

Band Assembly Bill 19-04-04-22

A Bill for Mille Lacs Corporate Ventures (“Corporate Ventures”), a corporate body politic of the Non-Removable Mille Lacs Band of Ojibwe (“Band”), for the purpose of appropriating funds and authorizing expenditures to Corporate Ventures for the operations and capital and economic development projects of any current or future non-gaming business managed or operated directly or indirectly by Corporate Ventures (“Non-Gaming Businesses”) for the period beginning October 1, 2021, and ending September 30, 2022.

The District I Representative introduced the following Bill on the 20th day of October, 2021.

Preamble

Be it enacted by the Band Assembly of the Non-Removable Mille Lacs Band of Ojibwe (“Band Assembly”) for the purpose of appropriating funds and authorizing expenditures to Corporate Ventures for the operations and capital and economic development projects of any current or future non-gaming business managed or operated directly or indirectly by Corporate Ventures (“Non-Gaming Businesses”) for the period beginning October 1, 2021, and ending September 30, 2022.

Statement of Purpose. The Band Assembly recognizes that economic development is the essential mandate of Corporate Ventures. Corporate Ventures is created by Band Statute to, among other purposes, establish and operate commercial enterprises for the benefit of the Band, to avail the Band of the benefits of engaging in business and economic development without subjecting the Band to the erosion of its inherent sovereignty, and to insulate Band assets from liability assumed in the conduct of its business operations. 16 MLBS §§ 102 (c), (e), (f). To that end, the Band Assembly is committed to support Corporate Ventures in its efforts at economic development and business diversification.

Section 1. General Appropriation. The Band Assembly hereby appropriates and authorizes expenditures consistent with this Ordinance or other applicable Band law to Corporate Ventures for the period beginning October 1, 2021, and ending September 30, 2022, for the general operations and capital and economic development projects of Non-Gaming Businesses, subject to and in accordance with the terms of this Ordinance.

- (a) No later than August 1, 2022, Corporate Ventures shall submit a budget to the Band Assembly for Fiscal Year 2023. The Fiscal Year 2023 budget shall be in such form and content to provide supporting detail in accord with general custom and usage for similar types of business budgets and shall be specific to allow the Band Assembly to reasonably discern the proposed actions and expenditures of Corporate Ventures. The proposed budget shall consist of the following component parts: (1) existing and proposed capital and economic development projects and (2) the general operations of any Non-Gaming Businesses managed or operated by Corporate Ventures directly or indirectly through other entities.

- (b) Unless otherwise approved by Band Assembly Resolution, any and all funds previously appropriated and remaining in the Non-Gaming Businesses and Economic Development Fund at the end of Fiscal Year 2022 shall not be carried over into the next fiscal year, but shall be deposited into the Non-Gaming Business and Economic Development Fund of the Mille Lacs Band Government within sixty (60) calendar days after the start of Fiscal Year 2023.
- (c) Corporate Ventures shall report to the Band Assembly on a quarterly basis, or as otherwise requested by the Band Assembly, the cash requirement levels needed to operate its Non-Gaming Businesses and the justification to support the use of such funds.

Section 2. Revenue.

- (a) One hundred percent (100%) of the net non-gaming revenue shall be deposited quarterly in the Non-Gaming Business and Economic Development Fund. All Non-Gaming Businesses shall calculate and remit their net revenues for a fiscal quarter no later than the last day of the first month following the end of a fiscal quarter to the Non-Gaming Economic Business and Development Fund. Net Revenue is defined as the gross revenue from any and all departments, units, and all other sources of the Non-Gaming Businesses less reasonable and proper operating expenses for those facilities, and businesses, including a project-based capital project reserve consistent with industry standards as per the attached schedule, to upkeep and maintain the facilities, and continue the improvement of the facilities necessary to ensure the facilities remain premiere business destinations.
- (b) For purposes of computing net revenue, reasonable and proper operating expenses may include, but are not limited to:
 - (1) Payment of wages, salaries, benefits, and training and educational programs for employees;
 - (2) Payment of principal and interest for debt acquired to maintain and improve assets;
 - (3) Prizes;
 - (4) Materials and supplies;
 - (5) Administrative fees;
 - (6) Utilities;
 - (7) Repairs and maintenance;

- (8) Interest on installment contract purchases;
 - (9) Insurance and bonding;
 - (10) Advertising and marketing expenses;
 - (11) Professional fees;
 - (12) Security costs;
 - (13) Costs associated with regulatory compliance;
 - (14) Equipment purchases and leases;
 - (15) Trash removal;
 - (16) Snow removal;
 - (17) Costs of goods purchased;
 - (18) A reasonable operating reserve fund for expenditures that may arise periodically but not in a regular recurring manner; and
 - (19) A reasonable reserve and replacement fund, consistent with industry standards, or as required by any future debt instruments in excess of the capital reserve described at Subsection 2(a) above, if any.
- (c) The Commissioner of Finance shall transfer funds to the Non-Gaming Business and Economic Development Fund no less than annually.

Section 3. Operations Budget. Revenues of Non-Gaming Businesses are budgeted at: Seventy-one million, ninety-eight thousand, two hundred thirty dollars and no cents (\$71,098,230.00) and a capital projects reserve budgeted at: One million, six hundred fifty-nine thousand, eight hundred eighty-four dollars and no cents (\$1,659,884.00) for Fiscal Year 2022. Capital projects are funded from the capital projects reserve budget line item. Any line item budget modification totaling one hundred thousand (\$100,000.00) or more must be approved by the Corporate Ventures Board of Directors. The Commissioner of Corporate Affairs shall notify the Secretary-Treasurer of the Band of the change in writing within five (5) business days of the Corporate Ventures Board of Directors action. Any cumulative budget modification to net revenues over five hundred thousand dollars (\$500,000.00) must be approved by Band Assembly.

Section 4. Economic Development Projects Budget.

- (a) Projects Equal to or Less Than \$250,000.00. At least ten (10) business days before expending money on a project for Non-Gaming Businesses equal to or

exceeding twenty-five thousand dollars (\$25,000.00) and less than two hundred fifty thousand dollars (\$250,000.00), Corporate Ventures shall provide written notice to the Band Assembly. If the Band Assembly stays the project within ten (10) business days after receiving proper notice, then Corporate Ventures may not expend money on the project.

- (b) Projects in Excess of \$250,000.00. Corporate Ventures shall notify the Band Assembly of any payment to a vendor exceeding two hundred fifty thousand dollars (\$250,000.00), which is paid as either a single payment or in a cumulative amount to the same vendor within the fiscal year. Corporate Ventures may not expend more than two hundred fifty thousand dollars (\$250,000.00) on any single project for a Non-Gaming Business without prior authorization from the Band Assembly. Said authorization shall be in the form of a Resolution adopted by the Band Assembly.

Section 5. Capital Projects Budget.

- (a) The Commissioner of Corporate Affairs shall present the Capital Projects Plan (“Plan”) to the Commissioner of Finance no later than August 1st of each year. The Plan shall include detailed reports which describe capital improvements completed during the fiscal year as well as those planned for the next fiscal year and four (4) years thereafter. The Plan shall not be binding on the Non-Gaming Businesses, but will be used by the Band Assembly as a tool to project future capital project cost outlays to facilitate the annual budgetary process. Upon receipt of the Plan, the Commissioner of Finance and the Commissioner of Corporate Affairs shall meet with the Band Assembly to discuss the details of the Plan. The Band Assembly reserves all authority to approve or adjust any Plan being proposed by the Commissioner of Corporate Affairs.
- (b) At the end of Fiscal Year 2022, Corporate Ventures shall submit a report detailing the capital expenditures and funds expended to complete projects for Non-Gaming Businesses during the fiscal year. Except as otherwise approved by Band Assembly Resolution, any funds previously appropriated and remaining at the end of Fiscal Year 2022, excluding obligated funds in any capital improvement budget line item at the end of Fiscal Year 2022, shall be deposited in the Non-Gaming Business and Economic Development Fund within sixty (60) calendar days.

Section 6. Reporting Requirements. Corporate Ventures shall provide quarterly reports on the Non-Gaming Businesses to the Chief Executive, Speaker of the Assembly, District Representatives, and the Commissioner of Finance at official quarterly meetings and at other times as requested.

- (a) Reporting on Business Participation. The required form of reporting shall be in a format acceptable to the Band Assembly to maximize the value of the information contained therein. The Band Assembly may, at any time, following reasonable notice, call to meet with the Commissioner of Corporate Affairs to discuss any

and all matters concerning the Non-Gaming Businesses. At a minimum, Corporate Ventures shall report or cause to be reported to the Band Assembly the following information concerning the operations of the Non-Gaming Businesses:

- (1) Quarterly balance sheet, income or profit and loss, and cash flow statements;
- (2) Annual audited financial statements within one hundred twenty (120) days of the end of the fiscal year;
- (3) All other activities the Non-Gaming Businesses are engaged in;
- (4) Any business record, statement, or other document in the possession or control of the Non-Gaming Businesses, subsidiaries, or direct investments and, at Band Assembly's request, delivered no later than ten (10) consecutive business days from the date of the request; and
- (5) A monthly written summary of all vendor contracts which have been submitted to the Corporate Ventures Legal Department for review. The contract summary shall be submitted within five (5) business days of the end of each month. The summary shall include:
 - (i) Contract name;
 - (ii) Name of the vendor providing goods and/or services;
 - (iii) Amount of the contract;
 - (iv) Description of the goods and/or services to be provided;
 - (v) The contract start and end dates;
 - (vi) The department for which the goods or services are to be provided and the departmental employee who initiated the contract;
 - (vii) Master control number; and
 - (viii) Other ancillary information applicable to the contract.
- (6) Band member and other Native American employment summary at quarter end. The summary shall be in sufficient detail to discern position, date of hire, date of termination, and tribal affiliation.

Section 7. Miscellaneous Provisions.

- (a) Loans for Non-Gaming Businesses and Other Credit. Corporate Ventures shall not borrow, lend, or enter into any loan or lease agreement or establish any line of credit for Non-Gaming Businesses which individually, or in aggregate, are in excess of two hundred fifty thousand dollars (\$250,000.00) without the prior approval of the Band Assembly.
- (b) Tax Revenue. All tax revenue collected by Corporate Ventures or Non-Gaming Businesses shall not be distributed or used for any purpose other than that expressly provided for by appropriation of the Band Assembly.
- (c) Employment Information. Corporate Ventures, on behalf of all Non-Gaming Businesses, shall submit a combined report to the Band Assembly detailing the specific budgeted dollar amount for each of the top twenty-five (25) positions, vacant or filled, of every business entity and shall report a dollar value in the aggregate for all the remaining positions of the business entities no later than March 1 of every year. Bonus amounts for each of the top positions shall also be included in this report.
- (d) Prohibited Projects. Corporate Ventures and Non-Gaming Businesses shall not use funds for any business activity, purpose, or venture that is illegal or inconsistent with the values of the Band.
- (e) Marketing Budget. Corporate Ventures and Non-Gaming shall decrease the Non-Gaming Businesses marketing budget by five percent (5%) from Fiscal Year 2021.
- (f) The professional and personal development of Band members is a priority of the Band. As such, Non-Gaming Businesses shall:
 - (i) Work with Band Member Development Advocates and TERO Representatives, who are employees of the Band, at each Non-Gaming Business to ensure Band members are given opportunities for employment and professional growth in order to increase Band member self-esteem and career progression;
 - (ii) Make every reasonable effort to increase Band member employment, retention, promotion, and make Band member employment statistics available to membership on a quarterly basis;
 - (iii) Implement measurable and sustainable Band member development goals;
 - (iv) Create and implement a Band member succession plan for management positions; and

- (v) Submit monthly reports to Band Member Development Advocates and TERO Representatives that includes statistics on the number of Band members hired, working positions, training opportunities and results, and promotions within the Non-Gaming Businesses. Band Member Development Advocates and TERO Representatives shall then provide quarterly reporting to the Band Assembly.

Ordinance 04-22
(Band Assembly Bill 19-04-04-22)

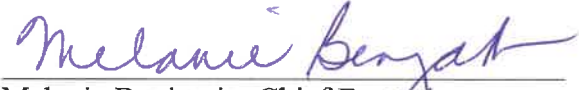
Introduced to the Band Assembly on this
Twentieth day of October in the year
Two thousand twenty-one.

Passed by the Band Assembly on this
Twentieth day of October in the year
Two thousand twenty-one.


Sheldon Boyd, Speaker of the Assembly

APPROVED
Date: _____

VETO


Melanie Benjamin, Chief Executive

OFFICIAL SEAL OF THE BAND



MILLE LACS BAND OF OJIBWE

Executive Branch of Tribal Government

October 23, 2021

Speaker Sheldon Boyd
Members of the Band Assembly
43408 Oodena Drive
Onamia, Minnesota 56359

Dear Honorable Members of the Band Assembly:

Pursuant to 4 MLBS § 6(1), I hereby veto Band Assembly Bills 19-04-03-22, 19-04-04-22, and 19-04-05-22 for the reasons below.

These bills may be appropriation bills, but they effectively serve as amendments to some of Title 16's foundational provisions. These amendments would alter the relationship between Band government and Mille Lacs Corporate Ventures in a manner that directly contravenes existing law under Title 16. If signed into law, these amendments would permit the Band Assembly to serve as Mille Lacs Corporate Ventures' *de facto* Board of Directors in numerous instances related to economic development.

The Band established MLCV to allow the Band to avail itself of the benefits of engaging in business. Title 16 makes MLCV a unique entity: one that is both a political subdivision and a separately chartered corporation. One important purpose of MLCV that is omitted from each bill's "Statement of Purpose" is to separate government from business. Title 16 states that one of MLCV's purposes is "to make sound business and economic development decisions in a way that is insulated from day to day political considerations faced by Band elected leaders[.]" Yet, these bills would force MLCV to do exactly what it was designed not to do: to include political considerations faced by elected officials when making business and economic development decisions.

For example, Title 16 expressly vests Mille Lacs Corporate Ventures with the power "[t]o enter any contracts or agreements necessary for business or economic development endeavors[.]" However, each bill grants the Band Assembly the authority to veto any economic development contract over \$25,000. These bills would hinder MLCV's business decision making by forcing MLCV to consider whether Band Assembly would ratify an economic development contract during the negotiation process.

The Band Assembly has confirmed numerous appointees to the Commissioner of Corporate Affairs and Board of Directors positions over the years. The Band Assembly confirmed these individuals to fulfill important business mandates, including the mandate to exercise sound business judgment. However, these bills effectively substitute the Band Assembly's business judgment for the Board of Directors' business judgment on economic development contracts over \$25,000. These provisions imply a lack of trust in the individuals appointed to these positions to carry out that important mandate.

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DISTRICT III

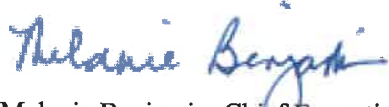
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URBAN OFFICE

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I look forward to discussing these issues with you all during the compromise process. Please feel free to contact me if you wish discuss this further in the meantime.

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Melanie Benjamin, Chief Executive

cc: Joseph Nayquonabe, Commissioner of Corporate Affairs
Caleb Dogeagle, Solicitor General