and future needs;
- 9           3. The leader(s) of the Judicial Branch (Ałáají' Hashkééjí Naat'ááh) shall  
10          resolve disputes in the courts of the Navajo Nation and adopt rules of  
11          pleading, practice, procedure, and evidence by applying and interpreting  
12          Navajo Nation statutory laws and policies (Diné bibeeshaz'ánii) enacted  
13          by the leaders of the Legislative Branch. The Peacemakers within the  
14          Peacemaking Program shall uphold the values and principles embodied in  
15          Diné bi beenahaz'ánii in the consensual practice of resolving disputes by  
16          peacemaking.

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

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

28          D. In 2009, the Navajo People, through an initiative vote action, delegated the President  
29          the authority to line-item veto budget items contained in the annual Navajo Nation  
30

1 Comprehensive Budget or supplemental appropriations approved by the Navajo  
2 Nation Council.

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

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

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

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

21 H. The title of CMY-44-20 summarizes its major provisions: AN ACT RELATING TO  
22 LAW AND ORDER, BUDGET AND FINANCE, AND NABIK’ÍYÁTI’  
23 COMMITTEES, AND THE NAVAJO NATION COUNCIL; WAIVING 12 N.N.C.  
24 §§ 301 *ET SEQ.*; ENACTING THE “NAVAJO NATION CARES FUND ACT” BY  
25 AMENDING TITLE 12 OF THE NAVAJO NATION CODE AND  
26 ESTABLISHING “THE NAVAJO NATION CARES FUND” TO BE COMPRISED  
27 OF THE NATION’S SHARE OF THE CORONAVIRUS RELIEF FUND  
28 RECEIVED FROM THE UNITED STATES PURSUANT TO TITLE V OF THE  
29 CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (“CARES  
30 ACT”)

1 I. The purpose of CMY-44-20 was to enact the Navajo Nation CARES Fund Act which  
2 establishes the legal framework for subsequent approval of CARES Fund  
3 expenditures; CMY-44-20 does not include any budget documents and does not  
4 appropriate any funds.

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

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

12 1. On page 1, in the title:

13 ~~TO BE COMPRISED OF THE NATION'S SHARE OF THE~~  
14 ~~CORONAVIRUS RELIEF FUND~~

15 2. On page 5:

16 § 2602. Establishment

17 There is established the "Navajo Nation CARES Fund (hereinafter "Fund").

18 A.—~~The Navajo Nation hereby designates that the monies that the~~  
19 ~~Navajo Nation has received and will receive from the United States from~~  
20 ~~the Coronavirus Relief Fund pursuant to the Coronavirus Aid, Relief, and~~  
21 ~~Economic Security Act (the "CARES Act"), P.L. No. 116-136, at Title V,~~  
22 ~~§5001 (the "Coronavirus Relief Fund") shall be deposited into the Fund.~~

23 B. ~~Any monies deposited into the Fund shall be used exclusively and~~  
24 ~~only as provided in this Chapter~~ and in compliance with the permissible  
25 uses of the funds as set forth in the Coronavirus Relief Fund and CARES  
26 Act, the Coronavirus Relief Fund Guidance for State, Territorial, Local,  
27 and Tribal Governments issued by the U.S. Treasury on April 22, 2020,  
28 and any and all future rulemaking and regulations of the Department of the  
29 Treasury or the Department of the Interior.

1           ~~C. The Fund shall be a continuing account and shall not lapse on an~~  
2           ~~annual basis pursuant to 12 N.N.C. § 820(N).~~

3           3. On page 6:

4           §2604. Expenditures of the Fund

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

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

14          4. On page 8:

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

19                 \*\*\*

20          B. ~~An Expenditure Plan may be approved by the Navajo Nation Council~~  
21          ~~without detailed budget forms, provided the Navajo Nation division,~~  
22          ~~department, program, chapter, or entity to which the appropriations are~~  
23          ~~allocated complies with the expedited budget procedures developed by~~  
24          ~~the Office of Management and Budget and approved by the Budget~~  
25          ~~and Finance Committee; in the event the entity to which~~  
26          ~~appropriation(s) are allocated fails to comply with and complete the~~  
27          ~~expedited budget procedures within fifteen (15) days of the date the~~  
28          ~~Expenditure Plan becomes law, the funds allocated to that entity will~~  
29          ~~revert back to the Navajo Nation CARES Fund.~~

- 1 L. The President’s line-item vetoes are all to policy language and do not strike out  
2 “budget items contained in the annual Navajo Nation Comprehensive Budget or  
3 supplemental appropriations” as required by the 2009 initiative; the President’s line  
4 items, also do not strike out any financial line items as allowed by 2 N.N.C. § 164 (A)  
5 (17).
- 6 M. The President’s line item veto of CMY-44-20 was not limited to budget items  
7 contained in the Comprehensive Budget or supplemental appropriations as required  
8 by the 2009 initiative and failed to comply with 2 N.N.C. § 164 (A) (17);  
9 consequently, the President’s line item veto of CMY-44-20 exceeded the authority  
10 granted to him by the people and runs the risk of concentrating too much power into  
11 one branch without real checks on the exercise of that power, exactly what was  
12 cautioned against in 1989.
- 13 N. In summary, CMY-44-20 does not make any appropriations, nor does it take any  
14 financial actions that are subject to the line-item veto power; CMY-44-20 only  
15 establishes the Navajo Nation CARES Act Fund that creates policies and procedures  
16 for future appropriations of the fund; CMY-44-20 codifies these new policies and  
17 procedures under new provisions in Title 12 of the Navajo Nation code; amendments  
18 to the Navajo Nation Code are subject to the Navajo Nation President’s regular veto  
19 power pursuant to 2 N.N.C § 1005(C)(11) and not the line-item veto power pursuant  
20 to 2 N.N.C §164(A)(17) or the 2009 initiative.
- 21 O. The appropriate vehicle for Presidential veto of CMY-44-20 was a regular veto  
22 pursuant to 2 N.N.C. § 1005 (C)(11); because the President instead chose to line item  
23 veto CMY-44-20, he exceeded his lawful authority; consequently, his line item veto  
24 of CMY-44-20 is without effect.
- 25 P. Out of respect for the Navajo Nation government’s separation of powers and system  
26 of checks and balances, the Navajo Nation Council will treat the President’s veto of  
27 CMY-44-20 as a regular veto so that his action is not completely without effect.
- 28 Q. The Navajo Nation Council does not agree with the President’s reasoning for vetoing  
29 CMY-44-20 and continues to believe that CMY-44-22 is necessary to expeditiously  
30 and immediately distribute CARES Act funds to programs, entities, communities, and

1 non-government organizations to mitigate the devastating effects of COVID-19 on  
2 the Navajo People.

3  
4 **Section Three. Override**

5 The Navajo Nation Council hereby overrides the Navajo Nation President's veto of  
6 Resolution CMY-44-22.

7  
8 **Section Four. Effective**

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