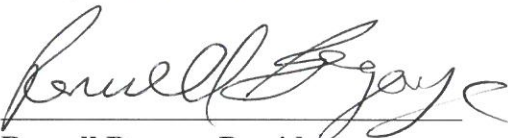




THE NAVAJO NATION

RUSSELL BEGAYE **PRESIDENT**
JONATHAN NEZ **VICE PRESIDENT**

TO: Honorable LoRenzo Bates, Speaker
Navajo Nation Council

FROM: 
Russell Begaye, President
THE NAVAJO NATION

DATE: November 9, 2015

SUBJECT: Resolution No. CO-41-15: RELATING TO BUDGET AND FINANCE COMMITTEE AND NAABIK' ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; AUTHORIZING A SENIOR UNSECURED GENERAL OBLIGATION TAX-EXEMPT TERM LOAN TO ACQUIRE NEW AIRCRAFT AND TO PURCHASE EQUIPMENT NECESSARY TO MAINTAIN THE NAVAJO NATION'S NEW AIRCRAFT AND TO PAY RELATED FINANCING AND LEGAL COSTS; APPROVING TERM SHEET; DELEGATING AUTHORITY TO NEGOTIATE, EXECUTE AND DELIVER FINAL LOAN DOCUMENTS; AND RELATED MATTERS

Pursuant to 2 N.N.C. 1005 (C)(10), action for Legislation CO-41-15 is being submitted to the Navajo Nation Council, through the Office of the Speaker within the ten (10) day requirement. Furthermore, the Navajo Nation President has veto authority pursuant to 2 N.N.C. 221 (B) for resolutions that enact new Navajo law or amend existing Navajo law and are adopted by the Navajo Nation Council and shall become effective on the day the President of the Navajo Nation signs it into law or the Navajo Nation Council takes action to override the President's veto, unless the Navajo Nation Council specifically authorizes and directs a different effective date.

After careful consideration and consultation with the Divisions, I have decided to exercise my veto authority and veto **authorizing a senior unsecured general obligation tax-exempt term loan to acquire new aircraft and to purchase equipment necessary to maintain the Navajo Nation's new aircraft and to pay related financing and legal costs; approving term sheet; delegating authority to negotiate, execute and deliver final loan documents; and related matters.**

The justification for use of the President's veto authority is set forth below.

The Office of the President and Vice-President issued a memorandum dated July 9, 2015 that outlined four (4) issues with this legislation. In the memorandum we requested the following: 1) justification for a \$20 million dollar loan; 2) source of funds that will be used to pay the loan; 3) whether the indemnification clause is an additional waiver of sovereign immunity; and 4) whether the non-impairment clause is too broad. Although the memorandum was part of the legislation that was approved by the Navajo Nation Council, the concerns of this Office were not addressed. As such these issues remain outstanding and this Office cannot support this legislation. I reiterate our concerns below.

First, the legislation fails to provide sufficient justification for a \$20 million dollar loan. Before considering a loan, it is highly recommended that a comprehensive feasibility study is developed identifying the options available to the Nation, including the ability to service debt. The study would also include the equipment, aircraft, expenses such as maintenance costs and supplies. If not, to the least comparable valuations or proposals should be offered to justify this amount. This information is not provided. This administration is not going to support efforts blindfolded.

Second, this legislation fails to identify the source of funds and any collateral that will be used to pay this loan. This is not just a concern from the Office of the President and Vice-President, but from the Navajo Nation's Controller and financial advisors. We have made requests to the Controller to identify a source of funds. As of today's date, those source of funds are not yet identified. We must be prudent in making these decisions, as leaders of the Navajo Nation we are also fiduciaries in the use of the Navajo people's funds.

Third, the indemnification clause in the term sheet remains the same. As stated in our memorandum, we are of the opinion the language is a limited waiver of sovereign immunity that would require an additional waiver of sovereign immunity from the Navajo Nation Council. The vote to the legislation was 13 to 5 which is not a 2/3 vote which is the number of votes needed to approve a limited waiver of sovereign immunity. Furthermore, any waiver of sovereign immunity must be "expressed" within the legislation. The waiver was not written into the legislation. As such, this legislation appears to be out of order.

Fourth, the non-impairment clause remains too broad. I understand the financial institution's concern is the Navajo Nation would not enact a law that would allow for the Nation to not carry out its obligations under the loan. We recommend the language to be written very narrow and clear it is limited just to this loan.

For all the above reasons, I decided to exercise my veto authority, pursuant to 2 N.N.C. 221 (B).