



THE NAVAJO NATION

OFFICE OF THE PRESIDENT & VICE PRESIDENT

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Navajo President Joe Shirley, Jr., vetoes Commercial Tobacco Free Act, amendments to sale tax distributions to non-governance certified chapters

WINDOW ROCK, Ariz. – Navajo Nation President Joe Shirley, Jr., today vetoed the Commercial Tobacco Free Act that would have banned cigarette smoking and tobacco chewing in all public places on the Navajo Nation, including casinos, and the Sales Tax Fairness in Distribution Act which would have changed how Navajo sales taxes are distributed to chapters.

In his veto message to Navajo Nation Council Speaker Lawrence T. Morgan, President Shirley said that although it is indisputable and already widely-known that commercial and smokeless tobacco use is harmful to individual users and those affected by secondhand smoke, he was concerned that the ban would infringe upon bona fide religious ceremonies, affect the Nation's ability to generate revenues through its gaming initiative, did not address concerns of due process and equal protection, and failed to adequately focus on underage smoking.

The law, he said, "is unreasonably broad, unenforceable, provides no administrative appeal process, puts the Nation at a competitive disadvantage, and fails to address the real problem on the Navajo Nation of underage smoking."

"The law is ambiguous about the type of tobacco which would be allowable for use in bona fide religious ceremonies," the President said. "I'm afraid the law can be construed to mean *no commercial tobacco use for religious ceremonies*. If so, this will subject those attending the religious ceremony, as well as the practitioners, to liability for allowing the use of commercial tobacco in bona fide religious ceremonies. This was not the intent of the legislation but would be the effect."

"This smoking ban is unreasonably broad, unenforceable, provides no administrative appeal process, puts the Nation at a competitive disadvantage, and fails to address the real problem on the Navajo Nation of underage smoking."

– Navajo Nation President Joe Shirley, Jr.

President Shirley said the smoking ban legislation gave enforcement responsibility to the Navajo Nation Division of Health, although no budget impact analysis was provided to explain what financial or administrative burden that would place on the division.

"Without that information," he said, "it is unlikely that the Division will have the resources necessary to properly implement the intent of the legislation."

He said that even if the division attempted to enforce the ban, there were no provisions to ensure that due process and equal protection under the law would be afforded to individuals issued a citation.

"Compounding this problem, the legislation allows any citizen to register an oral or written complaint to initiate enforcement," he said. "That raises serious concerns about the burden of proof required in matters involving civil penalties."

The legislation contained a reference to the role of the Attorney General to seek collection of all unpaid civil penalties but did not include information about any kind of administrative appeal process, he said.

A smoking ban would put planned Navajo Nation casinos at a significant competitive disadvantage that would result in an expected 20 percent reduction of projected revenues, he said.

“This means, essentially, that Navajo jobs will be cut, the Enterprise will default on the loan with the Nation, and the ability to seek outside financing from other lending institutions is very unlikely, all of which would likely prohibit the development of additional gaming establishments.” President Shirley said.

The President said he was committed to working with the sponsors of the legislation to develop a law that does not infringe upon bona fide religious ceremonies, affect the Nation’s ability to generate revenues through its gaming initiative, addresses concerns of due process and equal protection of the laws, and focuses on underage smoking.

“As leaders of the Navajo Nation, and upon the people’s approval of gaming, we have worked together and made very deliberate choices to pursue gaming for the benefit of our people,” he said. “The revenue-generating potential is huge and we simply cannot afford to risk this potential with well-intended legislation that will put the Nation at a competitive disadvantage.”

The President also vetoed the Navajo Nation Sales Tax Fairness in Distribution Act which would have significantly amended the distribution of Navajo sales taxes to chapters.

He said the current law provides an incentive to chapters to obtain their Local Governance Act certification.

“The purpose of the Local Governance Act is to recognize governance at the local level while also compelling chapters to govern responsibly with accountability,” he said. “Chapters that have attained governance-certification met this challenge and have undertaken a greater role to address the needs of our local people.”

He said to remove that incentive would undermine the intent of the LGA and the requirement for chapters to obtain governance-certification.

“As leaders of the Navajo Nation, we should do all we can to help our chapter governments comply with the requirements of the Local Governance Act,” he said. “We should not take away promises or benefits made to our community leaders and members who have worked hard to attain governance-certification for their chapter.”

Among the resolutions the President signed into law are approval to demolish the Chinle District Police Headquarters Building, approval of the Navajo Nation Gaming Distribution Plan, and supplemental appropriations of \$406,083 in the amounts of:

- \$24,200 to the Navajo Election Administration to increase the amount paid to poll officials from \$65 to \$120. This appropriation also includes the cost to train poll officials.
- \$200,000 to the Public Safety Committee of the Navajo Nation Council to hire consultants to advocate and lobby for Division of Public Safety and Judicial issues. The lobbying efforts are targeted toward congressional efforts, including 638 contracts and supplemental funding.
- \$181,884 to the Cameron Chapter to reconstruct the reservation boundary fence. This appropriation includes the cost of labor and materials.

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