

Act 27-23

An Act amending Title 15, Chapter 4 of the Mille Lacs Band Statutes (“MLBS”), making comprehensive reforms to the Tribal Employment Rights Office statute.

The District I Representative introduced the following Bill on the 26th day of April, 2023.

BE IT ENACTED BY THE BAND ASSEMBLY OF THE NON-REMOVABLE MILLE LACS BAND OF OJIBWE:

Section 1. Amending Title 15 (Independent Agencies), Chapter 4 (Tribal Employment Rights Office), Subchapter 1 (General Provisions)

§ 1001. Policy and Findings.

- (a) It is the policy of the Band to provide a preference in employment and contracting to members of the Band and other federally recognized ~~Indian~~Native American tribes.
 - (1) This policy applies to employment and contracting by the Band’s government, including all branches, departments, and agencies thereof; by all Band-owned entities while they are engaged in commercial or economic activities on behalf of the Band ~~within the Band’s~~son or near the Reservation; and by all persons and entities doing business with the Band, including subcontractors of persons or entities contracting with the Band, ~~within the Band’s~~son or near the Reservation.
 - (2) This policy: ~~(A)~~ is intended to further the Band’s overriding interests in self-government, self-sufficiency, and economic development; ~~(B)~~ is directed to the participation of the governed in the Band’s governing bodies and in its commercial and economic activities; ~~(C)~~ is intended to make the Band’s government and its commercial and economic activities more responsive to the needs of its constituents; and ~~(D)~~ is intended to provide for the economic security and employment of members of the Band and of other federally recognized ~~Indian~~Native American tribes and to overcome the effects of past discrimination against such persons.
 - (3) Economic insecurity and unemployment are serious impediments to the health, morale, and welfare of the Band. Employment and contracting opportunities with the Band’s government, Corporate Ventures, and with Band-owned entities and other persons and entities doing business with the Band ~~within the Band’s~~son or near the Reservation, are important resources for members of the Band and of other federally recognized ~~Indian~~Native American tribes, who have historically suffered from discrimination in

employment and contracting opportunities. As a result, ~~Indian~~Anishinaabe and Indigenous people living on or near the Band's Reservation have unique and special employment rights under federal law, and the Band is obligated to implement those rights.

- (b) Subject to the policy described in subsection (a) of this section, all employees subject to the Band's jurisdiction are entitled to a workplace environment that prohibits employment discrimination, protects employees' wages, and promotes health and safety.
- (c) The provisions of this chapter are critically important to the health and welfare of members of the Band and of other federally recognized ~~Indian~~Native American tribes, especially those residing on or near the ~~Band's~~ Reservation. Unemployment and underemployment rates within the boundaries of the ~~Band's~~ Reservation are consistently many times higher than the national and state averages. This pervasive unemployment and underemployment has directly contributed to serious social problems and a lower quality of life for members of the Band and of other federally recognized ~~Indian~~Native American tribes residing on or near the ~~Band's~~ Reservation and impeded the self-governance objectives of the Band.
- (d) The Band declares that the public good and the welfare of the Band require the enactment of this chapter, which is enacted pursuant to the Band's inherent sovereign and political powers, in order to increase employment of and the number of businesses owned by members of the Band and of other federally recognized ~~Indian~~Native American tribes, ~~especially within the Band's Reservation,~~ and to protect the workforce rights of ~~Indian~~Anishinaabe or Indigenous employees and non-~~Indian~~Native employees within the jurisdiction of the Band.

§ 1002. Purpose.

This chapter is adopted by the ~~Mille Lacs Band of Ojibwe (the Band)~~Band, under its inherent sovereign and political powers, for the following purposes:

- (a) to promulgate Band laws and rules governing employment relations and contracting preference within the Band's jurisdiction;
- (b) to establish the Band's Tribal Employment Rights Office (~~TERO~~) in order to enforce the Band's laws governing employment and contracting preference, and to protect the rights of all members of the Band, members of other federally recognized ~~Indian~~Native American tribes, and all other employees within the Band's jurisdiction;
- (c) to increase the employment of members of the Band and of other federally recognized ~~Indian~~Native American tribes;

- (d) to eradicate employment discrimination, protect employees' wages, and protect employees' health and safety within the Band's jurisdiction;
- (e) to provide a fair, enforceable, and effective system of preferences in contracting and sub-contracting as it relates to the provision of supplies, services, labor, and materials to the Band's government and to Band-owned entities and other persons or entities doing business with the Band, including subcontractors of persons or entities contracting with the Band, within the Band's on or near the Reservation; and
- (f) to supersede all other provisions of Band law that are inconsistent with the provisions of this chapter.

§ 1003. Severability.

If any provision of this chapter, or the application thereof to any person, business, corporation, circumstance, or government, including any agency or political subdivision thereof, or circumstance, is held invalid, the invalidity shall not affect any other provision or application of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared severable.

§ 1004. Definitions.

Unless otherwise provided in this section, all words in this chapter shall be construed according to their ordinary meaning. The following terms are defined for purposes of this chapter.

- (a) **“Adverse action”** means an action taken to try to keep an individual from opposing a discriminatory practice or from participating in an employment discrimination proceeding. Adverse actions include termination, refusal to hire, denial of promotion, threats, unjustified negative evaluations, unjustified negative references, increased surveillance, or any other action, such as assault or unfounded civil or criminal charge, that are likely to deter reasonable people from pursuing their rights.
- (b) **“Anishinaabe” or “Indigenous” or “Native” or “Native American”** refers to a member of a federally recognized Native American tribe.
- (a)(c) **“Anishinaabe or Indigenous certified entity”** means an entity, certified by the TERO Commission, in which 51 percent or more of the ownership interests are held by one (1) or more Anishinaabe or Indigenous people and in which daily management and control is provided by one (1) or more Anishinaabe or Indigenous persons.
- (b)(d) **“Band”** means the Mille Lacs Band of Ojibwe, a federally recognized ~~Indian~~ Native American tribe, and includes the Band's government, including all branches, departments and agencies thereof; ~~and all Band-owned entities while they are engaged in commercial or economic activities on behalf of the Band within the~~

Band's Reservation. For purposes of this chapter, the term "Band" does not include Corporate Ventures.

~~(e)~~(e) **"Commission"** or **"TERO Commission"** means the Commissioner of the Tribal ~~Employee~~Employment Rights Office.

~~(f)~~ **"Commission Member"** or **"Member"** means a director serving on the TERO Commission, appointed under § 1011 of this chapter.

~~(d)~~(g) **"Compliance plan"** means a document submitted by all covered employers and approved by the TERO Director. The compliance plan describes the necessary qualifications for each position subject to this chapter and further details the steps that covered employers will take to ensure full TERO compliance.

~~(e)~~(h) A **"Conflict of Interest"** means a situation that occurs when a TERO Commission ~~M~~Member is in a position to influence a decision that may result in a personal gain for that ~~M~~Member or for a ~~M~~Member of his or her or his immediate family.

~~(f)~~(i) **"Core crew"** means regular, permanent employees in supervisory or other key positions where an employer would face serious financial loss if the positions were filled by persons who had not previously worked for that employer.

~~(g)~~(j) **"Corporate Ventures"** means Mille Lacs Corporate Ventures (formerly known as the Corporate Commission of the Mille Lacs Band of Ojibwe) as established by 16 MLBS § 101 et seq.

~~(h)~~(k) **"Covered employer"** means the Band and any entity, company, contractor, sub-contractor, corporation, or other business doing business on or near the Reservation with the Band, including subcontractors of persons or entities contracting with the Band, ~~within the Band's Reservation~~ that employs for wages or other remuneration two (2) or more employees. Corporate Ventures is considered a covered employer under this chapter.

~~(i)~~(l) **"Days"** means calendar days, including holidays and weekends, unless otherwise indicated.

~~(j)~~(m) **"Director"** or **"TERO Director"** means the director of the Band's Tribal Employment Rights Office.

~~(k)~~(n) **"Disability"** means, with respect to an individual:

- (1) a physical or mental impairment that substantially limits one (1) or more major life activities of such individual;
- (2) a record of such an impairment; or

- (3) the state of being regarded as having such an impairment.

An impairment does not have to be permanent to rise to the level of a disability. Temporary impairments that take significantly longer than normal to heal, long-term impairments, or potentially long-term impairments of indefinite duration may be disabilities if they are severe.

~~(t) — “EEOC” means the federal Equal Employment Opportunity Commission.~~

~~(m)(o) “Elected oOfficials” means the Mille Lacs Band Chief Executive, Secretary-Treasurer, and District Representatives.~~

~~(n)(p) “Immediate fFamily” includesmeans a person’s spouse, a person’s biological or adopted child, a member of a person’s household, and a person’s mother, father, and sister, and brothersiblings.~~

~~(o) — “Indian” means a member of a federally recognized Indian tribe.~~

~~(p) — “Indian Certified Entity” means an entity, certified by the TERO Commission, in which fifty one percent (51%) or more of the ownership interests are held by one (1) or more Indians and in which daily management and control is provided by one (1) or more Indians.~~

(q) **“Reservation”** means all lands within the exterior boundaries of the Mille Lacs IndianBand Reservation as established by the Treaty of 1855, 10 Stat. 1165, all lands held in trust by the United States for the benefit of the Minnesota Chippewa Tribe, the Band or individual members of the Band, which are subject to the jurisdiction of the Band, and all lands owned by the Band which are located within one of the districts designated in 2 MLBS § 11.

(r) **“TERO”** means the Band’s Tribal Employment Rights Office established by this chapter.

Section 2. Amending Title 15 (Independent Agencies), Chapter 4 (Tribal Employment Rights Office), Subchapter 2 (Administration; Mille Lacs Band of Ojibwe Tribal Employment Rights Office)

§ 1011. TERO Commission and Recusal of Commission Members.

(a) **TERO Commission Members.** ~~The TERO shall be managed by the TERO Commission~~ shall provide oversight of the TERO in accordance with this chapter. At all times there shall be at least one (1) ~~commission M~~member on the Commission

from each Band district established by 2 MLBS § 11. The Commission shall consist of seven (7) ~~commission~~-Members as appointed under paragraph (1) below.

(1) Appointment Process; Terms; Oath of Office. ~~Each member shall be appointed using the following process: The elected officials shall each nominate two (2) individuals and submit their names to the Mille Laes Band Parliamentarian. The Chief Executive and Secretary-Treasurer of the Band shall each nominate two (2) additional individuals and submit their names to the Mille Laes Band Parliamentarian. Within ten (10) calendar days after receipt of the nominations, the elected officials shall convene and vote on one (1) of the two (2) nominees submitted from each elected official to be a member of the Commission. Members appointed by the Chief Executive and District I Representative shall serve until December 1, 2018, and Members appointed by the Secretary-Treasurer, District II Representative, and District III Representative shall serve until December 31, 2020. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four (4) years.~~

(i) The Chief Executive shall nominate two (2) individuals and submit their names to the Secretary-Treasurer. Within fifteen (15) business days after receipt of the nominations by the Secretary-Treasurer, the Secretary-Treasurer shall ratify one (1) of the two (2) nominees to be a Member of the Commission. Such Member shall serve until December 31, 2026. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four (4) years.

(ii) The District I Representative shall nominate two (2) individuals and submit their names to the Chief Executive. Within fifteen (15) business days after receipt of the nominations by the Chief Executive, the Chief Executive shall ratify one (1) of the two (2) nominees to be a Member of the Commission. Such Members shall serve until December 31, 2026. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four (4) years.

(iii) The District II and III Representatives shall each nominate two (2) individuals and submit their names to the Chief Executive. Within fifteen (15) business days after receipt of the nominations by the Chief Executive, the Chief Executive shall ratify one (1) of the two (2) nominees submitted by each Representative to be a Member of the Commission. Such Members shall serve until December 31, 2024. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four (4) years.

(iv) The Secretary-Treasurer shall nominate two (2) individuals and submit their names to the Chief Executive. Within fifteen (15) business days after receipt of the nominations by the Chief Executive, the Chief

Executive shall ratify one (1) of the two (2) nominees to be a Member of the Commission. Such Member shall serve until December 31, 2024. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four (4) years.

- (v) The Chief Executive shall nominate two (2) additional individuals and submit their names to the Band Assembly. Within fifteen (15) business days after receipt of the nominations by the Band Assembly, the Band Assembly shall ratify one (1) of the two (2) nominees to be a Member of the Commission. Such Member shall serve until December 31, 2026. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four (4) years.
- (vi) The Secretary-Treasurer shall nominate two (2) additional individuals and submit their names to the Band Assembly. Within fifteen (15) business days after receipt of the nominations by the Band Assembly, the Band Assembly shall ratify one (1) of the two (2) nominees to be a Member of the Commission. Such Member shall serve until December 31, 2024. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four (4) years.
- (vii) Members currently serving on the Commission who have been appointed by the Chief Executive and the District I Representative shall remain in their positions until December 31, 2026. Members currently serving on the Commission who have been appointed by the Secretary-Treasurer or the District II and III Representatives shall remain in their positions until December 31, 2024.
- (viii) If the Chief Executive or the Secretary-Treasurer does not ratify one from any of the nominations sent to them within the time prescribed, then the Band Assembly shall select such Member by majority vote.
- (ix) All vacancies shall be filled in a manner consistent with subsections (i) through (viii) above. If any elected official does not submit a nomination within thirty (30) calendar days after a vacancy has occurred, then the Band Assembly shall nominate two (2) individuals by majority vote and submit their names to the Chief Executive for ratification to the Commission. If the position being filled under this subsection is a District Representative-appointed position, then the position shall be filled by an individual from the respective district. If the Chief Executive does not ratify one of the two (2) nominations within fifteen (15) business days, then the nominee shall be deemed ratified.
- (x) No Member shall take office until swearing to the oath of office pursuant to 2 MLBS § 8.

- (2) **Qualifications.** ~~Commissioners~~ Commission Members shall be public officials subject to the ~~Mille Laes Band's Title 6 Ethics Code in 6 MLBS §§ 1151-1163.~~ At least three (3) of the ~~Commissioners~~ Members shall have education or experience in one (1) or more of the following areas:
- (i) human resources;
 - (ii) tribal employment rights;
 - (iii) construction management;
 - (iv) regulatory enforcement; or
 - (v) auditing or investigations.
- (3) **Officers.** The TERO Commission Members shall select a Chairperson, Vice-Chairperson, and Secretary at the first meeting of the Commission, and annually thereafter. The Chairperson shall preside at all meetings of the Commission and shall be authorized to sign required documents in accordance with the powers of the Commission.

(b) **Recusal of Commission Members.** When confronted with a conflict of interest, TERO Commission Members shall announce the nature of the conflict and recuse themselves from any corresponding vote.

§ 1012. Powers and Duties of the TERO Commission, ~~and~~; Compensation.

- (a) The TERO Commission has the full power, jurisdiction, and authority:
- (1) to take all actions necessary and appropriate to implement the provisions of this chapter;
 - ~~(1)~~(2) to interpret this chapter and any rules, regulations, or guidelines adopted hereunder, subject to judicial review;
 - ~~(2)~~(3) to approve or reject any and all rules, regulations, and guidelines formulated by the Director to carry out the provisions of this chapter and to approve or reject the amendment or rescission of any such rules, regulations, or guidelines, provided that, except when an emergency exists, the TERO Commission shall provide the public an opportunity to comment at a meeting of the TERO Commission before approving any such rules, regulations, or guidelines or amendments or rescissions thereof;

- (4) to approve or reject the use of TERO funds through the approval of the TERO budget, with ratification by the Band Assembly and Chief Executive under 3 MLBS § 21, and any subsequent amendments or modifications that may be required to carry out the provisions of this chapter;
- (5) to conduct hearings in accordance with such rules of practice and procedure as may be adopted by the TERO Commission after providing the public an opportunity to comment on them at a meeting of the TERO Commission;
- (3)(6) to order any relief or sanctions authorized by this chapter, and to petition the Mille Laes Band's Court of Central Jurisdiction for such orders to enforce the decisions of the TERO Commission and any sanctions imposed by the TERO Commission, if necessary;
- (4)(7) to make recommendations to the Band Assembly on regarding amendments to this chapter;
- (5)(8) to establish a system for certifying firms as Indian Anishinaabe or Indigenous-Owned Businesses or Mille Laes Band-Owned businesses;
- (6)(9) to maintain a list of Certified Businesses;
- (7)(10) to assist enrolled Band Members in obtaining certification;
- (8)(11) to coordinate training and mentorship programs for enrolled Band Members and Indian Anishinaabe or Indigenous people;
- (9)(12) to monitor all contracting activities on Band Lands in consultation with the elected officials;
- (10)(13) to inform the Band Government, Band Entities, Employers, and Contractors and assist in presentations to the public on the requirements of this chapter with respect to Indian Anishinaabe or indigenous employment and contact preference requirements;
- (11)(14) to oversee the Certified Businesses receiving invitations to bid on contracts;
- (12)(15) to establish a Band labor surplus pool and refer enrolled Band Members and other Indian Anishinaabe or Indigenous people to an Employer or Contractor for employment considerations;
- (13)(16) to assist procurement officers or delegated agents in the designation of contracts appropriate for the set aside program;

~~(14)~~(17) to develop and maintain an audit and reporting system which measures the effectiveness of ~~the Indian Preference Policy~~this chapter in meeting its employment preference goals and objectives;

~~(15)~~(18) to establish procedures for TERO's regulatory proceedings;

~~(16)~~(19) to establish procedures, forms, and policies necessary to carry out the purposes of the chapter; and

~~(17)~~(20) to enforce any employment and procurement laws, policies, and procedures in accordance with this chapter.

~~(b)~~ — **Compensation.** Commission ~~M~~members may receive a stipend for attendance at regular and special meetings in the amount of \$400.00 per meeting, but payment of such stipend shall be limited to two (2) meetings per month~~their services at a rate established by the Band Assembly.~~ Commissioners Members shall be reimbursed for actual expenses incurred on Commission business, including necessary travel expenses, in a manner consistent with applicable Band policies and procedures. Compensation for the attendance of trainings and conferences shall be considered a separate meeting for each day.

§ 1013. Tribal Employment Rights Office; Director.

There is hereby established the Tribal Employment Rights Office as an agency of ~~the Mille Laes Band of Ojibwe~~ government ~~the Tribal Employment Rights Office (also known as "TERO").~~ The TERO Director ~~of the TERO~~ shall be an employee of the TERO under the direct supervision of the TERO Commission and shall have the powers and duties prescribed in § 1014 of this subchapter.

§ 1014. Powers and Duties of TERO Director.

The Director shall have the following powers and duties:

- (a) to formulate, amend, and rescind regulations, rules, and guidelines necessary to carry out the provisions of this chapter, subject to the approval of the ~~Board~~Commission;
- (b) to implement and enforce the provisions of this chapter, as well as any properly adopted regulations, rules, guidelines, and orders;
- (c) to hire staff, expend designated funds from ~~an approved~~a budget approved by the TERO Commission, with ratification by the Band Assembly and Chief Executive under 3 MLBS § 21, and obtain and expend funding from federal, state, and other sources;

- (d) to maintain a list of current ~~c~~Covered ~~e~~Employers, current employer permits and work permits issued, and current ~~Indian~~Anishinaabe or ~~Indigenous~~ ~~c~~Certified ~~e~~Entities;
- (e) to maintain a record of all contracting projects subject to this chapter and the TERO fees assessed for each project;
- (~~e~~)~~(f)~~ to approve or deny compliance plans submitted by covered employers;
- (~~f~~)~~(g)~~ to process applications for certification of ~~Indian~~Anishinaabe or ~~Indigenous~~ ~~c~~Certified ~~e~~Entities by the ~~Board~~Commission;
- (~~g~~)~~(h)~~ to grant TERO permits and collect TERO fees as authorized by this chapter;
- (~~h~~)~~(i)~~ to establish training and workforce development programs, in conjunction with ~~the Mille Laesother Band Department of Labor~~programs, for Band members and other ~~Indians~~Anishinaabe or ~~Indigenous~~ people to assist them in obtaining and retaining employment;
- (~~i~~)~~(j)~~ to process applications for and maintain a list of Band members and other ~~Indians~~Anishinaabe or ~~Indigenous~~ people living on or near the Reservation who are available for employment and to assist such persons with job placement; and
- (~~j~~)~~(k)~~ to contract with federal and state entities for the provision of additional job procurement services and funding consistent with the purposes of this chapter.

§ 1015. Intergovernmental Relationships.

The TERO ~~Commission~~, acting through the Director, is authorized, ~~with the written concurrence of the Commissioner of Administration~~, to enter into cooperative relationships with federal employment rights agencies, ~~such as including but not limited to the EEOC~~ federal Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs (OFCCP), and with state employment rights agencies, such as the Human Rights Commission, in order to eliminate discrimination against ~~Indians~~Anishinaabe or ~~Indigenous~~ people on and off the Reservation, as well as to develop training programs for ~~Indians~~Anishinaabe or ~~Indigenous~~ people. The Director may also, ~~with the written concurrence of the Commissioner of Administration~~, enter into cooperative relationships with federal agencies, including but not limited to the Bureau of Indian Affairs, the Department of Labor, the Federal Highway Administration, and the Internal Revenue Service, in order to implement any federal employment or other workforce rights, authorities, or requirements as such agency may lawfully delegate to the Band.

Section 3. Amending Title 15 (Independent Agencies), Chapter 4 (Tribal Employment Rights Office), Subchapter 3 (Anishinaabe or Indigenous Preference in Employment and Contracting)

§ 1021. ~~Indian~~Anishinaabe or Indigenous Preference in Employment.

- (a) All covered employers shall give preference to Indians living on or near the Reservation in the hiring, promotion, training, and all other aspects of employment ~~within the boundaries of~~ on or near the Reservation, provided that these individuals have the necessary qualifications. The priority for ~~Indian~~Anishinaabe or Indigenous preference is as follows:
- (1) ~~Mille Laes-Band m~~Member;
 - ~~(1)~~(2) Band member direct descendant or spouse of Band member;
 - ~~(2)~~(3) member of another federally recognized ~~Indian~~Native American tTTribe; and
 - ~~(3)~~(4) all others.
- (b) Every covered employer shall encourage ~~Indians~~Anishinaabe or Indigenous people to seek ~~promotional~~ opportunities for promotion. For every opening in a supervisory position, the employer shall inform ~~Indian~~Anishinaabe or Indigenous workers about the position and encourage them to apply.
- (c) No covered employer shall be permitted to maintain a position that no employment opportunities exist in the fulfillment of any said contract in order to evade the provisions of this section. The covered employer shall develop a goal statement which is subject to advance approval by the TERO ~~D~~Director prior to the commencement of any work. Additionally, no goal statement shall be approved which contains less than fifty percent (50%) for each construction operation in ~~Indian~~Anishinaabe or Indigenous employment opportunities pursuant to any contract.

§ 1022. Covered Employer's Responsibilities.

- (a) Covered employers shall notify the TERO Director of openings in employment positions subject to this chapter and provide job descriptions for such openings at or before the time ~~at~~in which they advertise the openings. Job descriptions shall not be written in a way to unnecessarily exclude Band members or other ~~Indians~~Anishinaabe or Indigenous people from employment.
- (b) All covered employers shall define in writing the necessary qualifications for each employment position in their work force that is subject to this chapter, which shall be

provided to the TERO Director as part of their compliance plans and to applicants upon request.

- (c) All covered employers shall comply with this chapter, all rules and regulations relating to it, and all guidelines and orders of the TERO Director.
- (d) The requirements in this chapter shall not apply to any direct employment by the ~~f~~Federal or a state government or their agencies or subdivisions. However, such requirements shall apply to all contractors or grantees of such governments and to all commercial enterprises operated by such governments when they are doing business ~~with the Band within~~ on or near the Reservation.
- (e) Covered employers shall include and specify an ~~Indian~~Anishinaabe or Indigenous employment preference policy statement in all job announcements and advertisements and all employer policies that are subject to this chapter.
- (f) Covered employers shall post in a conspicuous place on their premises for their employees and applicants an ~~Indian~~Anishinaabe or Indigenous preference policy notice prepared or approved by the TERO Director.
- (g) Covered employers, except for construction contractors, shall ~~advertise and announce~~notify the TERO Director of all openings in employment positions subject to this chapter for publication on the Mille Laes Band website. Construction contractors, prior to starting work within the Reservation, shall provide a ~~TERO~~compliance ~~p~~Plan for the project to the TERO Director.
- (h) Covered employers shall use non-discriminatory job qualifications and selection criteria in filling employment positions subject to the requirements of this chapter. No covered employer shall use any job qualification criteria that serve as barriers to ~~Indian~~Anishinaabe or Indigenous preference in employment, ~~unless the covered employer can demonstrate that such criteria or requirements are required by business necessity~~.
- (i) Regardless of the qualifications of any non-~~Indian~~Native applicant, any ~~Indian~~Anishinaabe or Indigenous person who demonstrates the necessary qualifications for an employment position subject to this chapter:
 - (1) shall be selected by covered employers in the case of hiring, promotion, transfer, upgrading, recall, and other employment opportunities with respect to such position; and
 - (2) shall be retained by covered employers in the case of a reduction in force affecting a certain class of positions until all non-~~Indians~~Natives employed in that class of positions are laid -off.

§ 1023. Core Crew.

- (a) Covered employers, may, if necessary, designate a core crew, which is exempt from the ~~Indian~~Anishinaabe or Indigenous preference requirements of this chapter.
- (b) If a core crew is necessary, such core crew shall not exceed twenty-five percent (25%) of the total employees of the project ~~or jobsite,~~ except as otherwise provided in subsection (c) of this section.
- (c) The TERO Director may, at ~~his or her~~her or his discretion, grant a covered employer a larger core crew designation upon a satisfactory demonstration by the covered employer that a larger core crew is necessary due to unique or specialized positions that are essential for the operation of the business. A covered employer may appeal the decision of the Director to the ~~Board~~TERO Commission.

§ 1024. ~~Indian~~Anishinaabe or Indigenous Preference in Contracting.

- (a) To the extent provided in § 1026 of this chapter, all covered employers shall give preference in contracting and subcontracting to ~~Indian~~Anishinaabe or Indigenous certified entities.
- (b) If one (1) or more qualified ~~Indian~~Anishinaabe or Indigenous certified entities submit a bid that is within ten percent (10%) percent of the lowest competitive bid, the covered employer shall give ~~one of the~~ qualified ~~Indian~~Anishinaabe or Indigenous certified entities submitting such a bid the opportunity to negotiate an acceptable bid.
- (c) In accordance with §§ 1012 and 1014 of this chapter, the TERO Director shall formulate and the ~~Board~~Commission shall approve regulations providing guidance on implementing the requirements of this section and for implementing ~~Indian~~Anishinaabe or Indigenous contracting preference when the awarding entity uses a method other than competition to select a contractor.
- (d) Whenever feasible, the covered employer shall submit to the TERO Director, at least thirty (30) days in advance of the deadline for the submission of bids for a contract or subcontract, a list of all related contracts and subcontracts contemplated by the covered employer in order to enable the Director to give ~~Indian~~Anishinaabe or Indigenous ~~Certified~~ eEntities the opportunity to prepare bids for such related contracts and subcontracts.
- (e) Any covered employer or ~~Indian~~Anishinaabe or Indigenous certified entity entering into a contract under the ~~Indian~~Anishinaabe or Indigenous preference provisions of this chapter consents to the jurisdiction of the Band's Court of Central Jurisdiction for purposes of resolving any dispute arising under such contract, provided that nothing in this subsection shall waive the sovereign immunity of the Band.

§ 1025. Indian Anishinaabe or Indigenous Certified Entities.

The ~~Board~~TERO Director shall establish for approval by the TERO Commission a system for certifying firms as Indian Anishinaabe or Indigenous certified entities. This system shall include detailed provisions to ensure that entities that are not truly fifty-one percent (51%) or more owned by Indians Anishinaabe or Indigenous people, or in which daily management and control is not provided by Indians Anishinaabe or Indigenous people, are not granted Indian Anishinaabe or Indigenous preference certification.

§ 1026. Applicability of Indian Anishinaabe or Indigenous Preference in Contracting.

- (a) Except as otherwise provided in this section, the Indian Anishinaabe or Indigenous preference in contracting required under § 1024 of this chapter shall apply ~~only~~ to contracts and subcontracts to be performed on or near the Reservation and shall not apply to the delivery of goods from a location outside the Reservation.
- (b) Notwithstanding any other provision in this chapter, the Indian Anishinaabe or Indigenous preference in contracting required under § 1024 of this chapter shall not apply to any contracts or subcontracts where the ~~Board~~TERO Commission determines that application of that preference is specifically prohibited by federal law.
- (c) The Indian Anishinaabe or Indigenous preference in contracting required under § 1024 of this chapter shall not apply to contracts awarded by the federal or a state government or their agencies or subdivisions. However, the Indian Anishinaabe or Indigenous preference in contracting required under § 1024 of this chapter shall apply to all subcontracts awarded by a federal or state contractor or grantee that is a covered entity, whether or not the prime contract was subject to that preference, except when the Board determines that application of that preference to that entity is specifically prohibited by federal law.

§ 1027. Other Preferences to be Consistent.

Any provision for Indian Anishinaabe or Indigenous preference in employment or contracting contained in any Band policy, including any Corporate Ventures policy of the ~~Corporate Commission~~, must be consistent with the Indian Anishinaabe or Indigenous preference in §§ 1021 and 1024, which provide first priority to ~~Mille Laes~~enrolled Band members, second priority to members of another federally recognized Indian Native American tribe, and third priority to all others.

Section 4. Amending Title 15 (Independent Agencies), Chapter 4 (Tribal Employment Rights Office), Subchapter 4 (Fees)

§ 1031. Fees.

Except as otherwise provided in § 1032 of this chapter, and ~~except as~~ unless specifically prohibited by federal law, the following fees are assessed on covered employers, other than the Band, for the privilege of doing business with the Band or Corporate Ventures ~~within~~ on or near the Rreservation and to raise revenue for the operation of the TERO office and the enforcement of this chapter.

- (a) Every covered employer, ~~other than the Band,~~ that enters into a contract with the Band or Corporate Ventures totaling ~~\$25,000.00~~ \$7,500.00 or more shall pay a one-time project fee of ~~one-half percent (0.5%)~~ three percent (3%) ~~one~~ of the total amount of the contract. The covered employer shall pay the full amount of the fee before commencing work on the Reservation under the contract, provided that the TERO ~~D~~irector may, for good cause shown by the covered employer, authorize the fee to be paid in installments over the life of the contract, and provided further that if the total amount of the contract is subsequently increased, the covered employer shall pay the additional amount due ~~(0.5% of the increased amount of the contract)~~ at the time of the increase. In all cases, the full amount shall be paid by the contractor upon the last pay application. A covered employer ~~other than the Band~~ that enters into a contract with the Band or Corporate Ventures for less than ~~\$25,000.00~~ \$7,500.00 shall pay the ~~0.5%~~ fee on the total amount of the contract if the contract is amended or enlarged to ~~\$25,000.00~~ \$7,500.00 or more within one (1) year after it was entered into. The fee imposed by this paragraph does not apply to a covered employer that enters into a subcontract made under a contract with the Band or Corporate Ventures where the fee has been paid on the total amount of such contract.
- (b) All covered employers ~~other than the Band~~ shall, as a condition of doing business on or near the Reservation under a contract with the Band or Corporate Ventures, consent to the Band entity awarding the contract paying the fee imposed under subsection (a) of this section directly to the TERO prior to the commencement of work under the contract and subtracting the amount of the fee from the payments due to the covered employer under the contract. Prior to making the payment, the Band entity awarding the contract shall provide the contractor with a form prepared by the TERO, in which the contractor grants its consent to the payment of the TERO fee based on the amount it is entitled to receive from the Band entity. A contractor shall not be permitted to commence work on or near the Rreservation until it has executed this form, provided that this provision shall not apply if the imposition of the fee with respect to the contractor is prohibited by federal law.

§ 1033. Fee Collection and Expenditure.

- (a) ~~The TERO fees shall be collected by the director pursuant to TERO regulations.~~ The TERO fees shall be paid over to automatically withheld by the Band's Office of Management and Budget (OMB) and ~~shall be~~ credited to the TERO account. These funds shall be expended solely by the TERO, pursuant to a duly approved budget in order to carry out the purposes of this chapter.
- (b) ~~The TERO Director Office, in conjunction with the Band's Department of Labor,~~ shall prepare a quarterly report as to all employment and training expenditures. The report shall be made available to the legislative branch and executive branch Band Assembly, Chief Executive, and TERO Commission each calendar quarter.

Section 5. Amending Title 15 (Independent Agencies), Chapter 4 (Tribal Employment Rights Office), Subchapter 5 (Compliance Plan, Notice, and Contracts)

§ 1041. Compliance Plan.

- (a) All covered employers, other than the Band, shall, no less than ten (10) business days prior to commencing business on the Rreservation, prepare and submit to the TERO Director for her or his approval a plan setting out how the employer will comply with the requirements of this chapter and its implementing regulations regarding ~~Indian Anishinaabe or Indigenous~~ employment and ~~Indian Anishinaabe or Indigenous~~ contracting preference. A Band-owned entity shall, no less than ten (10) business days prior to entering into a contract with a non-Band contractor to be performed on or near the Rreservation, prepare and submit to the TERO Director for her or his approval a plan setting out how the Band-owned entity will comply with the requirements of this chapter and its implementing regulations regarding ~~Indian Anishinaabe or Indigenous~~ employment and ~~Indian Anishinaabe or Indigenous~~ contracting preference in connection with such contract. A covered employer already doing business on the Rreservation on the effective date of this chapter that has not prepared a compliance plan that has been approved by the TERO Director under this section shall come into compliance with the requirements of this section within thirty (30) business days of the effective date of this chapter.
- (b) The payroll records of all covered employers other than the Band shall be submitted to the TERO Director within thirty (30) days of his or her request. Any covered employer required to submit a certified payroll pursuant to federal law under the Davis-Bacon Act shall submit a copy of this certified payroll record to the TERO Director.
- (c) All covered employers, other than the Band and Corporate Ventures, are required to report relevant changes regarding their employees and employment positions to the

TERO Director when they submit the payroll records to the Director under subsection (b) of this section, including but not limited to new positions, terminations, layoffs, promotions, and retirements.

- (d) Corporate Ventures shall only be required to submit a compliance plan under this section for contracts subject to the fee established by § 1031 of this chapter.

§ 1044. Model Language.

In order to implement the requirements of §§ 1042 and 1043 of this chapter, the TERO Director shall provide to the covered employer:

- (a) model language that shall be included in the notice to prospective contractors and subcontractors, informing them of the requirements established by this chapter; and
- (b) model language to be included in each contract and subcontract, imposing the requirements set out in this chapter as terms of the contract.

§ 1045. TERO Approval of Notices of Contracts and Contracts Awarded by Covered Employers.

Each covered employer, prior to issuing notice of a contract to prospective contractors or subcontractors and prior to awarding a contract or subcontract, shall submit the proposed notice and, contract or subcontract to the TERO Director for approval.

Section 6. Amending Title 15 (Independent Agencies), Chapter 4 (Tribal Employment Rights Office), Subchapter 6 (Prohibition of Employment Discrimination)

Except as necessary to comply with the ~~Indian~~Anishinaabe or Indigenous employment preferences in subchapter 3 of this chapter, it shall be unlawful for a covered employer to do any of the following acts wholly or partially based on the actual or perceived race, color, religion, national origin, sex, age, sexual orientation, or political affiliation of any individual, unless such characteristic is a bona fide occupational qualification:

- (a) fail or refuse to hire, or discharge, any individual, or otherwise discriminate against any individual, with respect to ~~his or her~~ her or his compensation, terms and conditions, or privileges of employment, including promotion;
- (b) discriminate in recruiting individuals for employment; or
- (c) limit, segregate, or classify employees in any way that would tend to deprive them of employment opportunities.

§ 1052. Religious Accommodation.

It shall be an unlawful discriminatory practice for a covered employer to refuse to make a reasonable accommodation for an employee's religious or spiritual observance, unless doing so would cause undue hardship to the employer as determined by the TERO. A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to practice ~~his or her~~ her or his religion, such as flexible scheduling, voluntary substitutions or swaps, job reassignments, and lateral transfers, if approved by the authorized supervisor in accordance with the Band's Personnel Policy Manual. An accommodation would cause an employer undue hardship when ~~it~~ the accommodation would require more than ordinary administrative costs, diminish efficiency in other jobs, infringe on other employees' job rights or benefits, impair workplace safety, cause co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work, or conflict with another applicable law or regulation.

§ 1053. Discrimination Based on Disability.

- (a) It shall be unlawful for a covered employer to discriminate in any aspect of employment against a qualified individual with a disability because of that disability. However, it is not unlawful for a covered employer to use employment qualification standards, tests, or selection criteria that are job-related and consistent with business necessity that make an individual with a disability ineligible for an employment position where the individual could not perform the job even with reasonable accommodation. Nothing in this section shall prohibit a covered employer from refusing to hire an individual with a disability for or from discharging such an individual from an employment position if the individual, because of the disability, is unable to perform the duties of the position, would perform the duties in a manner that would endanger the health and safety of the individual or others, or is unable to be at or go to or from the place at which the position is located.
- (b) Subject to the provisions of subsection (c) of this section, a reasonable accommodation for an individual's disability may include but is not limited to making facilities readily accessible to and usable by disabled persons, job restructuring, modifying work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, and the provision of aides on a temporary or periodic basis.
- (c) An accommodation is not required if it would impose an undue hardship on the employer's operation. In determining whether an undue hardship exists, ~~employers~~ TERO may consider:
 - (1) the overall size of the business or organization with respect to the number of employees and the number and type of facilities;

- (2) the type of the operation, including the composition and structure of the work force, and the number of employees at the location where the employment would occur;
- (3) the nature and cost of the accommodation;
- (4) the reasonable ability to finance the accommodation at each site of business; and
- (5) documented good-faith efforts to explore less restrictive or less expensive alternatives, including consultation with the disabled person or with knowledgeable disabled persons or organizations.

§ 1056. Retaliation.

A covered employer may not retaliate against an individual for bringing a good-faith claim against the employer for a violation of this chapter, or because the individual opposed a practice he or she believed to violate this chapter or participated in an enforcement proceeding pursuant to subchapter 9 of this chapter. The firing, demoting, harassing, or taking of any other adverse action against an individual shall constitute retaliation within the meaning of this section. Any retaliation in violation of this section is itself a violation of this chapter and is subject to enforcement proceedings pursuant to subchapter 9 of this chapter.

Section 7. Amending Title 15 (Independent Agencies), Chapter 4 (Tribal Employment Rights Office), Subchapter 7 (Employee Wage and Hour)

§ 1061. Minimum Wage.

Any employee who is employed by a covered employer shall be paid an hourly wage of not less than:

- (a) \$11.00 per hour for tipped employees, or the current United States government's or the Band's minimum wage requirement for tipped employees, whichever is higher; or
- (a)(b) \$7.50\$15.00 per hour for non-tipped employees, or the current United States Federal Government's or the Band's minimum wage requirement for non-tipped employees, whichever is higher.

§ 1062. Prevailing Wage.

All covered employers are required to compensate construction ~~laborers~~workers according to the prevailing wage set by the U.S. Department of Labor according to the Davis-Bacon Act for the county in which the work shall commence, unless the ~~Board~~Commission implements Band

prevailing wage rates by rule, regulation, or guideline, in which case the Band prevailing wage determination shall apply.

§ 1063. Maximum Hours.

No covered employer shall employ any of its employees for a work week longer than forty (40) hours unless such employee receives compensation for the additional hours at a rate not less than one and one-half times the regular rate at which the employee is normally compensated.

§ 1067. Guidance.

For the purposes of interpreting this subchapter only, the ~~Board~~TERO Commission and the Band's Court of Central Jurisdiction may look to the Federal Fair Labor Standards Act (~~FLSA~~) of 1938, 29 U.S.C., §§ 201-219, its implementing regulations, and related case law for persuasive guidance, provided that nothing in this section shall be construed as an adoption by the Band of that Act or its implementing regulations.

§ 1068. Fringe Benefits.

A covered employer must give an employee engaged in construction the option of electing to receive any amount to which he or she is entitled as prevailing wage fringe benefits as a part of her or his hourly pay unless it is determined that the application of this provision is specifically prohibited by ~~f~~Federal law. The prevailing wage fringe benefits to which the employee is entitled shall include, but not be limited to, the fringe benefit determination made by the U.S. Secretary of Labor pursuant to the ~~Federal~~-Davis Bacon Act or by the ~~Board~~TERO Commission pursuant to this chapter. Every covered employer engaged in projects subject to the ~~Federal~~ Davis-Bacon Act shall offer this option to each employee at the time he or she is first employed.

Section 8. Amending Title 15 (Independent Agencies), Chapter 4 (Tribal Employment Rights Office), Subchapter 8 (Occupational Safety and Health of Employees)

§ 1073. Enforcement.

- (a) The TERO Director is authorized to enforce the rules adopted in § 1072 of this chapter pursuant to the enforcement provisions set out in subchapter 9 of this chapter, to the extent her or his authority has not been preempted by ~~f~~Federal law.
- (b) For any employer over whom the TERO Director's authority to enforce the requirements of this subchapter has been preempted by ~~f~~Federal law and for employers within the Reservation who are not subject to the jurisdiction of the Band, the Director shall work cooperatively with federal and state officials

responsible for enforcing occupational safety and health requirements applicable to such employers to ensure maximum enforcement.

Section 9. Amending Title 15 (Independent Agencies), Chapter 4 (Tribal Employment Rights Office), Subchapter 9 (Enforcement)

§ 1082. Investigations.

- (a) On her or his own initiative or on the basis of a complaint filed pursuant to § 1083 or any other provision of this chapter, the TERO Director, or any field compliance officer designated by the TERO Director, may make such public or private investigations within ~~the reservation~~ her or his jurisdiction as the TERO Director deems necessary:
 - (1) to ensure compliance with a provision in this chapter;
 - (2) to determine whether any covered employer has violated any provision of this chapter or its implementing regulations; or
 - (3) to aid in prescribing rules, regulations, or policies hereunder.
- (b) Separate from acting on any complaint filed, the TERO Director shall conduct regular compliance reviews to ensure that all covered employers are complying with the requirements of this chapter.
- (c) The TERO Director or any field compliance officer designated by the TERO Director may, provided they are clearly identified as TERO staff, enter the place of business or employment of any covered employer for the purpose of an investigation or compliance review, at said place of business or employment, in a manner consistent with good safety practices and with the orderly operation of the business activity. The TERO Director or officer may:
 - (1) interview any employee or agent of the covered employer;
 - (2) review and copy any documents; and
 - (3) carry out any other activity the TERO Director or officer deems necessary to accomplish the investigation or compliance review, provided that, the TERO Director or officer shall comply with the requirements of subsection (e) of this section when reviewing or copying any confidential documents.
- (d) For the purpose of investigations, compliance reviews, or hearings, which, in the opinion of the TERO Director or the TERO Commission, are necessary and proper for the enforcement of this chapter, the TERO Director or the Chairperson of the TERO Commission may administer oaths or affirmations, subpoena witnesses, take

evidence, and require the production of books, papers, contracts, agreements, or other documents, records, or information that the TERO Director or the TERO Commission deems relevant to the inquiry.

- (e) Any state or federal tax records, trade secrets, or privileged or confidential commercial, financial, or employment information subpoenaed or otherwise obtained pursuant to the provisions of this chapter or used at a compliance hearing or subsequent appeal to the Band's Court of Central Jurisdiction:
 - (1) shall be regarded as confidential records of the TERO Commission or the Court;
 - (2) shall not be opened to public inspection;
 - (3) shall be used only by the TERO Director, the TERO Commission, or parties to a compliance hearing or subsequent appeal to the Court; and
 - (4) shall be used in a manner that, to the maximum extent possible consistent with the requirement of fairness to the parties, protects the confidentiality of the documents.
- (f) Any person, including but not limited to any employee or official of the Band, who willfully discloses such confidential records, except as expressly authorized by this chapter or Court order, may be subject to a civil fine not to exceed \$500.00.
- (g) Documents obtained from a covered employer under this section shall be returned to the employer at the conclusion of any investigation, compliance review, or hearing, including the end of any available appeal period.

§ 1083. Complaints.

Any individual, group of individuals, business, or organization that believes any covered employer, other than the Band, or the TERO Director or other TERO staff, has violated any requirement imposed by this chapter or any regulation issued pursuant to it, may file a complaint with the TERO Director or, if the complaint is against the TERO Director or other TERO staff, may file a complaint with the Chairperson of the TERO Commission. The complaint shall be in writing and shall provide such information as is necessary to enable the Director or an independent party appointed by the TERO Commission to carry out an investigation. Within fifteen calendar (15) days after receipt of the complaint, and on a regular basis thereafter, the Director or the independent party appointed by the TERO Commission shall provide the complaining party with a written report on the status of the complaint. The Director or the independent party appointed by the TERO Commission shall, within thirty (30) days of the date on which a complaint is filed, complete an investigation of the complaint. Upon request, the TERO Commission may grant the Director or the independent party appointed by the TERO Commission an extension of no more than thirty (30) days to complete the investigation. If,

upon investigation, the Director or the independent party appointed by the TERO Commission has reason to believe a violation has occurred, he or she shall proceed pursuant to the provisions of this chapter.

§ 1084. Complaints Against the Band.

Any individual who believes the Band, including any office, division, branch, ~~subsidiary entity, or commercial enterprise of the Band~~ or agency, other than the TERO Director or other TERO staff, has violated any requirement imposed by this chapter or any regulation issued pursuant to it may file a complaint with the TERO Director, but only after the individual has either:

- (a) filed a complaint with and exhausted the administrative remedies provided by the involved office, division, branch, ~~subsidiary entity, or commercial enterprise of the Band~~ or agency; or
- (b) filed a complaint with the involved office, division, branch, ~~subsidiary entity, or commercial enterprise~~ or agency of the Band and thirty (30)~~sixty (60)~~ days have passed since filing and no meaningful action has been taken on the complaint by that office, division, ~~subsidiary entity, or commercial enterprise~~ or agency.

Upon receiving a complaint that meets the requirements of this section, the Director shall proceed in the same manner as he would on a complaint filed pursuant to § 1083 of this chapter, except that the Director and the TERO Commission shall take into consideration any written decision concerning the complaint issued by the office, division, branch, ~~subsidiary, entity, or commercial enterprise~~ or agency of the Band that is the subject of the complaint.

§ 1085. Resolution of Violations.

- (a) If, after conducting an investigation or compliance review, the TERO Director has reasonable cause to believe a violation of this chapter or any regulation issued ~~pursuant to it~~ thereunder has occurred, including a failure by a party to comply with a subpoena or other request during an investigation, the Director shall notify the covered employer ~~or covered entity~~ in writing, delivered by registered mail or via a reasonably secure electronic method, such as the email address of the covered employer on file with the TERO Commission, specifying the alleged violations.
- (b) The Director shall make a good-faith effort to achieve an informal settlement of the alleged violation by meeting with the covered employer and taking other appropriate action.
- (c) If the Director is unable to achieve an informal settlement, he or she shall issue a formal notice of non-compliance, which shall advise the covered employer of its right to request a hearing. The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. ~~¶~~ The notice shall

provide the covered employer with a reasonable time, which shall not be less than ten (10) days from the date of service of such notice, to comply. If the Director has reason to believe that irreparable harm will occur during that period, the Director may require that compliance occur in less than ten (10) days.

- (d) If the covered employer disputes the violation, as provided in the formal notice, the covered employer may request a hearing before the TERO Commission, which shall be held no sooner than five (5) days and no later than thirty (30) days after the date for compliance set forth in the formal notice. The Director or the covered employer may ask the TERO Commission to hold the hearing sooner. The TERO Commission shall grant such a request only upon a showing that an expedited hearing is necessary to avoid irreparable harm.
- (e) If a covered employer fails or refuses to comply and does not request a hearing, the Director shall request the Chairperson of the ~~TERO Commission~~ to convene a session of the TERO Commission for the purpose of imposing sanctions on the covered employer. This session shall take place as soon as necessary to avoid irreparable harm.
- (f) If an independent investigator determines the TERO Director or TERO staff may have violated this chapter, the Chairperson shall convene a meeting of the TERO Commission to determine the resolving action to be taken by the Director and TERO staff, and the results thereof shall be reported to the Band Assembly and the Chief Executive.

§ 1086. Hearing Procedures.

- (a) Any hearing held pursuant to this chapter shall be conducted by the TERO Commission. The hearing shall be governed by Robert's Rules of Order, or any other rules of practice and procedure that are hereafter adopted by the TERO Commission. The TERO Director and the covered employer shall have the right to call and cross examine witnesses, as well as present physical evidence. The TERO Commission may consider any evidence that it deems relevant to the hearing. The TERO Commission shall not be bound by technical rules of evidence in the conduct of hearings under this chapter, and the presence of informality in any proceeding, as in the manner of taking testimony, shall not invalidate any order, decision, rule, or regulation made, approved, or confirmed by the TERO Commission. The Director shall have the burden of proving that the covered employer violated this chapter by a preponderance of the evidence. An audio recording shall be made of each hearing. No stenographic record of the proceedings and testimony shall be required except upon arrangement by, and at the cost of, the covered employer.
- (b) The Director shall prosecute the alleged violation on behalf of the TERO. During the hearing and at all stages of the enforcement process provided for in this chapter, the Director may be represented by the Band's Solicitor General's Office~~Office of~~

the Solicitor General. If the covered employer is an office or subsidiary of the Band ~~Government and the Band Solicitor General's Office~~Office of the Solicitor General or the TERO Commission determines ~~that representation~~ would create a conflict to represent the director of interest, the Solicitor General ~~may~~shall obtain outside legal counsel for the TERO Director.

- (c) The TERO Commission shall sit as an impartial judicial body. The TERO Commission shall establish procedures and safeguards to ensure that the rights of all parties are protected and that there is no improper contact or communication between the TERO Commission and the Director during the hearing phase of the enforcement process.
- ~~(d)~~ If the TERO Commission requires legal assistance during the hearing process, or at any other phase of the enforcement process, and ~~it~~representation by the Office of the Solicitor General would ~~be~~create a conflict of interest for the Band Solicitor General's Office to provide such representation,, the Solicitor General ~~shall attempt to~~shall retain outside legal counsel.
- ~~(d)~~ The TERO Commission reserves the right to obtain outside legal counsel as it deems appropriate.

§ 1087. Sanctions.

- (a) If, after a hearing, the TERO Commission determines that the alleged violation of this chapter or a regulation issued pursuant to it has occurred, and that the party charged has no adequate defense in law or fact, or if a party was issued a formal notice of non-compliance and failed to request a hearing, the TERO Commission may:
 - (1) deny such party the ability to commence business on lands owned by or for the benefit of the Band or its members on the Rreservation, provided that the party is not an office, division, branch, ~~subsidiary, entity, or commercial enterprise or~~ agency of the Band;
 - (2) suspend such party's business activity on lands owned by or for the benefit of the Band or its members on the Rreservation, provided that the party is not an office, division, branch, ~~subsidiary, entity, or commercial enterprise or~~ agency of the Band;
 - (3) terminate such party's business activity on lands owned by or for the benefit of the Band or its members on the Rreservation, provided that the party is not an office, division, branch, ~~subsidiary, entity, or commercial enterprise or~~ agency of the Band;

- (4) deny the ability of such party to conduct any further business with the Band or on lands owned by or on behalf of the Band or its members on the Reservation, provided that the party is not an office, division, branch, ~~subsidiary, entity or commercial enterprise~~ or agency of the Band;
 - (5) impose a civil fine of up to \$500.00 per violation per day following the date for compliance;
 - (6) order such party to make payment of back pay or other damages to any aggrieved party;
 - (7) order such party to dismiss any employees hired in violation of the Band's employment rights requirements;
 - (8) reimburse any party who improperly paid a TERO fee or overpaid said fee, but no interest shall be paid in such cases; or
 - (9) order the party to take such other action as is necessary to ensure compliance with this chapter or to remedy any harm caused by a violation of this chapter, consistent with the requirements of the laws of the Band and the Indian Civil Rights Act, 25 U.S.C., § 1301, et seq.
- (b) The TERO Commission's decision shall be in writing and shall be served on the charged party by registered mail or in person by an employee of the TERO no later than thirty (30) days after the close of the hearing. The decision shall contain findings of fact sufficient to support the TERO Commission's ordered relief; or lack thereof. Upon a showing by the TERO Director or the charged party that further delay will cause irreparable harm, the TERO Commission shall issue its decision within ten (10) days after the close of the hearing. If the party fails to comply with the TERO Commission's decision within ten (10) days, the Director may file for an injunction in the Band's Court of Central Jurisdiction. The Court shall grant such injunctive relief as is necessary to prevent irreparable harm pending an appeal or expiration of the time for the party to file an appeal.

§ 1088. Appeals.

- (a) An appeal to the Band's Court of Central Jurisdiction may be taken from any formal order of the TERO Commission by any party adversely affected thereby, including a complainant. To take such an appeal, a party must file a notice of appeal in the Band's Court of Central Jurisdiction and serve a copy of the notice of appeal on the TERO Director and any other party to the proceeding no later than twenty (20) days after the party receives a copy of the TERO Commission's decision.
- (b) The notice of appeal shall:

- (1) set forth the order from which the appeal is taken;
 - (2) specify the grounds upon which reversal or modification of the order is sought;
 - (3) be signed by the appellant or her or his legal representative; and
 - (4) comply with any other requirements for actions filed in the Band's Court of Central Jurisdiction, as established by ~~that~~the Ceourt.
- (c) Except as provided elsewhere in this chapter, the order of the TERO Commission shall ~~be stayed~~remain in full force and effect pending the determination of the Court in the absence of an injunction staying the TERO Commissioner's order. The TERO D~~irector~~ may petition and, for good cause shown, the Court may order the party filing the appeal to post a bond sufficient to cover the monetary damages that the TERO Commission assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the TERO Commission's order in the event that order is upheld by the Court.
- (d) The Court shall sit without a jury, confine its review to the Commission record, and apply an abuse of discretion standard. The filing of briefs and oral argument must be made in accordance with the Band rules governing civil cases~~review the decision of the TERO Commission de novo.~~
- (e) The Court may affirm a formal order of the Commission, or it may remand the case for further proceedings, or reverse the formal order if the substantial rights of the appealing party have been prejudiced because the formal order is:
- (1) in excess of the statutory authority or jurisdiction of the Commission;
 - (2) made upon unlawful procedure;
 - (3) unsupported by any evidence; or
 - (4) plainly in error.
- (f) If a party has failed to come into compliance with a decision of the TERO Commission from which no appeal has been taken, or a decision of the Court, within twenty (20) days after receipt of notice of such decision, the TERO Director shall petition the Court and the Court shall grant such orders as are necessary and appropriate to enforce the orders of the TERO Commission or Court.
- (g) If the order of the TERO Commission is reversed or modified, the Court shall specifically direct the TERO Commission as to further action the TERO Commission shall take in the matter, including making and entering any order or orders in connection therewith, and the limitations, or conditions to be contained therein.

§ 1089. Monitoring.

If, when carrying out inspections at work sites or otherwise carrying out their responsibilities under this chapter, the TERO Director or TERO compliance officers have reason to believe that a requirement of a ~~t~~Tribal, ~~f~~Federal, state, or local law, act, or regulation, other than the ones included in this chapter, may have been violated by a party, the Director and TERO compliance officers are authorized to document such possible violations, to report said violations to the appropriate enforcement agency, and, to the extent that resources permit and the Director determines it to be appropriate, assist that agency in its attempt to investigate and cure the possible violation.

**Act 27-23
(Band Assembly Bill 20-03-27-23)**

Introduced to the Band Assembly on this
Twenty-sixth day of April in the year
Two thousand twenty-three.


Passed by the Band Assembly on this
Twenty-sixth day of April in the year
Two thousand twenty-three.

VETO


Sheldon Boyd, Speaker of the Assembly

APPROVED

Date: 5-5-2023


Melanie Benjamin, Chief Executive

OFFICIAL SEAL OF THE BAND



MILLE LACS BAND OF OJIBWE

Executive Branch of Tribal Government

May 5, 2023

VIA DELIVERY AND EMAIL

Band Assembly
Non-Removable Mille Lacs Band of Ojibwe
43408 Oodena Drive
Onamia, MN 56359

Re: Veto of Bill 20-03-27-23

Dear Honorable Members of the Band Assembly:

By the powers vested in me by the Mille Lacs Band Statutes, I veto Bill 20-03-27-23 for the reasons described below.

Appointment Process and Powers of TERO Commission

The appointment process described in Section 1011(a)(1) violates division of powers because it improperly grants powers to elected officials that they otherwise do not possess under Titles 3 and 4. First, subparagraph (i) provides that the Secretary-Treasurer shall ratify one of the Chief Executive's two nominees to serve as members of the Tribal Employment Rights Office ("TERO") Commission. This subparagraph conflicts with 3 MLBS § 8 because Title 3 does not vest the Secretary-Treasurer with confirmation or ratification authority.

Second, subparagraphs (ii) and (iii) provide that each District Representative shall nominate two individuals to serve as Commission members, and the Chief Executive shall ratify one nominee from each pair of nominees. These subparagraphs conflict with 3 MLBS §§ 3 and 9 because Title 3 does not vest the Band Assembly, acting as an entity, or the District Representatives, acting in their individual capacities, with appointment powers. Further, these subparagraphs conflict with 4 MLBS § 6 because Title 4 does not vest the Chief Executive with confirmation or ratification authority.

Third, subparagraph (iv) provides that the Secretary-Treasurer shall nominate two individuals to serve as Commission members, and the Chief Executive shall ratify one of the nominees. This subparagraph conflicts with 3 MLBS § 8 and 4 MLBS § 6 because Title 3 does not vest the Secretary-Treasurer with appointment power and Title 4 does not vest the Chief Executive with confirmation or ratification power.

Fourth, Section 1015 provides that "[t]he TERO Commission, acting through the Director, is authorized to enter into cooperative relationships with federal employment rights agencies...and with state employment rights agencies[.]" This section conflicts with 4 MLBS § 3 because Title 4 vests the Executive Branch with the power to "[c]onduct relations with all other governments and their political subdivisions."

Titles 3 and 4 are the Band's foundational law. Any law that is inconsistent with the foundational law cannot stand. The appointment process described in this bill is inconsistent with Titles 3 and 4 and should not be allowed to continue to stand. I recommend amending this bill's appointment process to be consistent with the appointment process established by Titles 3 and 4.

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36666 State Highway 65 • McGregor, MN 55760
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DISTRICT IIA

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Further, to ensure that TERO complies with Title 4, I recommend moving TERO back into the executive branch of government so that it can properly continue to perform its regulatory and intergovernmental functions.

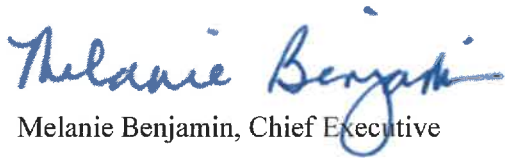
Finally, section 1012(a)(2)'s grant of authority to the TERO Commission "to interpret this Chapter any rules, regulations, or guidelines adopted hereunder, subject to judicial review" raises an issue with division of powers, and I am requesting the Band Assembly to clarify its intent for this provision.

Administrative Costs and Burdens

The proposed amendments to Sections 1031 and 1041 would add undue administrative costs and burdens to Mille Lacs Corporate Ventures. I am requesting the Band Assembly to clarify its intent for these provisions at the compromise hearing.

I look forward to discussing these issues at the compromise hearing.

Miigwech,

A handwritten signature in blue ink that reads "Melanie Benjamin". The signature is written in a cursive style with a large, stylized initial 'M'.

Melanie Benjamin, Chief Executive

Enc: Vetoed Bill 20-03-27-23

CC: Darcie Big Bear, Parliamentarian
Joe Nayquonabe, Commissioner for Corporate Affairs