



THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT  
JONATHAN NEZ VICE PRESIDENT

NOVEMBER 9, 2015  
FOR IMMEDIATE RELEASE

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## PRESIDENT BEGAYE VETOS \$20M AIRCRAFT LOAN LEGISLATION

WINDOW ROCK- After careful consideration and consultation with Divisions of the Executive Office, Navajo Nation President Russell Begaye vetoed legislation today authorizing a \$20 million dollar unsecured tax-exempt loan to acquire new aircraft for the Navajo Nation.

The legislation was for the purchase of a new aircraft, equipment necessary to maintain the new aircraft as well as related financial and legal costs.

Prior to receiving this legislation, the Executive Office wrote a memo expressing our concerns with the legislation, President Begaye said. "Council was aware we had critical concerns and if not addressed then we were not going to support this legislation."

In a memorandum dated Nov. 9, 2015, President Begaye outlined four areas of concern to support his decision to veto the legislation. His two prime concerns were lack of justification and the source of funds to repay the loan.

First, the legislation does not include sufficient justification for the \$20M dollar loan such as a comprehensive feasibility study. Without justification, the Begaye-Nez administration will not "support efforts blindfolded."

Second, the legislation fails to identify the source of funds and collateral that will be used to pay for this loan. President Begaye said he has requested this information from the Office of the Controller but as of today's date, the source of funds has yet to be identified.

"As leaders of the Navajo Nation, we must be prudent and fiscally responsible to our People and for our Government," said President Begaye.

The memorandum outlining all four areas of concern in vetoing Resolution No. CO-41-15 is included as an attachment.

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# 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).

RESOLUTION No.: CO-41-15/Legislation 0238-15

TITLE: RELATING TO BUDGET AND FINANCE 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

DELIVERED TO PRESIDENT'S OFFICE: 10/30/15 PM  
Date Time

Received By: Bikittany Smith 10/30/15 1043  
Name Date

Veto Waived as of 5:00 P.M. 11/09/15  
Date

Prepared by Office of Legislative Services

RESOLUTION OF THE  
NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL - FIRST YEAR, 2015

AN ACTION

RELATING TO BUDGET AND FINANCE 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

BE IT ENACTED:

Section One. Findings

- A. Pursuant to 12 N.N.C. §1330-1350, the Navajo Nation Council has authority to consider and approve the issuance of general obligation bonds, as such term is defined in Section 1310(J) of the Bond Financing Act (the "General Obligation Bonds" or the "Bonds"); and
- B. The Navajo Nation is authorized to incur indebtedness for financing the cost of capital improvement through the issuance of bonds or other debt obligations (including bank loans and financing agreements) ("Bonds") under 12 N.N.C. §1300 et. seq. of the Navajo Nation Code, as amended (the "Bond Financing Act").
- C. Bonds may include "general obligation bonds" backed by the "full faith and credit" of the Navajo Nation, as such terms are defined in § 1310 of the Bond Financing Act; and
- D. The Navajo Nation finds and determines that a critical need exists for the Navajo Nation Air Transportation Department to acquire new aircraft and to purchase equipment necessary to maintain the Navajo Nation's new aircraft (collectively, the "Aviation Projects") and that the interests of the Navajo Nation are best served by securing financing for all or a portion of the capital costs associated with the Aviation Projects including paying related financing and legal costs through the issuance of general obligation bonds. As required by the Bond Financing Act, the Aviation

Projects constitute a major project that is not recurring on an annual basis, has a useful life in excess of five years and is in a dollar amount greater than \$50,000, and the Controller has determined that the dollar amount of the Aviation Projects requires debt financing; and

- E. The Office of the Controller has obtained a proposal from KeyBank to finance the Aviation Projects and the Office of the Controller recommends approval and the execution and delivery of the Proposed Terms and Conditions dated June 17, 2015 submitted to the Nation by KeyBank, in substantially the form attached hereto as Exhibit A (the "Term Sheet"), with respect to a general obligation bond to be issued in the form of a privately negotiated Senior Unsecured General Obligation Tax-Exempt Term Loan (the "Loan") in an aggregate principal amount not to exceed Twenty Million Dollars (\$20,000,000); and
- F. The Office of the Controller has reviewed the terms and conditions of the Loan and performed the necessary calculations and evaluated the debt service requirements of the Loan and has determined that such indebtedness will comply with the requirements of the Bond Financing Act; and
- G. The Navajo Nation Council finds and determines that the Aviation Projects constitutes a "capital improvement" within the meaning of the Bond Financing Act.
- H. The obligations of the Navajo Nation in connection with the Loan will be backed by the "full faith and credit" of the Navajo Nation (as defined in § 1310(I) of the Bond Financing Act), including all assets and revenues of the Navajo Nation except (i) those assets and revenues held in trust by the United States for the benefit of the Navajo Nation, (ii) assets and revenues subject to a restriction on alienation or other federal or Navajo Nation legal prohibition or requirements (in case of the Navajo Nation, existing on the closing date of the Loan), including the Permanent Trust Fund, the minimum Unreserved, Undesignated Fund Balance required to be maintained in the General Fund and restricted federal grant and program moneys, (iii) real property of the Navajo Nation, (iv) fiduciary funds of the Navajo Nation, (v) the Sihasin Fund, and (vi) any assets or

revenues identified in writing by the Navajo Nation and accepted by KeyBank to be secured or financed by current or future additional obligations of the Navajo Nation (the "Available Assets"); and

- I. The Loan may bear interest at variable or fixed interest tax-exempt rates, subject to the approving opinion of Bond Counsel, ("Bond Counsel") to the Navajo Nation concerning the tax-exempt status of interest on the Loan.

## **Section Two. Approval**

- A. The Navajo Nation Council hereby finds that there is an immediate need to secure and close the Loan to fund the Aviation Projects.
- B. The Navajo Nation Council, pursuant to its authority under the Appropriations Act and the Bond Financing Act, hereby approves the Loan and the Term Sheet and authorizes and directs the President of the Navajo Nation and the Acting Controller of the Navajo Nation (the "Authorized Officers"), to execute and deliver the Term Sheet on behalf of the Navajo Nation, which execution and delivery by the Authorized Officers shall be conclusive evidence of approval thereof, and to do and perform any and all such further action as the Authorized Officers deem necessary or appropriate in connection with the Term Sheet based on the advice of the Navajo Nation Department of Justice and Bond Counsel; and
- C. The Navajo Nation Council hereby authorizes and directs the Authorized Officers to negotiate, execute and deliver all documents necessary to consummate the transactions contemplated by the Term Sheet in connection with the Loan, consistent with the material terms and conditions set forth in the Term Sheet and in compliance with the Bond Financing Act, including, but not limited to, a credit agreement, promissory note, tax certificate and closing certificates in connection with the Loan (collectively, the "Loan Documents"); based on the advice of the Attorney General of the Navajo Nation and Bond Counsel to the Navajo Nation, the financial advisor (the "Financial Advisor") to the Nation; and

- D. Upon negotiation of the final Loan Documents, the Authorized Officers are hereby authorized and directed to execute and deliver the Loan Documents, which execution and delivery by the Authorized Officers shall be conclusive evidence of approval thereof, and to do and perform any and all such further action as the Authorized Officers deem necessary or appropriate in connection with the Loan, having received the advice of the Navajo Nation Department of Justice, Bond Counsel, and the Financial Advisor; and
- E. The Navajo Nation Council hereby ratifies, approves and confirms all actions previously taken by the Authorized Officers in connection with the Loan consistent with the purposes and intentions of this resolution; and
- F. The Navajo Nation Council hereby acknowledges and affirms that all actions, requirements, terms and conditions of the Bond Financing Act for the due authorization, execution, delivery, validity and enforceability of the Loan Documents have been taken or satisfied and that the Loan Documents shall upon execution and delivery by the Authorized Officers be legal, valid and binding obligations of the Navajo Nation enforceable against the Navajo Nation in accordance with their terms.

**Section Three. Dispute Resolution, Jurisdiction and Governing Law with Respect to the Loan**

- A. The Navajo Nation Council hereby finds that the consent to arbitration and jurisdiction and related dispute resolution and remedial provisions contemplated by the Term Sheet and that will be included in the Loan Documents (the "Arbitration Provisions") comply with Navajo Nation law (including, but not limited to, the Bond Financing Act, the Sovereign Immunity Act, and the Arbitration Act). Upon execution and delivery of the Loan Documents, such Arbitration Provisions shall constitute a valid and enforceable limited exception to the Navajo Nation's defense of sovereign immunity, and no such defense of sovereign immunity shall prevent the enforcement of such obligations under 1 N.N.C. §§ 554 (J) and (K), Sovereign Immunity Act. Since authority to waive such sovereign immunity has been properly delegated pursuant to 1 N.N.C. §§ 554 (J) and (K), Sovereign Immunity Act; the arbitration clause shall not constitute a waiver of sovereign immunity pursuant to 2 N.N.C. § 223 (C); and

- B. The Loan and the Loan Documents shall be governed by Navajo Nation substantive and procedural law. Where no applicable Navajo Nation law exists, Navajo custom, the law of the State of Arizona or applicable federal law will apply as provided in the Navajo Nation Code. All actions arising out of the execution and delivery of the Loan and the loan Documents and the transactions they represent as evidence shall be brought in the courts of the Navajo Nation.

**Section Four. Loan Secured by the Full Faith and Credit of the Navajo Nation and Payable from Available Assets**

The obligation of the Navajo Nation to pay the Loan and all obligations of the Navajo Nation under the Loan Documents shall be secured by the full faith and credit of the Navajo Nation and payable from any and all legally Available Assets of the Navajo Nation as described in Recital G of this Resolution.

**Section Five. Savings Clause**

If any provision of this resolution or the application of any provision of this resolution is held to be invalid, the remainder of this resolution shall not be affected with respect to the same.

**Section Six. Licenses and Approvals**

The Navajo Nation Council hereby finds that, as a matter of tribal law, no licensing, registration, certification or eligibility requirements of any kind (other than those expressly set forth in the Loan Documents) apply, and shall not in the future apply, to KeyBank or any other parties to the Loan Documents. Additionally, the Navajo Nation Council finds that none of the obligations contained in the Loan Documents or in connection with the Loan require any additional actions, reviews, approvals, ruling or vote.

**Section Seven. Effective Date**

The action is effective upon its approval pursuant to 2 N.N.C. § 221(B).

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 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 13 in favor and 5 opposed, this 20<sup>th</sup> day of October 2015.



LoRenzo Bates, Speaker  
Navajo Nation Council

Oct. 30, 2015

Date

Motion: Honorable Seth Damon  
Second: Honorable Kee Allen Begay

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 \_\_\_\_\_ 2015.

\_\_\_\_\_  
Russell Begaye, President  
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this 9<sup>th</sup> day of November 2015 for the reason(s) expressed in the attached letter to the Speaker.

  
\_\_\_\_\_  
Russell Begaye, President  
Navajo Nation

3. I hereby line-item veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10) and 2 N.N.C. §164 (A) (17), on this \_\_\_\_\_ day of \_\_\_\_\_, 2015. The justification of my line-item veto is set forth by memorandum.

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Russell Begaye, President  
Navajo Nation