

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



August 6, 2020

Hon. Seth Damon
Office of the Speaker
Post Office Box 3390
Window Rock, AZ 86515

RE: CJY-62-20, *An Action Relating to Budget and Finance, Law and Order and Naabik'iyáti' Committees and Navajo Nation Council; Amending 2 N.N.C. §164 (A) (17) to Include the Budget Line-Item Veto Authority Language Approved by Navajo Voters Through Initiative Election in 2009*

Dear Speaker Damon,

With great respect to the Navajo People for their decision on the structure of their government and pursuant to the authority vested in the Navajo Nation President, I am vetoing CJY-62-20.

The Navajo People gave the line item veto authority to the Navajo Nation President, any change to this authority must go back to the People. History shows that prior to the approval of the Initiative in 2009, the Navajo Nation Council took advantage of riders to legislation to fund special interest projects that had no connection to the original intent of the legislation. This common practice siphoned funds from the Unreserved, Undesignated Fund Balance, often leaving the Fund dry while waiving Appropriation Act requirements in many situations. The Initiative language is clear on the intent of the People, to curb the reckless spending practice of the Council.

The vote of the People must be respected as it was the intent to incorporate checks and balances between the Executive Branch and the Legislative Branch. The line item veto authority gave the Navajo Nation President the authority to address the excessive spending practice by the Navajo Nation Council. Without this authority there is no limit on spending the People's money. The People gave the authority to the Navajo Nation President to protect the tribal treasury and that authority has protected and saved millions of dollars over the past decade.

The amendment to 2 N.N.C. § 164(A)(17) is not putting in the language of the People's Initiative in the Code as they voted on. Since the establishment of the three-branch government the authority of each Branch is codified in their respective sections. The power and authority of the Navajo Nation President and Vice President is set out in 2 N.N.C. § 1005. It is clear that the Initiative language intended to give the Navajo Nation President line item veto authority, not giving it to the Navajo Nation Council for its legislative process. Claiming that the amendment of CJY-62-20 is following the intent of the People is not correct. Presidential authority is in 2 N.N.C. § 1005 and not an authority under the legislative process of 2 N.N.C. § 164. Language in Section 164 deals with legislative processes and represents instructions or limitations to the Council and not the President. The amendment in CJY-62-20 does not respect the intent of the People.

The Initiative, giving line item veto authority to the Navajo Nation President, also reduced the number of Delegates to the Navajo Nation Council; that change is reflected in 2 N.N.C. § 102(A). The challenge to that portion of the Initiative resulted in the Court deciding that the Navajo Nation Council may not amend Section 102(A) but must defer to the will of the Navajo People.

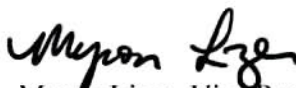
The similar conclusion can be made for the Council amending the Initiative's line item veto authority, it must defer to the will of the People and may not independently amend Section 164 to include the authority of the Navajo Nation President. As the Court determined, the Council recognized the power over the structure of Navajo government is ultimately in the hands of the Navajo People and the Council will look to the Navajo People to guide it. The will of the People, by way of the Initiative, must be respected as their decision on the structure of their government. CJY-62-20 is not what the People decided or intended.

The Initiative vote of the Navajo people is deemed to be superior to the statutory laws enacted by the Council. The law passed by the Navajo people in a referendum or initiative vote are quasi-constitutional and belong on a higher pedestal. Resolution CJY-62-20 attempts to bring down the Navajo People's law into statutory laws. That is not the proper place. It is for the protection of the People's decision and their vote on Navajo organic law that CJY-62-20 is vetoed.

Sincerely,



Jonathan Nez, President
THE NAVAJO NATION



Myron Lizer, Vice President
THE NAVAJO NATION

RESOLUTION OF THE
NAVAJO NATION COUNCIL
24th NAVAJO NATION COUNCIL - SECOND YEAR, 2020

AN ACTION

RELATING TO BUDGET AND FINANCE, LAW AND ORDER AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; AMENDING 2 N.N.C. § 164(A) (17) TO INCLUDE THE BUDGET LINE-ITEM VETO AUTHORITY LANGUAGE APPROVED BY NAVAJO VOTERS THROUGH INITIATIVE ELECTION IN 2009

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. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council empowered to review all proposed legislation which requires final action by the Navajo Nation Council. 2 N.N.C. §164(A) (9).
- C. The Law and Order Committee is a standing committee of the Navajo Nation Council empowered to review and make recommendations to the Navajo Nation Council on proposed amendments to and enactments to the Navajo Nation Code. 2 N.N.C. § 601 (B) (14).
- D. The Budget and Finance Committee is a standing committee of the Navajo Nation Council empowered to review and make recommendations to the Navajo Nation Council on the budgeting, appropriation, investment, and management of all funds. 2 N.N.C. § 301 (B) (2).

SECTION TWO. FINDINGS

- A. Title One, Subchapter 2, of the Navajo Nation Code, titled Diné Bi Beehaz'áanii Bitsé Siléí--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 (Ałaají 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 (Ałaají Naat'ájí Naat'ááh and Ałaají Naat'ájí Ndaanit'áii or Naat'aanii) shall enact policies and laws (Diné bibeelahaz'áanii) in harmony with Diné bi beenahaz'áanii to address the immediate and future needs;
 3. The leader(s) of the Judicial Branch (Ałaají Hashkééjí 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 bibeelahaz'áanii) 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, in response to the 21st Navajo Nation Council's "over-appropriation" of Undesignated Unreserved General Funds (aka UUFB), 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 through an initiative election, became the law of the Navajo Nation; the 2009 ballot language specifically stated that

"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." **Exhibit A.**

- F. The 2009 ballot language further stated that "[i]f approved, this initiative may be repealed or amended by the initiative process only." **Exhibit A.**
- G. 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) [emphasis added].
- H. The 22nd Navajo Nation Council's amendment did not match the ballot language approved by the Navajo voters in 2009; this discrepancy has contributed to confusion and discord between the Executive and Legislative Branches related to the extent of the President's line-item veto authority, as well as the appropriate roles of each of the branches.
- I. The Navajo Nation Council finds it in the best interest of the Navajo Nation government to fully recognize what was approved by the Navajo voters in the 2009 initiative by amending 2 N.N.C. § 164 (A) (17) to reflect the actual initiative ballot language, i.e., "[t]he 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." **Exhibit A.**

SECTION THREE. AMENDING 2 N.N.C. § 164 (A) (17)

The Navajo Nation Council hereby amends 2 N.N.C. § 164 (A) (17) as follows:

§ 164. Navajo Nation Council and Committee Legislative Process

- A. Statements of policy, enactment of positive law, intergovernmental agreements, budget resolutions and reallocations, must be reviewed and approved by resolution by the appropriate standing committee(s) and the Navajo Nation Council except as otherwise provided herein.

17. All 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 the President is 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 will not be subject to Navajo Nation Council override. A vetoed resolution shall first be submitted to Naabik'íyáti' Committee before consideration by the Council. Memorials are not subject to veto but become effective upon certification by the Speaker pursuant to 2 N.N.C. § 221 (C). All acts of the vetoing of the resolution shall occur within the territorial jurisdiction of the Navajo Nation as described in 7 N.N.C. § 254.

SECTION FOUR. EFFECTIVE DATE

This action shall become effective upon its approval pursuant to 2 N.N.C. §§ 164 (A)(17) and 221 (B).

SECTION FIVE. SAVING CLAUSE

Should any provision of this legislation be determined invalid by the Navajo Nation Supreme Court, or a District Court of the Navajo Nation without appeal to the Navajo Nation Supreme Court, those portions of the legislation which are not determined invalid shall remain the law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 24th 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 18 in Favor, and 04 Opposed, on this 22nd day of July 2020.



Honorable Seth Damon, Speaker
24th Navajo Nation Council

July 27, 2020
DATE

Motion: Honorable Pernell Halona
Second: Honorable Wilson Stewart, Jr.


Speaker Seth Damon not voting

ACTION BY THE NAVAJO NATION PRESIDENT:

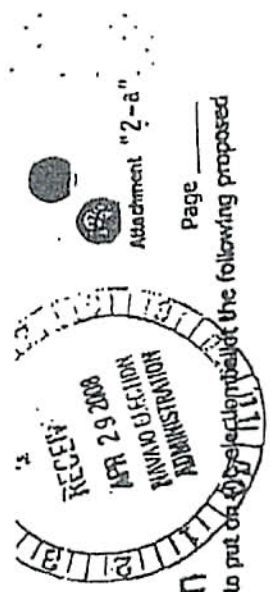
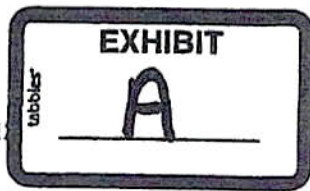
1. I, hereby, sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(10), on this _____ day of _____, 2020.

Jonathan Nez, President
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(11), on this 06 day of August, 2020 for the reason(s) expressed in the attached letter to the Speaker.



Jonathan Nez, President
Navajo Nation



The Navajo Nation Nation-Wide Initiative Petition

Page 2-a
Attachment "2-a"

C. The undersigned eligible registered voters of the Navajo Nation, petition the Navajo Board of Election Supervisors to put on the ballot the following proposed initiative:

A. Official Title: Initiative to Authorize the President of the Navajo Nation to Exercise Line Item Veto Authority

B. Summary of nature and purpose: To authorize the President of the Navajo Nation to veto budget line items contained in the annual comprehensive operating budget or supplemental appropriations passed by the Navajo Nation Council.

C. Vote required for measure to pass: (Must be majority or greater) Simple majority of the votes cast

Notes: Copy of full text of proposed initiative must be attached to this petition.
Warning: Liability may be incurred by unauthorized signing.

Signature of Petitioner: [Signature] Address: [Address] Date: [Date]

Exhibit D

THUMBPRINT or "X"	NAME OF VOTER (PRINT)	CENSUS OR SSN	CHAPTER	ADDRESS	DATE
1.					
10.					
11.					
12.					
13.	WITNESS' SIGNATURE	CENSUS OR SSN	CHAPTER	ADDRESS	DATE
THUMBPRINT or "X"	NAME OF VOTER (PRINT)				
14.	WITNESS' SIGNATURE				

Corridor Verification: I hereby certify that the signatures, marks, thumbprints above are the genuine signatures, marks, or thumbprints of the person whose name it is and the submission of all the signatures on this page of the petition.

Full Text

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.

If approved, this initiative may be repealed or amended by the initiative process only.



Nov-19-08 02:54pm FROM: HN LEGISLATIVE COUNSEL

19288717576

T-023 P.13/14 F-435



Summary Information

This initiative is intended to allow the Navajo people to decide whether the President of the Navajo Nation will be authorized to veto budget line items contained in the annual Navajo Nation Comprehensive Budget or supplemental appropriations approved by the Navajo Nation Council. The budget items vetoed pursuant to this authority will not be subject to Navajo Nation Council override.

The people have determined that the current governmental structure lacks sufficient checks and balances between the Legislative and Executive Branches of government. This is evidenced by the Navajo Nation Council's excessive spending of public funds, its inability to maintain the Undesignated, Unreserved Fund Balance at an amount required by law, and its continuous waiver of Navajo laws.

The people have also determined that a need exists to control excessive spending of the tribal treasury by the Navajo Nation Council, and that the only way to do so is to authorize the President of the Navajo Nation to have line item veto authority.

Through the initiative process, this ballot measure will be placed on the November 2008 Chapter Official General Election Ballot.

If approved, the power of the President of the Navajo Nation to exercise line item veto authority will become effective immediately.

NAVAJO NATION

7/22/2020

Navajo Nation Council 2020 Summer Session

05:54:53 PM

Amd# to Amd# MOT Halona, P SEC Stewart, W	Legislation 0153-20: Amending 2 NNC SS164 (A) (17) to Include the Budget Line-Item Veto Authority Language Approved...	PASSED
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Yeas : 18

Nays : 4

Excused : 0

Not Voting : 1

Yea : 18

Begay, E	Freeland, M	Slater, C	Tso, D
Begay, K	Halona, P	Smith	Tso, E
Brown	Henio, J	Stewart, W	Walker, T
Charles-Newton	James, V	Tso	Wauneka, E
Crotty	Nez, R		

Nay : 4

Begay, P	Yazzie	Yellowhair	Daniels
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Excused : 0

Not Voting : 1

Tso, C

Presiding Speaker: Damon