



Navajo Nation CARES Fund Act veto issued by President Jonathan Nez

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WINDOW ROCK, Ariz. — On Saturday, May 30, Navajo Nation President Jonathan Nez line-item vetoed Navajo Nation Council Resolution No. CMY-44-20, known as the Navajo Nation CARES Fund Act. The Act established the fund management plan, or legal framework, for appropriating the \$600,559,530.10 received from the federal government to fight the COVID-19 pandemic.

“The President’s line-item veto has unnecessarily delayed the release of Coronavirus Relief Funds to programs, chapters, non-profits and other entities,” said Speaker Seth Damon. “The Navajo Nation Council will continue to work quickly to get these resources to the grassroots efforts, front-line workers, health care facilities and to our families living in our most remote areas with the most immediate needs.”

On May 15, the Navajo Nation Council approved the Navajo Nation CARES Fund Act and has since held numerous work sessions on the needs of public safety, health care, social services, water infrastructure, broadband and other service providers.

The Navajo Nation Council recognizes and supports the presidential power to exercise regular veto authority over CMY-44-20. Under the separation of powers and the checks and balances between the three branches of the Navajo Nation government, the Council is given power to override that veto.

However, the use of the line-item veto instead of a regular veto by President Nez was an illegitimate expansion of the line-item veto authority voted into law by the Navajo People through referendum in 2009. The ballot language for the 2009 referendum stated:

“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.”

The Navajo Nation CARES Fund Act only established the legal framework for future expenditure plans and did not make any actual appropriations or include any budget line items.

The President’s line-item veto struck out statutory language, including full paragraphs, of the CARES Fund Act that make the entire statute non-sensical. “As of this moment, the Council does not believe the president has line-item veto authority in the first place and in the second place, the President cannot line-item veto entire paragraphs to the extent that it changes the intent of the Act,” said Speaker Damon. “If the President wanted to veto CMY-40-20, his only legitimate option was to regular veto the whole legislation and allow the Council the opportunity to override the veto as is the case in any true three branch government.”

In his veto message, President Nez stated that he relied on a Navajo Nation Attorney General Opinion (No. AG-01-18) from 2018 concerning an entirely different legislation as the basis for treating the Navajo Nation CARES Fund as an appropriation and striking policy language. The Attorney General opinion, however, specifically states that “the Navajo Nation Code defines an ‘appropriation’ as ‘the legislative act of designating funds, excluding externally restricted funds, for a specific purpose...”

The funds in question in the Attorney General's 2018 opinion were settlement funds paid to the Navajo Nation with no expectation or restrictions imposed on their use by an external agency. In contrast, the Coronavirus Relief Funds received by the Nation are federal funds governed by Title V of the federal CARES Act statute and U.S. Treasury Rules and Guidance. Therefore, those funds are "externally restricted funds" that are not subject to the Navajo Nation Code's definition of an appropriation or the Attorney General's 2018 opinion.

President Nez also took specific issue with the amendment sponsored by Delegate Nathaniel Brown which states that "no less than twenty-five percent (25%) of all expenditures from, and contracts using, the Navajo Nation CARES Fund shall go to Navajo-owned businesses."

In his veto message, the President criticized the Council for requiring that the Navajo Nation comply with the federal CARES Act and U.S. Treasury Rules and Guidance governing the expenditure of the Coronavirus Relief Funds received by the Nation. The Coronavirus Relief Fund under Title V of the federal CARES Act imposes the same restrictions on the expenditure of the federal funds by all other state, local and tribal governments as it does on the Navajo Nation's expenditure of the federal funds.

The President did not recognize that the penalty for violating Title V of federal CARES Act and U.S. Treasury Rules and Guidance is repayment of the expended funds.

As Speaker Damon said, "The Navajo Nation President is advocating for use of federal CARES Act funding that is not within its allowable uses and will subject the Nation to having to repay those funds to the federal government using Navajo Nation General Funds." Speaker Damon went on to explain that, "The United States Treasury has given the Navajo Nation great leeway in deciding how to apply federal CARES Act funding to address the COVID-19 pandemic and CMY-40-20 was structured to take full advantage of that leeway."

The expenditure of the federal CARES Act funds, be it by a state, local or tribal government, are subject to audit by the federal government. Speaker Damon assured that, when it comes to an audit and review by the federal government of the Coronavirus Relief Funds spent by the Navajo Nation, the Inspector General can point to the comprehensive discussions held by the 24th Navajo Nation Council to ensure that each expenditure was allowable and not subject to recoupment by the federal government.

President Nez pontificated in his veto message that, "...no one Branch should have unilateral authority over funds intended to benefit all members of the Navajo Nation and all Branches of the Navajo Nation government." This statement is confusing, given that proposed Legislation No. 0116-20, which is being heavily promoted by the Office of the President and Vice President, grants the president the sole authority to develop and sponsor expenditure plans and then to line-item veto any amendments to those plans made by Council.

Proposed Legislation No. 0116-20 also gives the president authority to directly introduce and sponsor legislation. In short, Legislation No. 0116-20 grants the president unilateral authority over all CARES Fund expenditures and removes the checks and balances necessary to ensure a true three branch government.

The Navajo Nation Council is currently considering numerous options over how to address the President Nez's illegitimate veto of CMY-40-20 while maintaining the integrity of the Navajo Nation's three branch government and ensuring that the CARES Fund are expeditiously available for expenditure.

"The Navajo Nation Council is moving forward with the best interests of the Navajo People in mind," said Speaker Damon. "We have acted in good faith and confidence to get all necessary policy and resources together to make this process the best it can possibly be. Enough time has been wasted, and the Navajo People cannot afford to wait any longer for the resources necessary to fight this pandemic."

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