

Act 50-23

An Act enacting a new chapter titled Minors' Trust in Title 17 of the Mille Lacs Band Statutes.

The District I, II, and III Representatives introduced the following Bill on the 2nd day of August, 2023.

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

Section 1. Enacting a new chapter in Title 17.

CHAPTER 4

MINORS' TRUST

§ 301. Definitions.

The following terms are defined for the purposes of this chapter:

- (a) “Account” means the separate bookkeeping account established under the Trust pursuant to § 305 on behalf of each beneficiary to hold his or her share of the trust fund.
- (b) “Band” means the Mille Lacs Band of Ojibwe.
- (c) “Band Assembly” means the members duly elected to serve as the legislative body of the Band.
- (d) “Band member” means an enrolled member of the Band.
- (e) “Beneficiary” means a Band member for whom an account has been established.
- (f) “Code” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated and in effect thereunder.
- (g) “Commissioner” means the Commissioner of Finance.
- (h) “Eligible member” means any Band member who is a minor.
- (i) “Insolvency” means the Band is unable to pay its debts as they become due or the Band is subject to a pending proceeding as a debtor under the United States Bankruptcy Code.

- (j) “Institutional Investment Committee” means the committee established in Chapter 3 of this title.
- (k) “Investment policy” means the policy adopted by the Institutional Investment Committee to provide guidance on and the minimum performance standards of the investment vehicles in which the trust fund may be invested.
- (l) “Legally incompetent person” means a Band member who has been declared to be legally incompetent, other than being a minor, by a court of competent jurisdiction.
- (m) “Minor” means a Band member who has not yet reached the age of eighteen (18) years.
- (n) “Revenue allocation plan” means the Band’s net gaming revenue allocation plan as approved by Resolution of the Joint Session 20-02-28-22 and any subsequent amendments duly approved by lawful process.
- (o) “Tribal gaming revenue contribution” means that portion of net revenues from tribal gaming activities distributed on a per capita basis for the benefit of minors and legally incompetent persons pursuant to the revenue allocation plan.
- (p) “Trust” means the Mille Lacs Band of Ojibwe Indians Minors’ Trust established to hold and invest contributions of tribal revenues and held, administered, and distributed pursuant to the provisions of this chapter.
- (q) “Trust agreement” means the Mille Lacs Band of Ojibwe Indians Minors’ Trust Agreement, as set forth in this chapter.
- (r) “Trust fund” means the contributions to the Trust as principal and the earnings thereon, until such amounts are distributed under § 306.
- (s) “Trustee” means the District Representatives currently serving on the Band Assembly for so long as they remain in office, and their successors while they are in office.

§ 302. Findings and Determinations.

- (a) The Band wishes to maintain the trust established in 2012 and to continue to contribute to the trust such per capita distributions of net gaming revenues until paid to the beneficiaries in such manner and at such times as specified in this chapter.
- (b) The Band has determined that it is in the best interests of any eligible member who is a legally incompetent person to have such eligible member’s per capita payments held in a separate trust for his or her benefit.

- (c) Any previous versions of the trust agreement shall be null and void as of the effective date of this chapter.
- (d) The Revenue Allocation Plan, as amended in 2022, expanded the criteria under which advance distributions may be granted. This chapter is intended to bring the trust into alignment with the amended provisions of the Revenue Allocation Plan.

§ 303. Establishment.

- (a) **Establishment and purpose.** The Band hereby establishes the trust, which shall be administered and disposed of by the trustee as provided in this chapter. The purpose of the trust is to hold tribal gaming revenue contributions distributed for the benefit of minors.
- (b) **Irrevocable grantor trust.** The trust is intended to be an irrevocable grantor trust, of which the Band is the grantor, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the Code, and shall be construed accordingly.
- (c) **Band as owner.** The Band shall be the owner of the principal of the trust and any earnings thereon. The trust fund shall be held separate and apart from other funds of the Band and shall be used exclusively for the uses and purposes set forth herein. The beneficiaries shall have no preferred claim on, or any beneficial ownership interest in, the trust fund. Any rights created under this chapter shall be mere unsecured contractual rights of beneficiaries against the Band.
- (d) **Trust to include minors' trust fund.** All funds currently held by the Band for minors, excluding those funds held for but not yet distributed to those who are 18 years of age or greater, shall be placed into the trust after an accounting is completed.

§ 304. Beneficiaries and Contributions.

- (a) **Beneficiaries.** Each eligible member shall be a beneficiary under the trust.
- (b) **Contributions.** The amount of the tribal gaming revenue contribution for each eligible member shall be determined pursuant to the revenue allocation plan approved by the Secretary of the Interior. Such contributions shall be allocated to the accounts of each such beneficiary on a per capita basis.

§ 305. Status of Trust Fund.

- (a) **Property of the Band.** The trust fund shall remain solely the property of the Band until such amounts are used to make distributions in accordance with § 306 hereof. A beneficiary shall not, under any circumstances, acquire any property or beneficial

interest in any investment asset of the Band by virtue of her or his participation in this trust.

- (b) **Investment of trust fund.** The trustee may invest the trust fund in any type of property or permissible investments in accordance with the investment policy, except to the extent otherwise provided by applicable law. The Band is not obligated to purchase any property or rights to support the promises made under this chapter to any beneficiary.
- (c) **Earnings and losses.** Any earnings, losses, and changes in market value of the assets of the trust fund shall be credited or debited, as the case may be, on a pro rata basis to each beneficiary's account on the last day of each calendar quarter in accordance with the ratio such beneficiary's account bears to the aggregate account balances of all other beneficiaries on such date. Such earnings shall be credited or debited, as the case may be, to each beneficiary's account on a quarterly basis until it is either distributed to the beneficiary or placed into a separate account or trust.
- (d) **Accounts.** The trustee, assisted by the Commissioner, shall establish a separate bookkeeping account on behalf of each eligible member under the trust. Each account shall be adjusted quarterly for the applicable beneficiary's share of:
 - (1) the contributions received by the trust under § 304(b);
 - (2) earnings, losses, and changes in market value credited or debited, as the case may be, to the trust fund under subsection (c); and
 - (3) advance distributions under § 306(f).
- (e) **Report of account balance.** The Commissioner shall advise the trustee and the Chief Executive of each beneficiary's account balance within thirty (30) calendar days of the end of the Band's fiscal year. The Commissioner shall maintain records of such annual account balances and shall make such information available to any beneficiary or, while the beneficiary is a minor, to said beneficiary's parent or legal guardian upon request.
- (f) **Extent of Band's liability.** The obligation of the Band to pay a beneficiary the amount contributed on her or his behalf as provided in this chapter shall be limited to the account balance of the beneficiary, as determined from time to time in accordance with subsection (d). The Band's obligation shall not be increased by the amount, if any, by which the eligible member's share of amounts contributed under § 304(b) may exceed the beneficiary's account balance, whether due to earnings, losses, and changes in market value credited or debited, as the case may be, to the trust fund under subsection (c) or distributions under § 306(f).

§ 306. Payments to Trust Beneficiaries.

- (a) **Disbursements prior to meeting distribution requirements.** Except as otherwise provided in this chapter, no disbursements from the trust may occur prior to the date on which an eligible member has qualified for distributions. No court order evidencing emancipation of an eligible member prior to qualifying for distributions may be accepted or acted upon to authorize a disbursement from the trust.
- (b) **Disenrollment.**
- (1) **Voluntary disenrollment.** No distributions whatsoever from the trust may be made to any beneficiary or, in the alternative, to any parent or legal guardian of a beneficiary, when that beneficiary or that beneficiary's parent or legal guardian voluntarily chooses to renounce and abandon that beneficiary's enrollment with the Band. In the event a beneficiary's parent or legal guardian voluntarily chooses to renounce or abandon that beneficiary's enrollment with the Band, any monies held for said beneficiary prior to disenrollment shall revert to the general fund of the Band.
- (2) **Involuntary disenrollment.** Upon determination by the Band Assembly that a person for whom funds have been deposited in the trust is no or is no longer an eligible member, such funds shall revert to the general fund of the Band.
- (c) **Distributions.**
- (1) **Minors.** A minor's right to receive a distribution of her or his account balance shall vest when he or she qualifies for distributions under one of the distribution schedules set forth in the revenue allocation plan and as more specifically detailed herein:
- (i) **Five-year distribution schedule.** An eligible member shall qualify to have her or his account balance distributed in five (5) annual distributions if he or she is 18 years of age and has graduated from high school or obtained an equivalent degree. The eligible member shall receive an initial distribution of twenty percent (20%) of her or his account balance upon qualifying for distributions under this schedule, a second distribution of twenty-five percent (25%) of her or his remaining account balance one (1) year after the initial distribution, a third distribution of thirty-three percent (33%) of her or his remaining account balance two (2) years after the initial distribution, a fourth distribution of fifty percent (50%) of her or his remaining account balance three (3) years after the initial distribution, and a final distribution of one hundred percent (100%) of the remaining account balance four (4) years after the initial distribution.
- (A) **Increased distribution for receiving an associate's or technical degree.** An eligible member that receives an

associate's or technical degree from an accredited institution of higher education while receiving distributions during the first four (4) years under the five-year distribution schedule shall qualify for one (1) increased distribution. The distribution following attainment of the degree shall include a distribution of the percent the eligible member would have received pursuant to the five-year distribution schedule plus an additional five percent (5%) of the remaining account balance. The distributions subsequent to the increased distribution shall be consistent with the five-year distribution schedule.

(B) **Accelerated distributions schedule for receiving a bachelor's degree.** An eligible member that receives a bachelor's degree from an accredited institution of higher education while receiving distributions under the five-year distribution schedule shall qualify for an accelerated distribution. The distribution following attainment of the degree shall be one hundred percent (100%) of the eligible member's remaining account balance. After paying the accelerated distribution, there shall be no further distributions under this provision of the five-year distributions schedule.

(ii) **Ten-year distribution schedule.** If an eligible member does not qualify for distributions under clause (i) by the close of the fiscal quarter in which he or she attained the age of 20 years, the eligible member shall receive distributions pursuant to this ten-year distribution schedule. Under this schedule, an eligible member will receive an initial distribution of ten percent (10%) of her or his account balance upon reaching the age of 20 years, a second distribution of eleven percent (11%) of her or his remaining account balance upon reaching the age of 21 years, a third distribution of twelve and a half percent (12.5%) of her or his remaining account balance upon reaching the age of 22 years, a fourth distribution of fourteen percent (14%) of her or his remaining account balance upon reaching the age of 23 years, a fifth distribution of seventeen percent (17%) of her or his remaining account balance upon reaching the age of 24 years, a sixth distribution of twenty percent (20%) of her or his remaining account balance upon reaching the age of 26 years, a seventh distribution of twenty-five percent (25%) of her or his remaining account balance upon reaching the age of 27, an eighth distribution of thirty-three percent (33%) of her or his remaining account balance upon reaching the age of 28, a ninth distribution of fifty percent (50%) of her or his remaining account balance upon reaching the age of 29, and a final distribution of one hundred percent (100%) of the remaining account balance upon reaching the age of 30 years.

- (A) **Modified distribution schedule for obtaining a general equivalency diploma.** If an eligible member obtains a general equivalency diploma after he or she begins receiving distributions under the ten-year distribution schedule, starting with the next payment due, her or his remaining account balance shall be paid out over a five-year period in a manner consistent with clause (i).
- (d) **Timing and form.** Quarterly, on a date selected by the trustee, the trustee shall distribute the account of each beneficiary who is entitled to receive a distribution. Each such distribution shall be made by check in a lump sum payment to the beneficiary, subject to any applicable income taxes being withheld from such distribution. With the exception of distributions made in accordance with subsection (f), distributions may only be made to the beneficiary, not to any other person or entity. Disbursements from the trust shall only occur at regularly scheduled disbursement dates.
- (e) **Distributions for deceased beneficiaries.** Any person for whose benefit funds are held in the trust who dies shall have any funds held for their benefit disbursed according to applicable probate law. In no event may any funds be distributed to any individual who is convicted of the wrongful death of a deceased beneficiary.
- (f) **Advance distributions.**
- (1) **Generally.** Notwithstanding the foregoing, amounts held in trust for a beneficiary may be distributed to such person's parent or legal guardian or, upon reaching the age of majority, the beneficiary in such amounts as the trustee determines is necessary for the health, education, or welfare of the beneficiary when such needs are not being met from other Band funds or programs or other state or federal public entitlement programs, subject to the following criteria:
- (i) the parent or legal guardian or, upon reaching the age of majority, the beneficiary must submit a written application to the trustee detailing the purpose and needs for such funds, including the efforts made to secure funding from other sources;
- (ii) the parent or legal guardian or, upon reaching the age of majority, the beneficiary shall maintain a detailed written accounting of all purchases made using any advance distribution to demonstrate that the funds disbursed were expended for the lawful purposes identified in the application, which must be returned to the trustee within 30 calendar days of receipt of the advance distribution;
- (iii) such amount must be limited to an amount sufficient to meet the needs identified in the application, plus the projected taxes on the

withdrawal, and in no case may the amount of the advance distribution exceed \$10,000.00; and

- (iv) any such request must otherwise comply with written policies adopted by resolution passed by the Band Assembly.
- (g) **Decision process for advance distributions.** Any advance distributions shall be made only in the trustee's sole discretion. The trustee may establish a screening committee to review and make recommendations regarding advance distributions. Any such committee may create policies and procedures by which to discharge its responsibilities. Said policies and procedures must be approved by the trustee before implementation.
- (h) **Governing law.** The trust is intended to be consistent with the revenue allocation plan. To the extent that any provision of this section is different from or inconsistent with the applicable provisions of the revenue allocation plan, then the provisions set forth in the revenue allocation plan shall apply.
- (i) **Effect of final distribution.** When the trust makes a final distribution of the account balance to a beneficiary, the trust, trustee, Band Assembly, and Band shall be relieved of all liability to such beneficiary under this chapter.

§ 307. Distributions When the Band is Insolvent.

- (a) **Cessation of distributions.** The trustee shall cease all regular and advance distributions of accounts to beneficiaries if the Band becomes insolvent.
- (b) **Claims of creditors.** At all times during the term of this trust, the trust fund shall be subject to claims of general creditors of the Band under any applicable federal, state, or tribal law.
 - (1) The Commissioner shall have the duty to inform the trustee in writing of the Band's impending insolvency. If a person claiming to be a creditor of the Band alleges in writing to the trustee that the Band has become insolvent, the trustee shall conduct an investigation to determine whether the Band is insolvent and, pending such determination, the trustee shall discontinue the distribution of any funds allocable to the beneficiaries under the trust.
 - (2) Unless the trustee has actual knowledge of the Band's insolvency, or have received notice from the Commissioner or a person claiming to be a creditor alleging that the Band is insolvent, the trustee shall have no duty to inquire whether the Band is insolvent. The trustee may in all events rely on such evidence concerning the Band's insolvency as may be furnished to the trustee and that provides the trustee with a reasonable basis for making a determination concerning the Band's insolvency.

- (3) If at any time the trustee has determined that the Band is insolvent, the trustee shall suspend payments to the beneficiaries and shall hold the assets of the trust for the benefit of the Band's general creditors, provided that such creditors can demonstrate an express and unequivocal waiver by the Band of its sovereign immunity.
 - (4) Notwithstanding an express and unequivocal waiver by the Band of its sovereign immunity, a creditor who has specifically waived recourse against the trust or the trust fund shall not be entitled to satisfy its claims from the trust fund.
 - (5) Nothing in this chapter shall in any way prevent the Band from satisfying creditor claims with assets other than those in the trust fund.
 - (6) If the Band becomes insolvent, the beneficiaries are authorized to pursue their contractual rights under this chapter as general creditors of the Band in the Court of Central Jurisdiction or other court of competent jurisdiction.
 - (7) The trustee shall resume the regular payment of benefits to the beneficiaries in accordance with § 306 only after the trustee has determined that the Band is not insolvent or is no longer insolvent.
- (c) **Aggregate distributions.** Provided that there are sufficient assets, if the trustee suspends the payment of benefits from the trust pursuant to subsection (b) and subsequently resumes such payments, the first payment following such discontinuance shall include the aggregate amount of all payments due to the beneficiaries under the terms of the trust for the period of such discontinuance, less the aggregate amount of any payments made to the beneficiaries by the Band in lieu of the payments provided hereunder during any such period of discontinuance.
- (d) **No waiver of sovereign immunity.** Nothing in this chapter or related trust documents shall be deemed to be a waiver of the Band's sovereign immunity for purpose of any access or recourse by the Band's general creditors to assets in the trust fund.

§ 308. Payments to Nonbeneficiaries

- (a) Except as provided in § 306(f) and § 307, the Band shall have no right or power to direct the trustee to divert to any person or entity who is not a beneficiary any of the trust fund before all payments of benefits have been made to beneficiaries pursuant to the terms of this chapter.

- (b) The prohibition of the payment of any funds to non-beneficiaries outlined in subsection (a) shall not include the allowance of the payment of reasonable administrative fees from the trust under § 313.

§ 309. Authority of the Band

- (a) **Grantor trust.** During the term of this trust, and so long as the Band has not relinquished any of the powers set forth in this section, the trust established under this chapter is intended to be a grantor trust in its entirety, of which the Band shall be treated as the owner for federal income tax purposes within the meaning of the Code, and the provisions of this chapter shall be construed in accordance with that intent.
- (b) **Powers of the Band.** The Band as grantor shall have the following powers with respect to the trust:
- (1) the power, exercisable by the Band or a non-adverse party, to borrow the corpus or income of the trust, directly or indirectly without adequate interest or security;
 - (2) the right, at any time and from time to time, in the Band's sole discretion and in a nonfiduciary capacity, to substitute assets or other property of an equivalent value for any asset held in the trust fund;
 - (3) the power to deal with the trust fund assets for less than adequate or full consideration;
 - (4) the power to vote directly or indirectly stock or other securities held by the trust; and
 - (5) the power to control the investment and reinvestment of the trust funds, by veto or otherwise.

§ 310. Disposition of Income.

During the term of this trust and subject to § 305, all income received by the trust, net of expenses and taxes, shall be accumulated and reinvested.

§ 311. Accounting.

The trustee, with the assistance of the Commissioner or a third-party recordkeeper, shall keep accurate and detailed records of all investments, receipts, disbursements, and other transactions required to be made, including such specific records as shall be agreed upon in writing between

the Band and the trustee. The assistance of a third-party recordkeeper may only be obtained with the prior approval of the Band Assembly. Within a reasonable period of time, not to exceed 30 calendar days, following the close of each calendar year and within a reasonable period of time, not to exceed 30 calendar days, after the loss of elective seat, removal, or resignation of any of the trustee members, the trustee shall deliver to the Chief Executive a written account of their administration of the trust during such year or during the period from the close of the last preceding year to the date of such loss of elective seat, removal, or resignation, setting forth all investments, receipts, disbursements, and other transactions effected by it, including a description of all securities and investments purchased and sold with the cost or net proceeds of such purchases or sales, with accrued interest paid or receivable being shown separately, and showing all cash, securities, and other property held in the trust fund at the end of such year or as of the date of such loss of elective seat, removal, or resignation.

§ 312. Responsibility of Trustee.

- (a) **Trustee as fiduciary.** The trustee shall act with the care, skill, prudence, and diligence that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.
- (b) **Indemnification.** The trustee and the Commissioner shall be indemnified by the Band from and against any and all liabilities, including any settlements, arising by reason of any act or failure to act made in good faith in accordance with the provisions of the trust. For purposes of this subsection, liabilities include expenses reasonably incurred in the defense of any claim relating to the trust.
- (c) **Legal counsel.** The trustee may consult with legal counsel with respect to any of its duties or obligations hereunder.
- (d) **Agents.** The trustee may hire agents, accountants, actuaries, investment advisors, financial consultants, or other professionals to assist it in performing any of its duties or obligations hereunder.
- (e) **Investment advisor; powers and duties.** The powers of any investment advisor hired by the trustee to manage the investments for all or a portion of the trust fund shall be deemed to be and exercised only as fiduciary powers, and in no event shall any such investment advisor have any power or authority to act in a non-fiduciary capacity. The fiduciary standard to which any such investment advisor will be held shall be the same as that established in subsection (a), provided that no investment advisor shall incur any liability to any person for any action taken pursuant to a direction, request, or approval given by the trustee that is contemplated by, and in conformity with, the terms of this trust and is given in writing by the trustee.
- (f) **Powers of the trustee.** The trustee shall have, without exclusion, all rights, powers, and duties with respect to the assets and liabilities of the trust that are conferred on

the trustee by the laws of the State of Minnesota, subject to all restrictions and limitations on such powers under the laws of the State of Minnesota, unless expressly provided otherwise herein. However, if an insurance policy is held as an asset of the trust, the trustee shall have no power to name a beneficiary of the policy other than the trust, to assign the policy, as distinct from conversion of the policy to a different form, other than to a successor trustee, or to loan to any person the proceeds of any borrowing against such policy.

- (g) **Federal tax limitations.** Notwithstanding any powers granted to the trustee pursuant to this chapter or other applicable law, the trustee shall not have any power that could give this trust the objective of carrying on a business and dividing the gains therefrom, within the meaning of the Code, or that could cause this trust to be treated as an entity other than a grantor trust under applicable federal tax laws.

§ 313. Compensation and Expenses.

- (a) The Band shall pay all administrative expenses and any other expenses incurred by the trustee, including any agents of the trustee. The trustee may not receive compensation from or reimbursement of expenses from the trust fund.
- (b) The Commissioner may deduct the cost of reasonable administrative fees from the trust fund as he or she deems reasonable and necessary.

§ 314. Loss of Elective Office, Resignation, or Removal.

- (a) If the trustee selects an independent trustee to administer the duties and responsibilities of the trust as stated in this chapter, the trustee may resign at any time by written notice to the Band. If such decision is made by the trustee, it shall not be effective until 30 calendar days after receipt of such notice by the Band.
- (b) If the Band Assembly continues to serve as the trustee, upon an individual trustee member's loss of or removal or resignation from office, her or his successor on the Band Assembly shall take on the responsibilities of a member trustee upon being sworn into office.
- (c) If the Chief Executive loses or is removed or resigns from her or his office, her or his successor as Chief Executive shall take on the responsibilities to act on behalf of the Band as outlined in this chapter upon being sworn into office, except with respect to powers specifically reserved to the Band Assembly.

§ 315. Termination.

- (a) The trust shall not terminate until the date on which all beneficiaries are no longer entitled to benefits pursuant to the terms of this chapter. Upon termination of the trust, any assets remaining in the trust shall be returned to the Band.
- (b) Upon written approval of the beneficiaries, the Band may terminate this trust prior to the time all benefit payments under the trust have been made. All assets in the trust at termination shall be returned to the Band.

§ 316. Administration and Finances.

- (a) The trust shall be administered by the trustee.
- (b) The trustee shall have all powers necessary to administer the trust, including, without limitation, the discretionary authority to interpret the provisions of the trust, to decide all questions of eligibility, to establish rules and forms for the administration of the trust, and to appoint individuals, committees, and entities to assist in the administration of the trust and any other agents it deems advisable.
- (c) All determinations, interpretations, rules, and decisions of the trustee shall be conclusive and binding upon all persons having or claiming to have any interest or right under the trust.
- (d) The trustee shall have the power to delegate specific administrative duties and responsibilities to individuals, committees, or entities. The trustee may rescind any delegation at any time. Except as otherwise required by law, each person or entity to whom a duty or responsibility has been delegated shall be responsible for the exercise of such duty or responsibility and shall not be responsible for any act or failure to act of any other person or entity.
- (e) The Institutional Investment Committee shall invest the trust fund in accordance with the Band's Investment Policy.

§ 317. Nonalienation.

The interest of any Beneficiary prior to the designated date of distribution under § 306 shall not be subject to the claims of any creditor, spouse, or others, or to legal process, and may not be voluntarily or involuntarily alienated or encumbered, anticipated, assigned at law or equity, pledged or subject to attachment, garnishment, levy, execution, or other legal or equitable process. The assets of this trust shall not be considered the beneficiary's assets in any way so as to preclude such beneficiary from meeting the qualifications for eligibility to receive support from other sources in connection with the beneficiary's financial hardship.

§ 318. Dispute Resolution.

- (a) The exclusive forum for the resolution of any dispute arising directly or indirectly under this chapter shall be the Court of Central Jurisdiction.
- (b) This chapter shall be construed, and any dispute arising directly or indirectly under this chapter shall be resolved, in accordance with applicable Band law. The Court of Central Jurisdiction shall have no authority to award punitive, special, exemplary, treble, or consequential damages, and any such award shall be null and void. Any monetary damages awarded in favor of or any amounts required to be paid in equity to a beneficiary shall in no event exceed the amounts specified in § 305(f).
- (c) Subject to subsections (a) and (b), the Band in its role as grantor and the trustee expressly waive sovereign immunity, and any defense based thereon, from suits brought by a beneficiary or by the Chief Executive on behalf of a beneficiary that arise directly or indirectly under this chapter, including but not limited to suits relating to the validity or arising from the performance, breach, or termination of this chapter. This limited waiver of immunity shall not extend to suits brought by any person or entity other than a beneficiary or the Chief Executive on behalf of a beneficiary, and shall not extend to any suits brought by a beneficiary or the Chief Executive on behalf of a beneficiary other than those set forth in this section. This limited waiver shall not extend to, and no party shall have recourse against, any property or funds of the Band held in trust by the United States of America for the benefit of the Band or any assets of the Band in its role as grantor or the Band Assembly in its role as trustee other than those specified in this section. By enacting this chapter, neither the Band nor the Band Assembly waives, limits, or modifies its sovereign immunity from suit except as specifically provided in this section.

§ 319. Compliance with Internal Revenue Law.

In administering the trust, the trustee shall comply with all applicable Internal Revenue Code provisions and regulations, revenue procedures, revenue rulings, and other guidance in force, to ensure that amounts contributed to and held in trust shall not be taxable to the individual beneficiary until actually distributed, or made available for distribution, pursuant to this chapter. At such time as any distributions are made, the trustee or its delegate shall deduct and withhold federal income taxes as required under federal law, and shall issue any required reports and file any required information returns.

§ 320. Severability.


Any provision of this chapter prohibited by law shall be ineffective to the extent of any such prohibition, without invalidating the remaining provisions hereof.

EFFECTIVE DATE. This bill shall take effect immediately upon signature by the Chief Executive, or lack of a veto, as provided in 3 MLBS § 17.

Act 50-23
(Band Assembly Bill 20-04-50-23)

Introduced to the Band Assembly on this
Second day of August in the year
Two thousand twenty-three.

Passed by the Band Assembly on this
Second day of August in the year
Two thousand twenty-three.


Sheldon Boyd, Speaker of the Assembly

APPROVED

Date: August 9, 2023


Melanie Benjamin, Chief Executive

OFFICIAL SEAL OF THE BAND

VETO



THE MILLE LACS BAND OF
OJIBWE INDIANS

Executive Branch of Tribal Government

August 9, 2023

Mille Lacs Band Assembly
43408 Oodena Drive
Onamia, MN 56359

Re: Veto of Bill 20-04-50-23

Dear Honorable Members of the Band Assembly:

Thank you for the significant work you put into Bill 20-04-50-23. Unfortunately, I must hereby veto Band Assembly Bill 20-04-50-23 so that we can discuss changes that will protect decisions about early withdrawal of our children's money from being influenced by political elections. I do have a proposed compromise that I would like to discuss with you when we meet in a Compromise Hearing.

I do not believe elected officials should be granted sole discretionary power to serve as Trustees for the Minor Trust Fund because Band Members are not treated equally under this system. Also, elected officials cannot serve as trustees without compromising their legal fiduciary duties under trust law, which include: (1) The duty to deal impartially with beneficiaries; (2) the duty of loyalty to beneficiaries above all others; and (2) the duty to avoid conflicts of interest. The risk of future District Representatives—or any other elected official—to abuse their sole discretionary power to approve withdrawals from Minors Trust Fund accounts is too great.

The Band's system is already flawed. This bill makes the flaws permanent in Band law. If we continue with a system that allows politicians to decide whether an adult's request to withdraw money early from a child's Trust Fund Account should be approved, we risk compromising the legal fiduciary duties of a Trustee.

In simple terms, elected officials (the Minor Trust Fund Trustees) are politicians who depend on the support of adult voters (who are eligible to request early withdrawal of a child's money) to support their election to office every four years. No matter how ethical an elected official is, every time they support an early withdrawal request from of a child's Trust Fund Account, the elected official puts themselves at risk of being accused of prioritizing a potential voter over their legal duties as Trustee to the child. The duty of a Trustee to avoid conflicts-of-interest is impossible carry out if the Trustees are politicians.

For years, an adult caregiver wanting to use the child's Trust Fund Account has only needed to submit a request for withdrawal to their District Representative. The District Representative would determine whether or not the Band Member was truly struggling to the point where the child's needs would not be met unless the child pays for those needs themselves. Once the District Representative made their decision, they recommended to the other District Representatives how to vote on that request at the next Band Assembly meeting. Generally speaking, history has shown that the other District Representatives tend to go along with that recommendation because they trust that the District Representative knows what's best for their District.

Despite the best efforts and good intentions of elected officials making these decisions, historically this practice has been inconsistent across the three districts. These requests are not being treated uniformly. District Representatives are individuals who do not think the same. Some past District Representatives have been more lenient than others and have tended toward supporting most requests that came before them. We have also had District Representatives who are more conservative or ethically opposed to the idea of an

DISTRICT I

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adult caregiver relying on the child to finance the child's own needs, and who have tended toward denying nearly every request.

Elected officials are human beings who are not unbiased because we each have personal views and attitudes that influence our decisions. The decision about whether adult Band members are given money from a Minor's trust account should not be determined by how sympathetic their District Representative is or their philosophical outlook. Rather, clearly defined criteria should guide these decisions, and the decisions should be made by trustees whose only loyalty is to the child, who have no relationships with the adults seeking the money, and who will treat all Band members equally regardless of which district they live in.

As stated earlier, this bill does not address that longstanding problem, and it proposes to codify that problem into Band statutes. Specifically, while the bill properly refers to the Indian Gaming Regulatory Act's requirements for distributions, Section 306(g) grants the District Representatives "sole discretion" to authorize distributions. Discretionary decision-making on a case-by-case basis does not promote integrity or uniformity. Future District Representatives could abuse that power for personal gain by approving more distributions before elections to influence voters who are experiencing difficult personal circumstances. Government decisions must be guided by clearly defined criteria.

However, the criteria established under Section 306(f)(1)(i)-(iv) are not criteria at all; they are application requirements and conditions for distributions. Criteria should define a health, education, and welfare necessity to the greatest extent possible. One example of criteria is under Section 306(f)(1), which requires Band members to exhaust all other federal, state and Band resources. Drafting clearly defined criteria does not require the Band Assembly to anticipate and define each specific factual circumstance, but drafting clearly defined criteria requires more than discretionary decision-making.

Lastly, under Section 318(c), the Chief Executive should not be the party representing a class action lawsuit against the District Representatives. Rather, the Solicitor General would be the proper entity to file that action in the Court of Central Jurisdiction.

As a compromise, I recommend that the bill should establish a process to appoint a Trustee or Trustees (perhaps the Investment Committee) and to vest them with all duties and powers applicable to a trustee under the law. An elected official with knowledge of the child's circumstances could still weigh in via a letter recommending support or denial of a request for early withdrawal, but the actual decision should be made by Trustees without any ties whatsoever to the adult parties making the request and who could objectively determine if the request meets the criteria for an early withdrawal.

Lastly, under Section 318(c), the Chief Executive should not be the party representing a class action lawsuit against the District Representatives. Rather, the Solicitor General would be the proper entity to file that action in the Court of Central Jurisdiction.

For these reasons, I hereby veto Bill 20-04-50-23 and offer the aforementioned compromise.

Sincerely,



Melanie Benjamin
Chief Executive

Enc: Vetoed Bill 20-04-50-23
cc: Caleb Dogeagle, Solicitor General
Darcie Big Bear, Parliamentarian