

Mille Lacs Band Statutes Annotated

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TITLE 15 – GAMING REGULATORY ACT

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CHAPTER 1

GAMING REGULATORY ACT

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SUBCHAPTER 1

GENERAL PROVISIONS

<u>Section</u>
1. Findings.
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§ 1. Findings.

The Mille Lacs Band of Ojibwe Assembly finds that:

- (a) The Mille Lacs Band of Ojibwe has a long history of conducting different forms of gaming within our sovereign territory. Prior to entering into treaties with the United States the Band allowed many traditional forms of gaming;
- (b) Gaming on Band Lands is a valuable means of generating revenues needed by the Band to enhance economic development and self-sufficiency, promote and strengthen self-governance, increase Band member employment, and to fund essential Band social programs and services; and
- (c) Band Regulation and control of gaming on Band Lands is necessary in order to ensure the welfare and best interests of the Band, its members and patrons of the Band's gaming enterprises, prevent any proliferation of organized crime and other corrupting influences on Band Lands, protect the fairness of gaming conducted on Band Lands and preserve the political integrity of the Band.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 2.

§ 2. Declaration of Purpose.

The express purposes of this chapter are:

- (a) to provide a statutory basis for the regulation of gaming on Band Lands to ensure that gaming is shielded from organized crime and other corrupting influences, to ensure that the Band is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and the player;
- (b) to regulate and control gaming on Band Lands for the protection of gaming as a means of promoting economic development, self-sufficiency, and strong tribal government;
- (c) to foster a spirit of cooperation with federal officials in the regulation of gaming;
- (d) to foster a spirit of cooperation with Minnesota officials in the conduct of class III gaming pursuant to any Compacts;
- (e) to ensure that gaming on Band Lands is conducted in conformity with Band law, the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 et seq. and regulations promulgated pursuant thereto, applicable State law and the Compact;

- (f) to ensure that the construction and maintenance of gaming facilities and the operation of all gaming conducted at such facilities is conducted in a manner which adequately protects the environment, public health, and safety; and
- (g) to establish an independent regulatory authority charged with oversight and enforcement of gaming regulatory matters under Band law, with the goal of becoming self-regulating under IGRA and regulations promulgated thereto.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 3.

§ 3. Definitions.

For the purpose of this chapter, the following definitions shall apply:

- (a) **“Authority”** means the Mille Lacs Band Gaming Regulatory Authority established by this chapter.
- (b) **“Authority Data”** means all information, files, reports, records, correspondence and other data collected, created, received, maintained or disseminated by the Authority regardless of its physical form, storage method, or conditions of use.
- (c) **“Applicant”** means an individual or entity that applies for a Band gaming license or certification.
- (d) **“Background Investigation”** has the meaning given in 25 C.F.R. § 556.4.
- (e) **“Band”** means the Mille Lacs Band of Ojibwe.
- (f) **“Band Gaming Laws”** means this chapter and all subsequent amendments thereto, and all detailed regulations promulgated thereunder.
- (g) **“Band Lands”** means any land within the jurisdiction of the Band upon which gaming activities pursuant to IGRA may be conducted.
- (h) **“Board”** means the Board of Directors of the Gaming Regulatory Authority.
- (i) **“Closely associated independent contractor”** means any contractor that shares common ownership, officers, or directors with any management principal or person related thereto.
- (j) **“Chairperson”** means the Chairperson of the Board.

- (k) **“Charitable Gaming”** means any Gaming carried out by an Indian Charitable Organization on Band Lands.
- (l) **“Compact(s)”** means any class III tribal-state gaming compact in effect between the Band and the State of Minnesota to govern the conduct of certain class III Gaming Activities on Band Land.
- (m) **“Compliance”** means that any gaming and gaming related activity regulated by this chapter is conducted in accordance with applicable laws.
- (n) **“Compliance Determination”** has the meaning given in § 308 of this title.
- (o) **“Confidential Data”** means Authority Data on a Person that by Band statute, regulation or order, or by applicable federal law, is not made available to the public. The term includes Confidential Limited Availability Data and Confidential Restricted Availability Data.
- (p) **“Confidential Financial Information”** means any financial accounting records, ledgers, reports, and audits; and any profit and loss statements, cash flow projections, tax returns, invoices, checks, bank records, or other data on the revenues, expenditures, or financial obligations of a Person, other than a Gaming Enterprise.
- (q) **“Confidential Limited Availability Data”** means Confidential Data that by Band statute, regulation or order, or by applicable federal law is made accessible to the subject of the data, if any.
- (r) **“Confidential Restricted Availability Data”** means Confidential Data that is not available to the subject of the data.
- (s) **“Corporate Commission”** means the Corporate Commission of the Mille Lacs Band of Ojibwe as established by 16 MLBS § 101 et seq.
- (t) **“Corporate Commissioner”** means the Mille Lacs Band Commissioner for Corporate Affairs.
- (u) **“Court of Central Jurisdiction”** or **“CCJ”** means the Court of Central Jurisdiction of the Mille Lacs Band of Ojibwe Indians established by 5 MLBS § 1.
- (v) **“Director”** means the director of the Office of Business Regulation and Compliance as described in § 401 of this title.
- (w) **“Exclusion List”** means a list prepared pursuant to § 312 of this title that contains the names of Persons who shall not be permitted in any Gaming Enterprise.
- (x) **“Financial Information on a Gaming Enterprise”** includes, but is not limited to, any financial accounting records, ledgers, reports, and audits; and any profit and loss

statements, cash flow projections, tax returns, invoices, checks, bank records, or other data on the revenues, expenditures, or financial obligations of a Gaming Enterprise.

- (y) **“Gaming”** means an activity in which a person stakes or risks something of value on the outcome of a contest of chance or a future contingent event, not under his or her control or influence, upon an agreement or understanding that the person, or someone else, will receive something of value in the event of a certain outcome, but shall not include a bona fide business transaction.
- (z) **“Gaming Activity”** or **“Gaming Activities”** means any class I, class II, or class III gaming activity as defined by the Indian Gaming Regulatory Act and conducted by or under the jurisdiction of the Band.
- (aa) **“Gaming Compliance Officer”** or **“GCO”** means the officer described in § 401(a)(4) of this title.
- (bb) **“Gaming Contractor”** means any person or entity that supplies gaming devices or other gaming equipment, personnel, or services, including gaming management or consulting services, to any Gaming Activity or Gaming Enterprise.
- (cc) **“Gaming Enterprise(s)”** means the Grand Casino Mille Lacs, the Grand Casino Hinckley, and any other commercial facility or business owned by the Band through the Corporate Commission and operated, in whole or in part, for the conduct of Gaming or related to Gaming Activities within the jurisdiction of the Band.
- (dd) **“Gaming Regulatory Authority”** means the independent agency established herein and designated with responsibility for performing the Band’s regulatory responsibilities and duties under IGRA, this title, and any Compacts.
- (ee) **“Gaming Supplier”** means any contractor or other supplier of gaming goods, supplies, materials, equipment, or services to any Gaming Enterprise, the aggregate annual cost of which to the Band’s Gaming Enterprises is at least \$25,000. The term Gaming Supplier shall be more particularly defined in detailed gaming regulations to be promulgated by the Authority.
- (ff) **“Hearing Examiner”** means an individual employed or contracted with by the Authority for the purpose of conducting a hearing pursuant to subchapter 4 of this title. Such person shall: (1) be independent of any claimant, the Corporate Commission, any Gaming Enterprise, and any affiliates of the foregoing; (2) be an attorney in good standing licensed by the Mille Lacs Band and any State; and (3) have relevant legal experience.
- (gg) **“Immediate Family”** or **“related to”** means persons who are the subject individual’s spouse, parents, siblings, and children, either adopted or biological.

- (hh) **“Indian Charitable Organization”** means any non-profit association or corporation, or unincorporated community group with a primary purpose of engaging in social, educational, cultural, religious or charitable activities, or a combination thereof within the tribal community.
- (ii) **“Indian Gaming Regulatory Act”** or **“IGRA”** means the Act of October 17, 1988, Public Law 100-497, 25 U.S.C. § 2701 as amended, and all regulations promulgated pursuant thereto.
- (jj) **“Information on a Pending Compliance Recommendation”** means (1) any data gathered by the Director in connection with an ongoing investigation for which a Compliance Recommendation is required pursuant to § 402(b) of this title or (2) any Compliance Recommendation that has been completed by the Director but not yet finally acted upon by the Authority.
- (kk) **“Information on a Pending License Application”** means any data submitted by the applicant or gathered by the Director or the Authority in connection with a pending application for a license required by this chapter.
- (ll) **“Initial Detailed Gaming Regulations”** means a full and complete set of gambling regulations, to be the first regulations promulgated by the Authority pursuant to § 305 of this title and submitted to the Band Assembly for final approval, to comprehensively regulate all aspects of gaming necessary to (1) ensure effective, independent oversight and regulation of all gaming conducted on Reservation lands; (2) ensure that Persons who hold key positions in the Band’s gaming enterprises are honest, trustworthy and of good moral character; (3) protect Band assets through implementation of strong, effective financial accounting and internal cash controls; (4) comply with all applicable law, including Band law, federal law, and Band/State gaming compacts; and (5) clearly define and distinguish the respective duties and powers of casino management and gaming regulation so that they complement one another in such a manner as to maximize the benefits of gaming to the Band and the surrounding non-Indian community.
- (mm) **“Key Employee”** means any person as defined in 25 C.F.R. § 502.14 and any other persons who may, pursuant to the Detailed Gaming Regulations, be included under the definition of “Key Employee” and become subject to such requirements.
- (nn) **“Management Principal”** means any person who is an officer or member of the Board of Directors or other person defined as a Primary Management Official as defined in 25 C.F.R. § 502.19.
- (oo) **“Net Revenues”** means gross gaming revenues of an Indian gaming operation less: (1) amounts paid out as, or paid for, prizes; and (2) total gaming-related operating expenses, excluding management fees.

- (pp) **“Non-Key Employee”** means any person employed by a Gaming Enterprise or the Corporate Commission, who is not otherwise defined as a Key Employee or Primary Management Official.
- (qq) **“Office of Gaming Regulation and Compliance”** or **“OGR&C”** means the office charged with the responsibility of, inter alia, regulating gaming activity within the jurisdiction of the Band.
- (rr) **“Person”** means any individual, partnership, corporation, association, business trust, joint stock company, unincorporated association or society, any other business or non-business entity, or the legal representative of such entity.
- (ss) **“Personnel Data”** means data on individuals collected because the individual is or was an associate of, or an applicant for employment with, the Authority or the OGR&C, or acts as an independent contractor therefor.
- (tt) **“Primary Management Official”** means any person as defined in 25 C.F.R. § 502.19 and any other persons who, at the discretion of the Authority, may be included under the definition of “Primary Management Official” and become subject to such requirements.
- (uu) **“Security Information”** means Authority Data the disclosure of which would be likely to substantially jeopardize the security of Gaming Enterprise information, possessions, associates, guests or property against theft, tampering, improper use, illegal disclosure, trespass or physical injury.
- (vv) **“Trade Secret Information”** means Authority Data, including formula, pattern, compilation, program, device, method, technique, or process (1) that was supplied by the affected Person; (2) that is the subject of efforts by the affected Person to maintain its secrecy; and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other Persons who can obtain economic benefit from its disclosure or use.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 4.

SUBCHAPTER 2

GAMING ACTIVITY

Section

101. General Prohibition on Gaming Activities; Violations Punishable.

- 102. Unauthorized Gaming Prohibited.**
- 103. Permitted Gaming.**
- 104. Tribal-State Compacts for Class III Gaming Authorized.**
- 105. Use of Band Lands for Gaming Purposes.**
- 106. Health, Safety, and Environmental Protections.**
- 107. Prohibited Activities.**

§ 101. General Prohibitions on Gaming Activities; Violations Punishable.

All Gaming Activity on Band Lands shall be conducted in compliance with this chapter and any Gaming Activities not authorized by this chapter or by regulations promulgated pursuant to this title by the Authority is prohibited. Any violations of this chapter shall be punishable through means adopted by this chapter, the Authority and as otherwise provided by Band law.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 5.

§ 102. Unauthorized Gaming Prohibited.

All Gaming Activities on Band Lands, whether class I, II, or III, are prohibited and unlawful, except as expressly authorized by this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 6(a).

§ 103. Permitted Gaming.

- (a) **Class I Gaming.** class I traditional games are permitted to the extent consistent with tribal custom and practice. The Authority may prohibit and prevent any conduct which is claimed to be class I gaming if it finds that such conduct is not in accordance with tribal customs or practices or violates the IGRA or other applicable law. The Authority shall consult with a committee of Band Elders to determine which games are consistent with Band custom and practice. These games shall be listed and defined in the Initial Detailed Gaming Regulations.
- (b) **Class II and Class III Gaming.** Class II and class III gaming on Band Lands is hereby authorized. The Band has the sole proprietary interest in and responsibility for the conduct of any Gaming Enterprise.
 - (1) **Permitted Class II Games.**

- (i) any game of chance which the Authority and/or the National Indian Gaming Commission has determined to be class II; and
- (ii) any game of chance for which the Authority has promulgated rules and regulations so that such games are conducted in accordance with this chapter.

(2) **Permitted Class III Games.**

- (i) video Games of Chance licensed and conducted pursuant to the compact between the Commission and the State of Minnesota;
- (ii) blackjack Games licensed and conducted under the terms of the compact between the Commission and the State of Minnesota; and
- (iii) any other game of chance which is licensed and conducted pursuant to the compact and for which the Authority has promulgated rules and regulations.

(c) **Community Charitable Gaming.**

- (1) **Policy.** It is the policy of the Band to foster and assist Indian Charitable Organizations and the good works they perform for the community. To this end, the Band will allow Indian Charitable Organizations to use certain forms of gaming to raise money for their charitable purposes and to provide a healthy social outlet for members of such groups and their friends. The Authority shall regulate charitable gaming carried out by an Indian Charitable Organization so as to promote the general health and safety of the Band and to assure that such gaming is operated honestly, with high integrity, and in accordance with the highest standards.
- (2) **Allowable Games.** Indian Charitable Organizations may operate the games of pull-tabs and bingo for the purposes set forth in § 103(c)(1).

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 6(b).

§ 104. Tribal-State Compacts for Class III Gaming Authorized.

- (a) **Corporate Commission Authorized.** The Commission is hereby authorized to negotiate and enter into class III Gaming Compacts with the State of Minnesota to govern the conduct of class III Gaming on Band Lands. Such Compacts and

amendments thereto, other than technical amendments as provided in § 104(b), shall not be valid until ratified by the Band Assembly pursuant to title 3.

- (b) **Technical Amendments.** The Commission may enter into technical amendments pursuant to section 6.12 of the Video Game of Chance Compact or § 7 of the Blackjack Compact or similar section of any subsequent Compact and such technical amendment shall not require Band Assembly approval as provided in § 104(a). However, the shareholders at the shareholders' meetings shall be delivered copies of any technical amendments.
- (c) **Regulations to be in compliance with Compacts.** The Authority shall adopt regulations to provide that such class III Gaming is conducted in compliance with the terms and conditions of such Compact or amendments thereto.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 6(c).

§ 105. Use of Band Lands for Gaming Purposes.

- (a) **Leases.** Leases for all Band Lands for Gaming Activities, or related to Gaming Activity purposes, shall be in full compliance with all applicable laws of the United States and the Band.
- (b) **Indian celebrations.** The use of Band Lands for Indian celebrations or other social events, which includes traditional gaming as part of the celebration or other social event, shall not be subject to federal, state, or local government approval.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 7.

§ 106. Health, Safety, and Environmental Protection.

The construction and maintenance of any facility wherein Gaming Activities are conducted and the operation of Gaming Activities authorized by this chapter, or any other Band law, shall be conducted in a manner which adequately protects the environment and the public health and safety, and shall comply with all applicable Band and federal law concerning such.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 8.

§ 107. Prohibited Activities.

- (a) **Minors prohibited.** It shall be unlawful for any adult to allow a person under the age of eighteen (18) years to participate in Gaming Activities at a Gaming Enterprise, or for such minor to participate in Gaming Activities at a Gaming Enterprise.
- (b) **Cheating prohibited.** It shall be unlawful to conduct or participate in any gaming in a manner which results in cheating, misrepresentation, or other disreputable tactics which distract from a fair and equal chance for all participants, or otherwise affects the outcome of the game.
- (c) **Sale and consumption of alcoholic beverages.** The sale of alcoholic beverages shall not be allowed at any Gaming Enterprise, unless specifically authorized by Band Statute and properly licensed pursuant to applicable Band, federal, and state law.
- (d) **Extension of credit prohibited.** Extension of credit in any form shall not be allowed at any Gaming Enterprise, unless specifically authorized by Band Statute and properly licensed pursuant to applicable Band, federal, and state law.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 16.

SUBCHAPTER 3

OWNERSHIP AND REVENUES

Section

201. Ownership of Gaming.

202. Ownership and Use of Class II and Class III Gaming Revenues.

§ 201. Ownership of Gaming.

The Band shall have the sole proprietary interest in and responsibility for conducting any class II and class III Gaming Activities authorized by this chapter, except to the extent the Band may contract with and license a person or entity to own, operate, or manage a Gaming Enterprise pursuant to the provisions of IGRA, any Compacts, or as otherwise permitted by applicable law.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 9.

§ 202. Ownership and Use of Class II and Class III Gaming Revenues.

(a) Band Property.

- (1) All revenues generated from any class II or class III Gaming Activities conducted by any Gaming Enterprise are the sole property of the Band, except as provided for under the terms of any agreement made pursuant to the provisions of IGRA, or as otherwise permitted by Band law.
- (2) Any profits or net revenues from any class II or class III Gaming Activities conducted by any Gaming Enterprise shall be deposited into the Band's general treasury. Upon becoming part of the general treasury, such funds shall lose any identity as gaming revenues, except to the extent necessary to identify them as such in order to comply with applicable law.
- (3) No individual tribal member shall be deemed to have any interest in such profits or net revenues from any class II or class III Gaming Activities conducted by any Gaming Enterprise, provided that the Band may adopt rules for distributing gaming proceeds to Band members on a per capita basis; provided further that such plan must meet the requirements of 25 U.S.C. § 2710 (b)(3). Payments from the general treasury funds to Band members under other Band programs, including those related to health, welfare, education, elderly care, and housing, shall not be deemed "per capita" payments.

(b) Use of Net Band Revenues. Net revenues derived from any class II or class III Gaming Activities conducted by any Gaming Enterprise shall be used only for the following purposes:

- (1) To fund Band government operations or programs;
- (2) To provide for the general welfare of the Mille Lacs Band and its members;
- (3) To promote Band economic development; and
- (4) To donate to charitable organizations recognized by the Band.

(c) Distribution plan. There shall be no per capita payments made from any net revenues derived from any class II or class III Gaming Activities conducted by any Gaming Enterprise, unless the distribution plan is approved by the Secretary of Interior pursuant to 25 U.S.C. § 2701 et seq. and the payments are made in accordance with such approved plan.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 10.

SUBCHAPTER 4

GAMING REGULATORY AUTHORITY

Section

- 301. Establishment.**
- 302. Board of Directors.**
- 303. Organization.**
- 304. General Powers and Duties of the Authority.**
- 305. Regulations.**
- 306. Monitoring and Investigation.**
- 307. Licensing.**
- 308. Compliance Determinations.**
- 309. Independent Audits.**
- 310. Enforcement.**
- 311. Limitations on Actions.**
- 312. Excluded Persons.**
- 313. Regulatory Role.**
- 314. Budget.**

§ 301. Establishment.

There is hereby established as an agency of the Mille Lacs Band of Ojibwe the “Gaming Regulatory Authority” (hereinafter the “Authority”), which has the power and duty to regulate Gaming matters for the Band as authorized by Band law.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(a).

§ 302. Board of Directors.

- (a) The Authority shall be managed by a Board of Directors to be known as the Authority’s “Board.” At all times there shall be at least one (1) Board Member, to be known as “Member(s),” on the Board from each District. The Board shall consist of five (5) Members appointed in the manner and have the terms provided in § 302(b).
- (b) **Appointments process, terms, oath of office.** Each Member shall be appointed using the following process.
 - (1) The Chief Executive shall nominate two (2) individuals and submit their names to the Secretary-Treasurer. Within ten (10) calendar 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 Board. Such Member shall serve until August 1, 2004. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four (4) years.

- (2) Each District Representative shall nominate two (2) individuals and submit their names to the Chief Executive. Within ten (10) calendar 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 Board. Such Members shall serve until August 1, 2006. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four (4) years.
- (3) The Secretary-Treasurer shall nominate two (2) individuals and submit their names to the Chief Executive. Within ten (10) calendar 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 Board. Such Member shall serve until August 1, 2004. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four (4) years.
- (4) If the Chief Executive or the Secretary-Treasurer do 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.
- (5) If any person does not submit a nomination within thirty (30) 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 Board. The timing and process for such ratification are as stated in § 302(b)(1) and (4).
- (6) No member shall take office until swearing to the oath of office pursuant to 2 MLBS § 8.

(c) **Qualifications.**

- (1) Members shall be individuals who are of high moral character and integrity, who have a reputation for being honest, fair, objective, and who are recognized as possessing sound judgment.
- (2) Members may not have been convicted of a felony or any gambling related offense.
- (3) No fewer than three (3) Members shall be members of the Band. There shall be at least one (1) Board Member from each of the Band's three (3) Districts.
- (4) Members may not be employed by any Gaming Enterprise, nor may they gamble at any Gaming Enterprise.

- (5) Members shall be subject to the Background Investigations and standards for Primary Management Officials.
- (d) **Board Officers, Selection, Duties, Vacancies, Disqualification, Removal.**
 - (1) **Officers.** The Board shall have a Chairperson, Vice-Chairperson, and a Secretary.
 - (2) **Selection.**
 - (i) **Chairperson.** The Chair of the Authority shall be determined by a majority vote of the Joint Session of the Band Assembly from one (1) of the current Members, or, if there is a vacancy, the individual who is appointed to fill such vacancy.
 - (ii) **Vice-Chairperson.** The Members shall select from among their members, by majority vote, a Vice-Chairperson.
 - (iii) **Secretary.** The Board may select a Member or an employee of the Authority to act as Secretary of the Board. An employee acting as Secretary at the request of the Board is not a Board Member and has no powers of a Member.
 - (3) **Board Duties.**
 - (i) The Chairperson shall preside over meetings of the Board and the Vice-Chairperson shall preside over meetings of the Board in the absence of the Chairperson. The Secretary shall record in writing the minutes of all Board meetings and all official actions taken by the Authority, and shall notify all persons, as required under this chapter, who require notification of such official actions.
 - (ii) In carrying out any function under the provisions of this chapter, all Members shall be governed by the laws of the Band, general policies of the Authority and such regulatory decisions, findings, and determinations as the Authority may by law be authorized to make.
 - (iii) Requests or estimates for regular, supplement, or deficiency appropriations on behalf of the Authority may be submitted to the Band Assembly by the Chairperson with the prior approval of the Board.
 - (iv) The Chairperson shall delegate authority and assign duties to the Director of the Office of Business Regulation and Compliance sufficient to aid the Authority in fulfilling its regulatory

responsibilities. Such assignment and delegation shall comply with this chapter.

- (v) Members shall serve part-time; however, the Board shall meet a minimum of once per month or more if necessary to fulfill their duties.
- (vi) Members shall attend one (1) or more training seminars or courses related to gaming regulation per year during their terms of membership. Such seminars shall be paid by the Authority. Per diem and other travel expenses shall be paid at the rate of a Senior Executive Staff Band employee.

(4) **Vacancies in Memberships.**

- (i) The Chairperson shall notify the Band Assembly and the Chief Executive of any vacancy on the Board of Directors at least thirty (30) days prior to the end of a term, or, in circumstances other than the end of a term, immediately upon the knowledge that a vacancy will occur.
- (ii) If there is a vacancy on the Board, then the vacancy shall be filled in the same manner as the vacating Member was originally appointed.
- (iii) Any Member, including the Chairperson, appointed to fill a vacancy shall serve for the remainder of the term left vacant; however, any Member may be re-appointed during this time period pursuant to § 302(b).

(5) **Disqualifications from Board Membership.** The following persons shall not serve as Board Members:

- (i) persons in the employ of, or holding any office in or having any business relation with, any business engaged in selling or manufacturing any gaming products or services;
- (ii) persons who own stocks or bonds in any business engaged in selling or manufacturing any gaming products or services;
- (iii) persons having any pecuniary interest whatsoever in any business engaged in selling or manufacturing any gaming products or services;
- (iv) persons having any interest in any business engaged in commerce with or employed by the Corporate Commission. A Member may be engaged in other businesses, vocations, or employment, which do not create a conflict of interest with their duties;

- (v) persons related to any Gaming Contractor licensed by the Authority, including any principal thereof or Closely Associated Independent Contractor; and
 - (vi) the Chief Executive or members of the Band Assembly.
- (6) **Removal from Membership.** Member may be removed by a super-majority vote of four (4) out of five (5) members of the Joint Session of the Band Assembly. The determination of the Joint Session is final and un-appealable to the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(b).

§ 303. Organization.

(a) **Meetings.**

- (1) **Regular Meetings.** Regular meetings of the Board shall be held at least monthly and upon written notice. The dates of regular meetings shall be set by official action of the Board.
- (2) **Special Meetings.** Special meetings of the Board may be called by the Chairperson with a minimum of forty-eight (48) hours written notice to the Board Members, by the Director with a minimum of forty-eight (48) hours written notice to the Chairperson, or by a majority vote of the Board with forty-eight (48) hours written notice to the Chairperson.
- (3) **Other.** Either Regular or Special meetings may be called by petition of a majority of a quorum of the Board Members other than the Chairperson upon forty-eight (48) hours written notice to the Chairperson.

(b) **Quorum.** Three (3) members of the Board shall constitute a quorum.

(c) **Voting.**

- (1) All actions of the Board shall be taken by majority vote.
- (2) The Chairperson shall vote only in the following circumstances:
 - (i) to break a tie; and
 - (ii) if necessary, to constitute a quorum in the absence of other Members.

(d) **Compensation.**

- (1) **Board Meetings.** Members, including the Chairperson, shall be compensated with two-hundred and fifty dollars (\$250) per meeting, not to exceed five hundred dollars (\$500) in one month, except that in the case of a demonstrated emergency, the Chairperson may petition the Secretary-Treasurer for compensation for additional meetings. Mileage and other travel expenses will be compensated on the same terms and conditions as apply to Senior Executive Staff appointees as provided by Band law.
- (2) **Training.** If Member are not Band government employees and are required to be absent from their employment to attend mandatory training pursuant to § 302(d)(3)(vi) of this title, then Members shall be compensated at their previously documented hourly rate of pay for each hour that they are in attendance at such training plus mileage and other travel expenses as stated in paragraph (1) above. If Members are Band government employees, then absence from employment will not be deducted from their accrued annual leave and they will be paid as if they were at work plus expenses as stated in paragraph (1) above.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(c).

§ 304. Powers and Duties of the Authority.

The Authority shall be responsible for ensuring that all Gaming Activities on Band Lands are carried out in compliance with the Indian Gaming Regulatory Act, Band Gaming Laws, the Compacts, and other applicable law. To this end, the Authority shall exercise regulatory, not operational authority over any Gaming Enterprise and Charitable Gaming. All management and operational authority over any Gaming Enterprise shall remain with the Corporate Commission separate and distinct from the Authority. The Office of Gaming Regulation and Compliance shall provide staff and administrative support, and office space and equipment, which shall be separate and not under the authority of the Corporate Commission. The Authority may retain such consultants and enter into such contracts as it may deem necessary to carry out its duties as specified in this chapter; however, it shall not hire employees of the Office of Business Regulation and Compliance. In addition, as an agency of Band government, the Authority shall comply with all Band laws, including title 7, for all contracts including professional services contracts. The Authority may bring such actions as may be necessary to carry out its duties, including but not limited to, the enforcement of this chapter and other Band Gaming Laws.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(1).

§ 305. Regulations.

- (a) **Power and duty.** The Authority shall have the power and duty to develop, adopt, and promulgate regulations regarding:
- (1) licensing of Gaming Enterprises;
 - (2) licensing and Background Investigations of Key Employees and Primary Management Officials;
 - (3) licensing and Background Investigations of Gaming Suppliers;
 - (4) conducting annual independent audits of all gaming operations of the Band;
 - (5) permitted games and the conduct thereof;
 - (6) standards and criteria for gaming machines and for testing machines;
 - (7) audio and video surveillance standards;
 - (8) minimum internal cash, playing card, chip and token control standards, and procedures for gaming operations;
 - (9) procedures for compliance with the Bank Secrecy Act and applicable provisions of the Internal Revenue Code;
 - (10) resolving gaming related disputes involving patrons and vendors of any Gaming Enterprise, after exhausting all remedies available at the Gaming Enterprise;
 - (11) Charitable Gaming as provided in § 103(c) of this title;
 - (12) the prevention and cure of compulsive gambling as provided in subchapter 8 of this title;
 - (13) the development and maintenance of a list of excluded Persons as provided in § 312 of this title;
 - (14) related reporting, record-keeping, auditing, investigation and enforcement procedures;
 - (15) dispute resolution procedures, including OGR&C employee appeals;
 - (16) reasonable fines and other penalties for violations of this chapter, Band gaming laws, the IGRA, the Compacts and other applicable law; and

- (17) other activities as required by law.
- (b) **Rulemaking Process.** The Authority shall promulgate the regulations authorized by § 305 with or without hearing according to the notice and comment process specified herein.
- (1) **Notice of intent to adopt.** The Authority shall give notice of its intent to adopt a regulation by posting a copy of the notice in the Band Government Center and the Community Centers in Districts II and III, and by delivering a copy of the notice by U.S. mail or other appropriate means to the Chief Executive, the Speaker of the Band Assembly, the Solicitor General, the Commissioner for Administration; the Corporate Commissioner; and the manager of any Gaming Enterprise. The notice shall include a copy of the proposed regulation and a description of the nature and effect of the proposed regulation. In addition, the notice shall include the following statements:
- (i) comments may be submitted on the proposed regulation no later than thirty (30) days from the date of the notice; and
- (ii) the proposed regulation may be modified if supported by the data and views submitted.
- (2) **Review, adoption, notice of adoption.** The Authority shall review all comments received during the comment period, shall make such changes to the proposed regulation as it deems reasonable and appropriate, and shall approve the regulation by resolution. The Authority shall, by official action, set the effective date of the regulation and publish and post copies of a notice of adoption of the regulation in the same manner as for the notice of intent to adopt the regulation. The notice of adoption shall summarize the final regulation and the changes to the proposed regulation, state the effective date, and announce that free copies of the regulation are available from the Authority. In addition, copies of the notice and the final regulation shall be delivered by U.S. mail or other appropriate means to all Persons who were sent a copy of the notice of intent.
- (3) **Adoption is a compliance determination.** Approval of any regulation by the Authority shall be considered a Compliance Determination for purposes of effecting an appeal pursuant to subchapter 6 of this title.
- (c) **Initial Detailed Gaming Regulations.** The Authority shall adopt a set of Initial Detailed Gaming Regulations within one-hundred eighty days (180) days after the first meeting of all of the members of the first Authority Board. Upon approval by the Band Assembly, such regulations shall supersede those currently codified at 15 App. §§ 1.001-18.004 of the MLBS. The Initial Detailed Gaming Regulations shall be adopted pursuant to paragraph (b) of this section, except that the Joint Session of the Band Assembly may act to annul such regulations in whole or in part within sixty

(60) days of receipt by the Joint Session of the Band Assembly. Thereafter, any gaming regulation may be annulled by statute. The regulations currently codified will remain in effect until the sixty (60)-day annulment period has lapsed, or for regulations annulled by the Joint Session of the Band Assembly, until the Joint Session of the Band Assembly has granted final approval.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(2).

§ 306. Monitoring and Investigation.

- (a) **General.** The Authority shall have the power and duty to monitor and investigate:
 - (1) all Gaming Enterprises for compliance with the IGRA, Band Gaming Laws, the Compacts, and other applicable law and to undertake such related investigations and enforcement actions as it deems necessary, including, but not limited to, investigating and evaluating the effectiveness of the Mille Lacs Band gaming regulatory system;
 - (2) to help resolve all gaming related patron and vendor complaints that have not been resolved by agreement of a complainant and the Gaming Enterprise;
 - (3) prior to levying fines, granting, denying or suspending licenses;
 - (4) to assure compliance with the rules concerning Charitable Gaming;
 - (5) to assure compliance with compulsive gambling cure and prevention requirements;
 - (6) to develop, maintain, and enforce a list of Persons to be excluded from Gaming Enterprises; and
 - (7) take any and all other similar action it deems to be necessary or desirable to carry out the powers and duties granted by this section.
- (b) **Scope of investigations and related activities.** Any investigations and related activities, including, but not limited to, electronic and non-electronic searches of credit histories, arrests, and judgements, and electronic surveillance shall be strictly limited to official Authority duties under law. All such investigations and related activities may be undertaken only after review by legal counsel that the scope and subject of any such activities complies with this chapter and other applicable law. Individuals who perform investigations and related activities outside the scope of this chapter and other applicable law are subject to immediate dismissal and reasonable fines.

- (c) **Access.** The Authority shall have access to all books, files, records, reports, and other data regarding the operation of all Gaming Enterprises, whether in written or electronic form, as it deems necessary or desirable to carry out its legitimate regulatory duties.
- (d) **Surveillance.** The Surveillance Department shall be under the control and supervision of the Authority. However, a Gaming Enterprise shall have access to electronic surveillance output as further defined in the Detailed Gaming Regulations.
- (e) **Cooperation of the Gaming Enterprises with the Authority.** The Authority may:
 - (1) require associates of any Gaming Enterprise to compile and provide such data and to testify as to matters within their knowledge concerning the operation of the Gaming Enterprise; and
 - (2) require the associates of any company that is managing a Gaming Enterprise on behalf of the Corporate Commission, or any other Person within the jurisdiction of the Band to comply and provide such data and to testify as to matters within their knowledge concerning the operation of the Gaming Enterprise.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(3).

§ 307. Licensing.

- (a) **General.** The Authority shall promulgate regulations for granting, suspending, and revoking licenses, which are consistent with Band law, the IGRA, and the Compacts regarding matters of licensure.
- (b) **Minimum licensing requirements.** It is the policy of the Band that all Gaming Activities and Enterprises be licensed and controlled so as to protect the morals, good order, and welfare of Band members and other persons on Band lands and to preserve the honesty, fairness and integrity of such gaming activities. Accordingly, no person shall engage in any class II or class III Gaming Activities on Band Lands without an appropriate and valid independent class II or class III license issued by the Authority. In addition, the Authority shall issue a separate license to each place, facility, or location on Band Lands where the Band elects to allow class II or class III gaming. The Authority shall perform background investigations and issue licenses for key employees and management officials according to requirements that are at least as stringent as those in 25 C.F.R. parts 556 and 558 which are hereby incorporated into this chapter, unless otherwise superseded pursuant to an agreement with the NIGC. No license shall be issued that would place the Band in violation of applicable law or the Compacts.

(c) **Mandatory licensing application provisions and procedures.**

(1) **Notices to applicants.**

- (i) **Privacy Notice.** The Authority shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. § 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be granted a gaming license. The information will be used by the Tribal gaming regulatory authorities and by the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the issuance, denial, or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to license you for a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

- (ii) The Authority shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by any applicant.

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment (18 U.S.C. § 1001).

- (iii) If there exist any key employees or primary management officials who have filled out forms which did not contain the notice stated in clause (ii) above, then the Authority shall notify in writing such employees and officials that they shall either:

- (A) complete a new application form that contains a notice regarding false statements; or

- (B) sign a statement that contains the notice regarding false statements.

- (2) **Information required from an applicant.** Each application for key employees and primary management officials shall request from each applicant the following information set forth at 25 C.F.R. § 556.4(a)(1) - (14):
 - (i) full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
 - (ii) current and the previous five (5) years of business and employment positions held, ownership interests in those businesses and residence addresses, and driver's license numbers;
 - (iii) the names and current addresses of at least three (3) personal references, including one (1) personal reference who was acquainted with the applicant during each period of residence listed under clause (ii) above;
 - (iv) current business and residence telephone numbers;
 - (v) a description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
 - (vi) a description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
 - (vii) the name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
 - (viii) for each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;
 - (ix) for each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten (10) years of the date of the application, the name and address of the court involved, and the date and disposition;
 - (x) for each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant

to clauses (viii) or (ix) above, the criminal charge, the name and address of the court involved, and the date and disposition;

- (xi) the name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
- (xii) a photograph;
- (xiii) any other information the Authority deems relevant; and
- (xiv) fingerprints consistent with procedures adopted by the Band according to 25 C.F.R. § 522.2(h).

(3) **Mandatory licensing procedures.**

- (i) **Fingerprints.** Fingerprints of each applicant for the position of key employee or primary management official will be taken by the Office of Gaming Regulation and Compliance and sent to either Minnesota Gambling Enforcement or the National Indian Gaming Commission. Minnesota Gambling Enforcement or the National Indian Gaming Commission will send the fingerprints to the FBI for a check of criminal history records information maintained by the FBI and return the results back to the Office of Gaming Regulation and Compliance.
- (ii) **Reporting to the NIGC.**
 - (A) When the Band employs a primary management official or a key employee, the Band shall forward to the Commission a completed application containing the information listed under 25 C.F.R § 556.4(a)(1)-(13).
 - (B) Before issuing a license to a primary management official or to a key employee, a tribe shall forward to the Commission an investigative report on each background investigation. An investigative report shall include all of the following:
 - (I) steps taken in conducting a background investigation;
 - (II) results obtained;
 - (III) conclusions reached; and
 - (IV) the bases for those conclusions.

- (C) When the Band forwards its report to the Commission, it shall include a copy of the eligibility determination made under 25 C.F.R. part 558.2.
- (D) If the Band does not license an applicant, the Band,
 - (I) shall notify the Commission; and
 - (II) may forward copies of its eligibility determination under 25 C.F.R. part 558.2 and investigative report (if any) under 25 C.F.R. part 556.5(b) to the Commission for inclusion in the Indian Gaming Individuals Record System.
- (E) When a key employee of a primary management official begins work at a gaming operation the Band shall:
 - (I) forward to the Commission a completed application for employment that contains the notices and information listed in 25 C.F.R. §§ 556.2, 556.3, and 556.4; and
 - (II) conduct a background investigation under 25 C.F.R. part 556 to determine the eligibility of the key employee or primary management official for continued employment in a gaming operation.
- (F) Upon completion of a background investigation and a determination of eligibility for employment in a gaming operation under 25 C.F.R. § 558.3(a)(2), the Band shall forward a report under 25 C.F.R. § 556.5(b) to the Commission within sixty (60) days after an employee begins work or within sixty (60) days of the Chairman's approval of an ordinance under 25 C.F.R. part 523. A gaming operation shall not employ a key employee or primary management official who does not have a license after ninety (90) days.
- (G) During a thirty (30)-day period beginning when the Commission receives a report submitted under 25 C.F.R. § 558.3(b), the Chairman may request additional information from a tribe concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the thirty (30)-day period until the Chairman receives the additional information.

(iii) **Granting a gaming license.**

- (A) If, within the thirty-day period described in 25 C.F.R. § 558.3(c), the Commission notifies the Authority that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the Band has provided an application and investigative report to the Commission pursuant to 25 C.F.R. §§ 558.3(a) and (b), the Band may go forward and issue a license to such applicant.
- (B) If, within the thirty-day period described in 25 C.F.R. § 558.3(c), the Commission provides the Authority with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the tribe has provided an application and investigative report to the Commission pursuant to 25 C.F.R. §§ 558.3(a) and (b), the Authority shall reconsider the application, taking into account the objections itemized by the Commission. The Authority shall make the final decision whether to issue a license to such applicant.

(iv) **License suspension.**

- (A) If, after the issuance of a gaming license, the Commission receives reliable information indicating that a key employee or a primary management official is not eligible for employment under 25 C.F.R. § 558.2, the Commission shall notify the Authority that issued a gaming license.
- (B) Upon receipt of such notification under item (A) above, the Authority shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.
- (C) The Authority shall notify the licensee of a time and a place for a hearing on the proposed revocation of a licensee.
- (D) After a revocation hearing, the Authority shall decide to revoke or to reinstate a gaming license. The Authority shall notify the Commission of its decision.

- (v) **Standard for license denial.** If the Authority, in applying the standards of this chapter, determines that employment of a person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming,

the Authority shall not employ that person in a key employee or primary management official position.

- (d) **Licensing a privilege.** Any gaming license, or finding of suitability or approval, which is issued by the Authority, shall be deemed a privilege subject to suspension or revocation.
- (e) **Burden on applicant.** The burden of proving an applicant's qualification to receive any license hereunder is at all times on the applicant. Applicants must accept any risk of adverse public notice, embarrassment, or other action which may result from the application process and expressly waive any claim for damages as a result thereof.
- (f) **Applicant claim of privilege.** An applicant may claim any privilege afforded by law in connection with a gaming license application or investigation, but a claim of privilege with respect to any testimony or evidence pertaining thereto may constitute sufficient grounds for denial, suspension, or revocation.
- (g) **Release of information.** All persons applying for a license shall agree to release all information necessary in order for the Authority to achieve its goals under this chapter, and to furnish such information to the Bureau of Indian Affairs, the National Indian Gaming Commission, or such other governmental agency as may be required by law or the Compact.
- (h) **License investigations.** The Authority may employ all reasonable means, including engaging outside services and investigators, and convening hearings, to acquire the information necessary to determine whether or not a license should be issued, suspended, or revoked. Applicants and licensees shall also agree to release all information necessary in order for the Authority to achieve its goals under this section and to furnish such information to the Authority, the National Indian Gaming Commission, or other agency as may be required by law or the Compact. In conducting a background investigation, the Authority and its agents shall promise to keep confidential the identity of each person interviewed in the course of the investigation.
- (i) **License fees.** All Gaming Enterprises or persons applying for a license or the gaming enterprise associated with the license applicant shall be required to pay all applicable license fees and costs when due, including a reasonable deposit for costs incurred in obtaining information in connection with the license application, unless specifically waived in advance by the Authority. Estimates of licensing costs shall be provided to applicants within a reasonable period of time after a request is made. The Authority prior to issuing of the license, must receive all fees and costs, unless otherwise provided for in advance. Such fees shall be included in the Initial Detailed Gaming Regulations.

- (j) **Appeals.** All customers, vendors, licensees, and persons who have been denied a license or had their license suspended or revoked, may appeal pursuant to the procedures detailed in this chapter and the Detailed Gaming Regulations.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(4).

Band Ordinance 25-13, § I.

§ 308. Compliance Determinations.

The Authority shall convene to consider a Compliance Recommendation within ten (10) days of its receipt from the Director as required by § 402(b) of this title, unless, only for issues of licensing, the Authority has received notice of intent to appeal directly to the Court of Central Jurisdiction from the person who has received notice of an adverse licensing recommendation. In addition to the Compliance Recommendation, the Authority may consider any oral or written comments offered by the parties that the Authority deems to be relevant. The Authority may consider any additional information it determines to be necessary and appropriate to reaching a determination. All information considered by the Authority shall become part of the official record of the proceedings. Based on substantial evidence contained in the official record, the Authority shall make a Compliance Determination by accepting, rejecting, or modifying the Compliance Recommendation. The Authority shall clearly state on the record its decision and the reasons therefor. Compliance Determinations shall be effective on the date made, unless the Authority establishes a different effective date. In arriving at any Compliance Determination, the Authority may employ the services of a Hearing Examiner to either make a recommendation for a Compliance Determination or to issue a Compliance Determination on behalf of the Authority.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(5).

§ 309. Independent Audits.

Annual outside auditing by a recognized independent accounting firm shall be conducted of each Gaming Activity for compliance with Band gaming laws, the IGRA, and the Compacts, and the results thereof reported to the Chief Executive, the Band Assembly, and to the extent required by law, the Bureau of Indian Affairs and the National Indian Gaming Commission or another entity. In addition, such audits shall include all contracts related to class II or III gaming, which are in excess of \$25,000, and any other contract of a lesser amount at the discretion of the Authority.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(6).

§ 310. Enforcement.

Any enforcement action taken shall be fair and reasonable under the circumstances, shall be proportionate to the violation, and shall be designed to promote the goals of correction and improvement, unless the violation is such that correction and improvement is not possible. Any enforcement action taken by the Authority must be related to its gaming regulatory function. Any such enforcement action shall be considered to be a Compliance Determination and as such, is appealable pursuant to subchapter 6 of this title. In a manner provided by regulation, the Authority may hold such hearings, make such findings, and issue such orders as may be necessary to enforce Band Gaming Laws, the IGRA, the Compacts, and other applicable law, including but not limited to:

- (a) revoking or suspending any license issued to an individual, Gaming Supplier, or Gaming Enterprise as allowed by this chapter;
- (b) imposing civil fines reasonably proportionate to the activity being punished. Such monies shall be deposited in the Band's general fund. A fine schedule including minimum and maximum fine amounts shall be included in the Initial Detailed Gaming Regulations; and
- (c) adding a Person to a list of Persons excluded from Gaming Enterprises.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(7).

§ 311. Limitations on Actions.

Any enforcement action of Authority or order of the Court of Central Jurisdiction pursuant to any appeal shall be limited as follows:

- (a) The Authority is not authorized to order the cessation of operations of a Gaming Enterprise. Such an order for cessation of operations of a Gaming Enterprise may only occur upon:
 - (1) recommendation by majority vote of the Authority to the Joint Session of the Band Assembly that a Gaming Enterprise be closed, citing the specific cause for which closure is being recommended and the conditions under which the cause of closure shall be determined remedied, thereby allowing the reopening of the Gaming Enterprise; and
 - (2) a Super-majority vote of four (4) out of five (5) members of the Joint Session of the Band Assembly ordering closure of a Gaming Enterprise citing the specific cause for which closure is being recommended and the conditions

under which the cause of closure shall be determined remedied, thereby allowing the reopening of the Gaming Enterprise.

- (b) All claims by patrons against a Gaming Enterprise shall be limited to a maximum recovery of \$10,000 per claim and a cumulative limit of \$20,000 per patron per year regardless of the number of claims.
- (c) All claims by Vendors or Gaming Suppliers against a Gaming Enterprise shall be limited to the amount of the contract between the Vendor or Gaming Supplier and the Gaming Enterprise that is the subject matter of the claim. However, this provision is subject to the existence of an effective waiver of sovereign immunity pursuant to Band statutes. Under no circumstances shall punitive or other damages, costs, and fees be ordered.
- (d) All claims involving denial, suspension or revocation of a gaming license shall be limited to an award of specific performance of granting or reinstating such license. No monetary award shall be awarded on a license claim.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(8).

§ 312. Excluded Persons.

- (a) **Exclusion list; creation; effect.** Subject to the criteria and procedures of this section, the Authority shall establish and maintain an Exclusion List. Individuals whose names appear on the Exclusion List shall not be allowed to enter any Gaming Enterprise or participate in any class II or class III Gaming operated by any Gaming Enterprise whether on behalf of the Band or an Indian Charitable Organization.
- (b) **Duty to exclude.** It shall be the duty of the Commissioner and the manager of each Gaming Enterprise to exclude or eject from a Gaming Enterprise any Person whose name appears on the Exclusion List. Any associate of a Gaming Enterprise who knows or has reason to know that an excluded Person has entered or is attempting to enter a Gaming Enterprise shall be responsible for notifying appropriate staff and taking such other action as is within the scope of the associate's authority and responsibility to exclude or eject such Person.
- (c) **Distribution and availability of exclusion lists.** The Authority shall maintain a list of Persons to be ejected or excluded from Gaming Enterprises. It shall be the duty of the manager of each Gaming Enterprise to inform the Commissioner in writing of the name of each Person who the manager reasonably believes meets the criteria for placement on the Exclusion List as established by subsection (d) below. The Commissioner, in turn, will provide such names to the Director. The list shall be distributed to each Gaming Enterprise. The list shall be made available to law

enforcement agencies if properly subpoenaed or upon request based upon a documented law enforcement need for the list. The following information, to the extent known, shall be provided for each excluded Person:

- (1) the full name, date of birth, and all alias;
- (2) a physical description;
- (3) the effective date the Person's name was placed on the list;
- (4) a photograph, if available;
- (5) the Person's occupation and current home and business address;
- (6) the specific reason for exclusion;
- (7) the date, if any, exclusion will expire; and
- (8) such other information as may be deemed necessary by the Director or the Authority.

(d) **Criteria for exclusion or ejection and placement on an exclusion list.** The Authority may, based upon the recommendation of the Director, or the Director by Emergency Enforcement Order subject to the provisions of § 402(c) of this title, place a Person on the Exclusion List pending a hearing by the Authority if:

- (1) such Person has been convicted of a felony in any jurisdiction, any crime that brings into question the person's honesty and integrity, including, but not limited to, shoplifting, theft, robbery, burglary, embezzlement, conspiracy to commit a crime, or of a gambling related crime;
- (2) such Person has violated or conspired to violate any provisions of the Indian Gaming Regulatory Act, Band Gaming Laws, the Compacts, and other applicable law;
- (3) such Person has a notorious or unsavory reputation which would adversely affect public confidence and trust in gaming. The list of which acts constitute such reputation shall be included in the Initial Detailed Gaming Regulations;
- (4) his or her name appears on any valid and current Exclusion List from another jurisdiction and the reason for exclusion from such other jurisdiction would also be likely to cause exclusion from Band Gaming Enterprises;
- (5) pursuant to § 706 of this title, the Person requests to be excluded, by means which allows the Authority to positively identify the person, due to a demonstrable gambling problem.

(e) **Procedure for entry of names.**

- (1) The Director of the Office of Business Regulation and Compliance shall investigate all matters concerning whether or not a Person should be placed on the Exclusion List. Upon a determination that a Person satisfies any of the criteria listed in subsection (d) above, the Person shall be deemed a candidate for exclusion, and the Director shall prepare and submit a Compliance Recommendation as to whether the Person's name should be added to the Exclusion List and forwarded to the Authority for action. Such recommendation shall include the identity of the candidate and the nature and scope of the circumstances or reasons that such Person should be placed on the Exclusion List. Pursuant to § 402(b)(2) of this title, notice of the recommendation must be given to the Person who is the subject of the recommendation and that Person must be informed of the opportunity to offer oral or written testimony to the Authority concerning the recommendation.
 - (2) If the Authority or subsequent review by Court of Central Jurisdiction finds in favor of the candidate or excluded Person, then his or her name shall be removed from the excluded list and his or her exclusion shall be terminated as of the date of the action by the Authority or the Court of Central Jurisdiction. If the finding is against the candidate or excluded Person, then his or her name shall be placed on the Exclusion List. If no hearing is requested, then the Person's name shall be placed on the Exclusion List. The Authority may place a Person on the Exclusion List either permanently or temporarily. If a Person is placed on the Exclusion List temporarily, then the Authority shall clearly state the period of time that the Person will be on the Exclusion List.
- (f) **Removal from the exclusion list.** Any Person who has been placed on the Exclusion List may petition the Authority in writing, not more frequently than annually, that his or her name be removed from the list.
- (g) **Confidential data.** The Exclusion List shall be classified as Confidential Limited Availability Data.
- (h) **Immediate removal of disorderly persons.** A Gaming Enterprise may immediately remove and bar re-entry of any Person who engages in, or is reasonably believed likely to engage in, disruptive, unruly, or any other behavior which presented a danger to the health, welfare, morals, or the public peace. The manager of the Gaming Enterprise may seek to have such a removed and barred individual placed on the Exclusion List.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(9).

§ 313. Regulatory Role.

The Authority is to serve in a regulatory role, not in an operations role in connection with Gaming Activities conducted by any Gaming Enterprise. The scope of the Authority's authority is limited strictly to the powers and duties specifically enumerated in §§ 304 through 313 of this title.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(10).

§ 314. Budget.

The Authority and the Office of Gaming Regulation and Compliance (OGR&C), as established in subchapter 5 of this title, shall have budget and expenditure authority independent of gaming operations. Funding for the Authority and OGR&C shall be adequate to allow the Authority and OGR&C to perform the task of gaming regulation. Such funding for the Authority and OGR&C shall conform to Band appropriation laws and shall not be reliant on the discretion of any management official of a Gaming Enterprise who is subject to regulation of the Authority.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(e).

SUBCHAPTER 5

OFFICE OF GAMING REGULATION AND COMPLIANCE; DIRECTOR OF GAMING REGULATION AND COMPLIANCE

Section

401. Establishment; Appointment; Qualifications; Removal and Suspension.

402. Powers and Duties.

403. Regulatory Role.

§ 401. Establishment; Appointment; Qualifications; Removal and Suspension.

- (a) **Establishment.** There is hereby established the Office of Gaming Regulation and Compliance ("OGR&C") which shall be under the management and supervision of the Director, but subject to the ultimate control of the Authority Board.

- (b) **Appointment of the director.** The Director shall be appointed by the Board by majority vote and shall report to the Board as the Board requires.
- (c) **Qualifications.** The Director shall possess the following qualifications:
 - (1) experience and training in management and regulatory enforcement of sufficient scope, depth, and relevancy to enable her or him to direct the work of the OGR&C;
 - (2) high moral character with no conviction for a felony or any gambling-related offense;
 - (3) freedom from any conflict of interest created by outside business interest or occupation; and
 - (4) licensure as a Primary Management Official.
- (d) **Removal, suspension.** The Director may be removed for cause as manifest by a Super-majority vote of four (4) out of five (5) of the Board Members, including the Chairperson. In addition, if the Director is charged in any competent jurisdiction with a felony or any gambling-related crime, the Chairperson shall immediately suspend the Director with or without pay until the charges have been resolved.
- (e) **Vacancy.** If there is a vacancy for any reason, then the Chairperson shall immediately appoint an Interim Director, until the Board convenes to appoint a Director.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 12(a).

§ 402. Powers and Duties.

- (a) **Director.**
 - (1) **Staff.** The OGR&C shall provide staff, administrative, and office support to the Authority. The Director shall appoint one or more Gaming Compliance Officers, to whom he or she may delegate certain duties of the Director, and hire such other employees or consultants as may be necessary to perform the duties as set forth herein. All employee suspensions and terminations are appealable to the Authority Board.
 - (2) **Day-to-day operations.** The Director shall be responsible for the day-to-day operations of the OGR&C, subject to the authority of the Board, including:

- (i) enforcement of all applicable gaming laws and regulations at all Gaming Enterprises;
- (ii) investigations of any matter within the scope of authority of the Authority as described in subchapter 4 of this title, including but not limited to, performing or causing to be performed background investigations necessary to determine if any applicant for a Primary Management Official, Key Employee, or Gaming Supplier license required by this chapter, or the gaming regulations adopted by the Authority, meets the applicable licensure criteria;
- (iii) assisting the Authority in defending all decisions where an adversely impacted license applicant files an appeal to such adverse decision.
- (iv) investigating and evaluating the effectiveness and efficiency of the Mille Lacs Band gaming regulatory system and recommending changes;
- (v) investigating and monitoring all Gaming Enterprises for compliance with the IGRA, Band Gaming Laws, the Compacts, and other applicable law upon receiving any credible report of a violation of gaming statutes or regulations, or at random or periodic intervals, with or without prior notification to the management or associates of the subject Gaming Enterprise;
- (vi) investigating all gaming related patron and vendor complaints concerning a Gaming Enterprise that have not been resolved between the complainant and the Gaming Enterprise after full exhaustion of attempts to amicably settle the matter and make a Compliance Recommendation to the Authority concerning the matter;
- (vii) investigating and monitoring all Gaming Enterprises for compliance with compulsive gambling cure and prevention requirements;
- (viii) investigating and monitoring for compliance with all rules concerning Charitable Gaming;
- (ix) investigating, monitoring and assisting in all matters concerning the maintenance and enforcement of a list of Persons to be excluded from Gaming Enterprises;
- (x) at the request of the Authority, assisting the Authority in:
 - (A) the execution of any authorized enforcement actions;

- (B) the preparation and defense of any appeal taken from any Compliance Determination; and
 - (C) the preparation of the annual budget which is to be submitted to the Band Assembly for direct appropriation for Authority activities; and
- (xi) hiring and supervising the Gaming Compliance Officers and other personnel of the OGR&C.
- (3) **Access to data and files of any gaming enterprise.** The Director shall have access to all areas, records, files, and data of any Gaming Enterprise, and may interview any associate of any Gaming Enterprise with respect to matters relating to the operation of any Gaming Enterprise without first notifying the associate's supervisor or any other employee of any Gaming Enterprise, and shall have access to the results of Background Investigations carried out pursuant to subchapter 4 of this title or the gaming regulations adopted by the Authority.
- (4) **Gaming compliance officers.** Gaming Compliance Officers shall be considered Key Employees for purposes of Background Investigations and licensing. Gaming Compliance Officers shall be responsible for performing investigations and otherwise assisting the Director in carrying out the duties specified herein. The Director may delegate to Gaming Compliance Officers any of the Director's powers and duties, except the power to appoint Gaming Compliance Officers.
- (5) **Security of records and access to offices.** The OGR&C shall take all measures necessary to safeguard and track records. In addition, access to the offices of the OGR&C shall be strictly controlled to assure security and maintain adequate separation of gaming regulation and gaming operations.
- (b) **Compliance recommendations, notice, time and content.**
 - (1) **Compliance recommendation.** The Director shall submit a Compliance Recommendation to the Board Members and the persons stated in paragraph (2) below, which shall summarize the facts and state whether or not the license should be granted, suspended, or revoked, whether or not the documented practices and procedures satisfy the relevant statutes and regulations, and recommend appropriate corrective, enforcement, or other responsive action.
 - (2) **Notice, time, content.** The Director shall submit the written Compliance Recommendation within five (5) days to each Board Member, the Corporate Commissioner, the licensee or license applicant if the Compliance Recommendation involves a license denial, suspension, or revocation, and any

vendor or patron who is the subject of a Compliance Recommendation for each investigation carried out pursuant to § 307(h) of this title. The notice shall state that the Compliance Recommendation will be heard by the Authority Board prior to issuance of a Compliance Determination pursuant to § 308 of this title and contain a copy of the Authority's procedures for issuing of a Compliance Determination. In addition, the notice shall state that all parties have the right to counsel at the party's own expense, the right to appear before the Authority, the right to review the record upon which the initial Compliance Recommendation was made, and may supplement the record with additional information if deemed relevant by the Board.

- (c) **Emergency enforcement orders.** If the Director finds that there is an immediate threat to Band assets, or that probable cause exists to believe that a crime has been, or is about to be committed, the Director may, by emergency order, immediately impose any legitimate regulatory enforcement and/or corrective action within the scope of the Authority's authority which is proportional to the harm such emergency order seeks to remedy. Emergency orders shall be in writing, and the Director shall immediately forward any such order, along with a supporting Compliance Recommendation, to the Authority and the Corporate Commissioner in the manner provided by § 312(d) of this title. The Authority shall act on any such order and Compliance Recommendation in the same manner as provided in § 312(e) of this title, except that it shall convene to consider the order and Compliance Recommendation within three (3) days of having received the emergency order and supporting Compliance Recommendation. In any such proceeding, the Compliance Determination of the Authority shall supersede the Director's emergency order.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 12(b).

§ 403. Regulatory Role.

The OGR&C is to serve in a regulatory role, not in an operations role. As such, the scope of the Director's authority is limited strictly to the powers and duties specifically enumerated in subchapter 5 of this title and to those powers and duties specifically granted to the Authority in subchapter 4 of this title, which have been specifically delegated to the Director by the Authority, including those limitations of actions described in § 311 of this title.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 12(c).

SUBCHAPTER 6

APPEALS

Section

501. Who May Appeal.

502. Effecting an Appeal.

503. Procedure on Appeal; Standard of Review.

§ 501. Who May Appeal.

- (a) A Person who has been denied reversal of an adverse Compliance Recommendation or denied any other relief requested from the Authority may appeal such Compliance Determination or final enforcement order to the Court of Central Jurisdiction.
- (b) A Person who has received a Compliance Recommendation that recommends a license denial, suspension, or revocation may directly appeal to the Court of Central Jurisdiction. If a person takes such action, then he or she waives any right to receive a Compliance Determination from the Authority.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 13(a).

§ 502. Effecting an Appeal.

Any appeal shall be filed with the Court of Central Jurisdiction and must be filed within twenty (20) days after the date of the issuance of a Compliance Determination, final order, or a Compliance Recommendation that denies, suspends, or revokes a license.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 13(b).

§ 503. Procedure on Appeal; Standard of Review.

- (a) The Court of Central Jurisdiction shall sit without a jury, confine its review to the Authority 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.
- (b) The Court of Central Jurisdiction may affirm the Compliance Determination or order of the Authority, or it may remand the case for further proceedings, or reverse the

Compliance Determination or order if the substantial rights of the petitioner have been prejudiced because the decision is:

- (1) in excess of the statutory authority or jurisdiction of the Authority;
- (2) made upon unlawful procedure;
- (3) unsupported by any evidence; or
- (4) plainly in error.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 13(c).

SUBCHAPTER 7

DATA PRIVACY

Section

601. General Rule.

602. Confidential Data.

603. Temporary Classification.

604. Information Sharing.

§ 601. General Rule.

All Authority Data shall be public unless classified by a Band statute, regulation, or order, or by federal law, as Confidential Data. The Authority shall adopt and promulgate detailed and thorough rules pursuant to data privacy in its Initial Detailed Gaming Regulations.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 14(a).

§ 602. Confidential Data.

- (a) **Confidential limited availability data.** The following Authority Data shall be Confidential Limited Availability Data under these restrictions:

- (1) Background Investigations Information; available only in a case where information revealed through a Background Investigation is, in whole or in part, the basis for an adverse decision regarding a license applicant or license renewal. The information contained in such Background Investigation shall be made available to the license applicant or the Person seeking license renewal if so requested;
 - (2) Confidential Financial Information;
 - (3) Compliance Recommendations Information; available only to the extent that the Authority adopts a Compliance Recommendation or accepts the record developed by the Director supporting a Compliance Recommendation, all information so accepted or relied upon shall be public;
 - (4) Personnel Data; and
 - (5) whether or not a Person is on the Exclusion List; however, limited only to the receipt of such information by the Person who is on the Exclusion List or her or his agent pursuant to 25 C.F.R. § 515.8.
- (b) **Confidential restricted availability data.** The following Authority Data shall be Confidential Restricted Availability Data under these regulations:
- (1) Financial Information on a Gaming Enterprise;
 - (2) Information on a Pending Compliance Recommendation;
 - (3) Information on a Pending License Application;
 - (4) Security Information; and
 - (5) Trade Secret Information.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 14(b).

§ 603. Temporary Classification.

- (a) **Authority.** The Authority may, on its own motion or at the request of the Director, temporarily classify Authority Data as Confidential Data if it determines that:
 - (1) the data for which the temporary classification is sought has been treated as private or confidential by the Corporate Commission or other agencies of Mille Lacs Band Government or by the federal government; or

- (2) a compelling need exists for immediate temporary classification, which if not granted could adversely affect the public interest or the health, safety, or well-being of the subject of the data.
- (b) **Ratification.** No later than July 1 of each year the Authority shall submit all temporary classifications then in effect to the Corporate Commissioner for review. The Corporate Commissioner may comment on the classification and the Authority shall consider the comments of the Corporate Commissioner in reaching its decision. If the Corporate Commissioner fails to act by July 1 of the year following the submission of a temporary classification hereunder, then the classification shall thereupon expire.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 14(c).

§ 604. Information Sharing.

The Authority may, on its own motion or at the request of the Director, share information with any regulatory agency of another gaming jurisdiction or any law enforcement agency where it is determined that sharing such information is in the best interest of the Band, where the agency with whom the information is to be shared assures that the shared information will remain confidential, if the other gaming jurisdiction agrees to share such information with the Band, and if sharing the information is not contrary to any applicable law.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 14(d).

SUBCHAPTER 8

COMPULSIVE GAMBLING

Section

- 701. Policy.**
- 702. Program Content and Responsibility.**
- 703. Counseling Resources; Referrals.**
- 704. Associate Training.**
- 705. Patron Information and Education.**
- 706. Exclusion.**

§ 701. Policy.

While gambling is an enjoyable form of entertainment for most people, the Band recognizes that some people may have difficulty with keeping their gambling within reasonable limits. The Band is committed to helping these people to deal constructively with their actual or potential gambling problems, and in furtherance of this goal it has established the Mille Lacs Problem Gambling Prevention Program described in this section.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 15(a).

§ 702. Program Content and Responsibility.

- (a) The Problem Gambling Prevention Program shall consist of the following elements:
 - (1) a referral system;
 - (2) associate training;
 - (3) patron information and education; and
 - (4) exclusion.
- (b) The Director, in consultation with the Commissioner of Corporate Affairs subject to the review and approval of the Authority, shall develop and update as necessary a Problem Gambling Prevention Program. The Commissioner, subject to the oversight of the Director, shall implement the program in all Gaming Enterprises.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 15(b).

§ 703. Counseling Resources; Referrals.

The referral system of the Problem Gambling Prevention Program shall be based on a current, computerized directory of organizations and individuals that have a reputation for providing effective assistance for individuals with gambling problems. The system shall include a process for referring patrons who seek help with such problems to resources listed in the directory and for encouraging them to take advantage of such resources.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 15(c).

§ 704. Associate Training.

Problem Gambling Prevention Training shall be provided to all casino associates who have regular contact with patrons. This training program, which shall be provided as part of the associate orientation program and require subsequent periodic in-service refreshers, shall include but not be limited to the following:

- (a) a description of the Problem Gambling Prevention Program;
- (b) the nature, extent, and effects of compulsive gambling;
- (c) how to recognize the warning signs of potential and actual gambling problems; and
- (d) techniques for intervening constructively with problem gamblers.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 15(d).

§ 705. Patron Information and Education.

- (a) **General.** Patrons shall be provided information on the Problem Gambling Prevention Program by signs and in promotional materials as provided in this section.
- (b) **Signs.** Signs that clearly and in plain language inform patrons about how to obtain assistance in dealing with gambling problems shall be prominently posted at the following locations in each Gaming Enterprise:
 - (1) at each entrance and exit;
 - (2) at any check cashing facility within the Gaming Enterprise;
 - (3) near any ATM cash machines at the Gaming Enterprise; and
 - (4) any other locations as determined by the Commissioner of Corporate Affairs.
- (c) **Promotional material.** The Problem Gambling Prevention Program shall contain guidelines and suggestions for including messages about responsible gambling, the need to get help for problem gambling behavior, and the sources of such help. The

Director shall monitor the promotional materials and campaigns of each Gaming Enterprise to ensure that such messages are being included to the extent appropriate and, in cooperation with the Commissioner, take such action as may be necessary to correct any deficiencies in this regard.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 15(e).

§ 706. Exclusion.

At the request of a patron who states that he or she may have a gambling problem, or at the request of an immediate family member of a patron who alleges that the patron has a gambling problem, the patron's name may be added to the Exclusion List established pursuant to § 312(d) of this title.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 15(f).

CHAPTER 2

DEPARTMENT OF ATHLETIC REGULATION

Subchapter

1. Athletic Regulation

Section

801

SUBCHAPTER 1

ATHLETIC REGULATION

Section

801. Professional Boxing and Mixed Martial Arts.

802. Purpose of the Department of Athletic Regulation.

803. Jurisdiction of the Department of Athletic Regulation Commission.

804. Department of Athletic Regulation Commission.

805. No Right of Action.

806. Medical Standards.

§ 801. Professional Boxing and Mixed Martial Arts.

- (a) This subchapter and the Rules and Regulations shall constitute the entire professional athletic activity laws, including amateur mixed martial arts (“MMA”), and regulations of the Band. No professional boxing, sparring, amateur mixed martial arts, or other professional athletic exhibitions shall be conducted, held, or given on the Mille Lacs Band of Ojibwe Reservation, except in accordance with the provisions of this subchapter and the Department’s Rules and Regulations adopted by the Department of Athletic Regulation (“DAR”).
- (b) The DAR, through its Executive Director and Athletic Regulation Commission, shall have the right to amend the Rules and Regulations as the need arises. The Band Assembly reserves the right to approve or revoke any changes to the DAR Rules and Regulations prior to implementation within 90 calendar days of receipt from the DAR. If no formal action is taken within the 90 calendar days, the change is automatically adopted.

Historical and Statutory Notes

Source:

Band Ordinance 45-06, § 1.
Band Ordinance 05-11, § I(2), Exh. A, § 801.
Band Ordinance 31-21.

§ 802. Purpose of the Department of Athletic Regulation.

- (a) With the exception of subsection (b), below, the purpose of the Department of Athletic Regulation is to regulate, administer, and oversee the conduct of all professional athletic, including professional boxing and amateur mixed martial arts, events held on the Mille Lacs Band of Ojibwe Reservation for the purpose of promoting the health, safety, and welfare of all persons engaged in such activities, and that of Band Members and the public. The Department of Athletic Regulation shall regulate such events through its Executive Director and Athletic Commissioners.
- (b) The Department of Athletic Regulation (“DAR”) may, upon invitation from another tribe or tribal entity, regulate a boxing or MMA event on behalf of such tribal entity for the purpose of promoting professionalism and safety in the sport. All such regulatory activities conducted on behalf of another tribe or tribal entity must be compensated by that tribe or tribal entity that extended the invitation to the DAR in an amount that is fair and reasonable, but no less than \$2,000.00 per event. Any monies earned in this manner by the DAR shall be deposited in the Band’s general fund within five (5) calendar days of the event.

- (c) The DAR Executive Director and at least two (2) Commission members shall be present at each place where amateur MMA or professional boxing, MMA or other professional athletic activities are to be held pursuant to the provisions of this subchapter. If the Executive Director is unable to attend such event due to illness or for any other reason, the Athletic Regulation Commission members shall oversee the regulation of such event.

Historical and Statutory Notes

Source:

Band Ordinance 45-06, § 2.
Band Ordinance 23-07, § I.
Band Ordinance 16-13, § 1.
Band Ordinance 31-21.

§ 803. Jurisdiction of the Department of Athletic Regulation Commission.

The Department of Athletic Regulation Commission shall have and is hereby vested with the sole discretion, management, control, and jurisdiction over all amateur and professional boxing, sparring, mixed martial arts, and other professional athletic exhibitions to be conducted, held, or given on the Mille Lacs Band of Ojibwe Reservation, and other Band Lands, and over all licensing of any and all persons who participate in such activities. All gyms, clubs, training camps, and other organizations that provide training facilities for persons preparing for participation in professional boxing, sparring, or mixed martial arts on Band lands are also included.

Historical and Statutory Notes

Source:

Band Ordinance 45-06, § 3.
Band Ordinance 05-11, § I(2), Exh. A, § 803.
Band Ordinance 31-21.

§ 804. Department of Athletic Regulation Commission.

- (a) **General.** The Department of Athletic Regulation shall be managed by an Executive Director and a five-member Board, referred to as the Athletic Regulation Commission (“Commission”). At all times, there shall be at least one (1) Commissioner from each District serving on the Athletic Regulation Commission. The Commission shall consist of five (5) members appointed in the following manner and have staggered terms as provided in subsection (b), below. The Commission shall have oversight of the Executive Director.
- (b) **Appointments process, terms, oath of office.** Each Commissioner shall be appointed using the following process:

- (1) The Chief Executive shall nominate two (2) individuals and submit their names to the Secretary-Treasurer. Within ten (10) calendar 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 Commissioner on the Athletic Regulation Commission. Such Commissioner shall serve until September 30, 2008. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four (4) years.
 - (2) The Secretary-Treasurer shall nominate two (2) individuals and submit their names to the Chief Executive. Within ten (10) calendar 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 Commissioner of the Athletic Regulation Commission. Such Commissioner shall serve until September 30, 2008. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four (4) years.
 - (3) Each District Representative shall nominate two (2) individuals and submit their names to the Chief Executive. Within ten (10) calendar 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 Commissioner of the Athletic Regulation Commission. Such Commissioner shall serve until September 30, 2009. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four (4) years.
 - (4) If the Chief Executive or Secretary-Treasurer does not ratify one individual from any of the nominations sent to them within the time prescribed, then the Band Assembly shall select a Commissioner by majority vote.
 - (5) If any person does not submit a nomination within 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 Athletic Regulation Commission. The timing and process for ratification are as stated in clauses (1) and (4) above.
 - (6) No person shall take office until swearing to the oath of office pursuant to 2 MLBS § 8.
- (c) **Qualifications of Commissioners are as follows:**
- (1) Commissioners shall be individuals who are of high moral character and integrity, who have a reputation for being honest, fair, objective, and who are recognized as possessing sound judgment.
 - (2) It is preferred that Commissioners be individuals with an interest in boxing or mixed martial arts or be individuals that have a background in amateur boxing, wrestling, or mixed martial arts.

- (3) Commissioners may not have been convicted of a felony within ten (10) years of the date of their appointment. Any Commissioner convicted of a felony during their term shall be automatically removed for such cause.
 - (4) No fewer than three (3) Commissioners shall be Band members. There shall be at least one (1) Commissioner from each of the Band's three districts.
 - (5) If the Corporate Commission or a Mille Lacs Band of Ojibwe gaming enterprise acts as a promoter in any type of amateur or professional athletic event to be regulated by the DAR, any Commissioner employed by the Corporate Commission or Band gaming enterprise, will not participate in the regulation of such event.
 - (6) Commissioners shall be subject to criminal background investigations. The Office of Solicitor General shall conduct the criminal background investigation for the Athletic Regulation Commission and shall return the results of an investigation to the Band Assembly within ten (10) business days of notice of ratification.
- (d) **Commission officers.**
- (1) The Commission shall have a Chairperson, Vice-Chairperson, and a Secretary.
 - (2) The Chairperson of the Commission shall be determined by a majority vote of the elected officials and selected from one of the current Commissioners or, if there is a vacancy, the individual who is appointed to fill such vacancy.
 - (3) The Vice-Chairperson shall be selected by the Commission by majority vote.
 - (4) The Secretary shall be selected by the Commission by majority vote.
- (e) **Board duties and responsibilities.**
- (1) The Chairperson shall preside over meetings of the Commission and the Vice-Chairperson shall preside over meetings of the Commission in the absence of the Chairperson. The Secretary shall record, in writing, the minutes of all Board meetings and all official actions taken by the Commission. A copy of the minutes may be provided to the Band Assembly and Chief Executive upon request.
 - (2) Commissioners shall serve part-time. The Commission shall meet a minimum of once per month, but no more than twice per month.
 - (3) Each Commissioner is responsible for reading and reviewing the DAR Rules and Regulations, as well as this subchapter within 30 calendar days of her or his appointment to the Commission.

- (4) As part of each Commissioner's training, he or she shall, on a staggered basis, assist in pre-bout and post-bout duties and responsibilities, including weigh-ins, licensing, and payouts. Commissioners shall also work to ensure that all rules and regulations are followed during each athletic event.
 - (5) As part of each Commissioner's training, he or she shall attend boxing inspection training at their earliest opportunity after appointment. Commissioners are also expected to take advantage of other types of trainings that may be offered locally to enhance their knowledge of the unarmed combat that they are appointed to regulate.
- (f) **Vacancies.**
- (1) The DAR or Chairperson shall notify the Band Assembly and Chief Executive of any vacancy on the Commission at least 30 days prior to the end of term or, in circumstances other than the end of a term, immediately upon the knowledge that a vacancy will occur.
 - (2) If there is a vacancy on the Commission, then the vacancy shall be filled in the same manner as the vacating Commissioner who was originally appointed.
 - (3) Any Commissioner, including the Chairperson, appointed to fill a vacancy shall serve for the remainder of the vacant term. Any Commissioner may be re-appointed during this time period pursuant to subsection (c).
- (g) **Elected official.** No elected official shall serve as a Commissioner during her or his term of office.
- (h) **Removal.** A Commissioner may be removed by a super-majority vote of four (4) out of five (5) members of the elected officials. The determination of the elected officials is final and unappealable to the Court of Central Jurisdiction.
- (i) **Compensation.** Commissioners shall be paid two hundred fifty dollars (\$250.00) per attendance at official Department of Athletic Regulation meetings or events, not to exceed one thousand dollars (\$1,000.00) in one (1) month. Mileage and other travel expenses will be compensated on the same terms and conditions as applicable to Senior Executive Staff appointees as provided by Band law. Commissioner stipends are restricted to her or his attendance at official Department of Athletic Regulation meetings or events. For this subsection, "events" shall mean a pre-planned professional or amateur combative sport match including, but not limited to, boxing, mixed martial arts, and wrestling matches regulated by the Department of Athletic Regulation within the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe or as contracted with another federally recognized tribe.

(j) **Training.**

- (1) Commissioners may attend one or more training seminars per year during their terms of membership. These seminars shall be sanctioned by the Association of Boxing Commissioners (“ABC”) or other professional boxing or martial arts organization.
- (2) Commissioners attending mandatory training seminars, who are also employees of the Band government, shall be compensated at their documented rate of pay for each hour they are in attendance at such training, plus mileage, and other travel expenses as stated in subsection (i) above. Commissioners, who are also employees of the Band government, shall not be required to use her or his accrued annual leave, but will be paid as if they were at work.
- (3) Commissioners who are not Band government employees and are required to be absent from their employment to attend training pursuant to subsection (j)(1) above, shall be compensated at their previously documented hourly rate of pay, but not to exceed fifteen dollars (\$15.00) per hour, for each hour that they are in attendance at such training, plus mileage, and other travel expenses as stated in paragraph (2) above.

(k) **Funding and Collection of Fees.** The DAR shall be funded as follows:

- (1) From ticket sales of unarmed combat events, there shall be a 10/90 split between the DAR and the appropriate Grand Casino budget. Ten percent (10%) shall be assigned to the DAR budget through the Office of Management and Budget.
- (2) The remaining budget requirements will be funded from Taxation Revenue to be appropriated each and every year by Band government budget process.
- (3) If an unarmed combat promoter chooses to negotiate a “4-wall” deal with Grand Casino, he or she shall be responsible for marketing and sale of tickets for such unarmed combat event. The promoter shall negotiate with Grand Casino as to all other matters except regulation. For regulation of a “4-wall” event, the promoter shall pay ten percent (10%) of the gross ticket sales to the DAR, but not to exceed two thousand five hundred dollars (\$2,500.00). If any comp has the potential to impact the regulation fee, the promoter shall be restricted to “comp” no more than ten percent (10%) of the gross ticket sales. Within ten (10) calendar days of the event, the promoter shall file a written report with the DAR listing all ticket sales and comps of the “4-wall” event.
- (4) The minimum payment to the DAR from a promoter for the regulation of any unarmed combat “4-wall” event shall be one thousand dollars (\$1,000.00). Such amount shall be paid according to the timeline established under the DAR Rules and Regulations.

Historical and Statutory Notes

Source:

Band Ordinance 45-06, § 4.
Band Ordinance 05-07.
Band Ordinance 23-07, § II.
Band Ordinance 05-11, § I(2), Exh. A, § 804.
Band Ordinance 31-21.
Band Ordinance 34-21.

§ 805. No Right of Action.

This subchapter does not create any right, cause of action, or benefit enforceable at law or in equity by any individual, entity, or party against the Non-Removable Mille Lacs Band of Ojibwe, its representatives, elected officials, Athletic Department, or the Commission.

Historical and Statutory Notes

Source:

Band Ordinance 45-06, § 5.
Band Ordinance 31-21.

§ 806. Medical Standards.

For each World Championship Event and all televised events, there shall be two (2) ringside physicians present at each professional boxing or mixed martial arts (“MMA”) or other professional athletic event. For all other non-championship athletic events or non-televised events, there shall be one (1) ringside physician present. At the earliest opportunity, all such physicians shall be registered with and attend training sessions with the American Association of Professional Ringside Physicians (“AAPRP”). All ringside physicians must be licensed in the United States and have professional qualifications suitable to professional boxing or mixed martial arts. Accepted medical background includes, but is not limited to, internal medicine, neurology, or general practice. All regulations adopted with the passage of this subchapter shall be followed.

Historical and Statutory Notes

Source:

Band Ordinance 45-06, § 6.
Band Ordinance 23-07, § III.
Band Ordinance 05-11, § I (2), Exh. A, § 806.

CHAPTER 3

BAND MEMBER LEGAL SERVICES

Section

- 901. Definitions.
- 902. Band Member Legal Services.
- 903. Number and Appointment of Directors.
- 904. Removal of Directors.
- 905. Qualifications of Directors.
- 906. Term of Office.
- 907. Duties of the Board.
- 908. Managing Attorney of Band Member Legal Services.
- 909. Duties of the Managing Attorney of Band Member Legal Services.
- 910. Service Area of Band Member Legal Services.
- 911. Limitations on Representation by Band Member Legal Services.
- 912. Declination and Termination of Representation.

§ 901. Definitions.

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

- (a) **“Board”** means the board of directors of Band Member Legal Services.
- (b) **“Director”** means a member of the board.
- (c) **“Drug crime”** means any federal crime involving the possession or sale of illicit drugs, a state first or second-degree controlled substance crime, or any other crime for the sale of an illicit drug.
- (d) **“Good cause”** means any reason set forth in the personnel policy manual established under 6 MLBS § 1 or any reason recognized under the common law.
- (e) **“Indigent defense services”** means legal representation provided to those individuals who qualify to receive legal representation, whether free or otherwise, under the standards promulgated by the board.
- (f) **“Tribal public defender”** means an attorney employed by or contracted with Band Member Legal Services for the purpose of providing indigent defense services.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 902. Band Member Legal Services.

Band Member Legal Services shall be an independent entity established to provide indigent defense services to Band members, whose funding shall be provided by appropriations by the Band Assembly and, to the extent possible, by charitable or grant funds provided by outside entities. Band Member Legal Services shall be under the administrative control of the board.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 903. Number and Appointment of Directors.

The board shall consist of five (5) directors, who shall be appointed as follows:

- (a) one (1) director appointed by the District I Representative;
- (b) one (1) director appointed by the District II Representative;
- (c) one (1) director appointed by the District III Representative;
- (d) one (1) director appointed by the Chief Executive; and
- (e) one (1) director appointed by the Chief Justice.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 904. Removal of Directors.

Directors may be removed for good cause by the individual by whom the director was appointed to the board. A vacancy caused by removal or for any other reason shall be filled in a timely manner by the relevant appointing individual as identified under § 903.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 905. Qualifications of Directors.

Directors must be attorneys licensed to practice law in the State of Minnesota, under the laws of the Band, or both. Directors shall remain in good standing with the bar of the relevant jurisdiction or jurisdictions during their term.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 906. Term of Office.

- (a) Initially, the directors appointed under § 903(a) and (b) shall expire on December 31 of 2021 and on this date every three (3) years hence, the term of the directors appointed under § 903(c) and (d) shall expire on December 31 of 2022 and on this date every three (3) years hence, and the term of the director appointed under § 903(e) shall expire on December 31 of 2023 and on this date every three (3) years hence.
- (b) All directors after the initial directors shall serve three (3) year terms. The term of office for directors shall begin on January 1 of the calendar year in which the appointment was due to be made and shall end on December 31 of the final year of the director's three (3) year term.
- (c) Any director appointed to fill a vacancy in the board shall serve until December 31 of the year in which that position on the board would normally be filled. At that time, the term will be completed and the appointing individual shall make an appointment for a full three (3) year term in that position.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 907. Duties of the Board.

The board shall have the following duties:

- (a) to develop standards governing the delivery of indigent defense services, including:
 - (1) standards governing eligibility for indigent defense services;
 - (2) standards for maintaining and operating regional tribal public defender officers, if any regional tribal public defender offices are established;
 - (3) standards prescribing minimum experience, training, and other qualifications for tribal public defenders;
 - (4) standards for tribal public defender caseloads;
 - (5) standards for the evaluation of tribal public defenders;
 - (6) standards for independent, competent, and efficient representation of clients whose cases present conflicts of interest; and
 - (7) such other standards as are necessary and appropriate to ensure the delivery of adequate indigent defense services;
- (b) to establish regional tribal public defender offices, if determined to be necessary and appropriate;
- (c) to adopt bylaws; and
- (d) to approve and submit to the Band Assembly a biennial budget request.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 908. Managing Attorney of Band Member Legal Services.

The board shall appoint a managing attorney who must be chosen on the basis of relevant training, experience, and such other qualifications considered appropriate. The managing attorney must be an attorney licensed and eligible to practice law in the State of Minnesota or under the laws of the Band. The managing attorney shall serve a two-year term from his or her date of appointment and may be removed prior to completion of his or her term for good cause by a majority vote of the board.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 909. Duties of the Managing Attorney of Band Member Legal Services.

The managing attorney shall have the following duties:

- (a) to attend all meetings of the board as a non-voting member;
- (b) to assist the board in developing standards for the delivery of adequate indigent defense services;
- (c) to administer and coordinate delivery of indigent defense services and supervise compliance with board standards;
- (d) to recommend the establishment of regional tribal public defender offices, if determined to be necessary and appropriate;
- (e) to conduct regular training programs for tribal public defenders;
- (f) to hire, subject to policies and procedures established by the board, professional, technical, and support personnel, including attorneys to serve as tribal public defenders, considered reasonably necessary for the efficient delivery of indigent defense services;
- (g) to prepare and submit to the board a proposed annual budget for the provision of indigent defense services;
- (h) to prepare and submit to the board an annual report containing pertinent data on the operations, needs, and costs of Band Member Legal Services and any other information that the board may require;
- (i) to adopt a personnel policy for human resources purposes, which must be approved by the board; and
- (j) to perform other duties as assigned by the board.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 910. Service Area of Band Member Legal Services.

- (a) **General.** Band Member Legal Services shall have a service area including the counties of Aitkin, Crow Wing, Hennepin, Mille Lacs, Morrison, Pine, and Ramsey.
- (b) **Child custody proceedings.** Band Member Legal Services shall have a service area including all counties in Minnesota for child custody proceedings as defined by 25 U.S.C. §1903 and child protection matters as state in Title 8, Chapter 13 – Child Protection.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.
Band Act 23-23.

§ 911. Limitations on Representation by Band Member Legal Services.

- (a) Band Member Legal Services may represent Band members in all civil matters in administrative hearings, tribal court, state court, and federal court.
- (b) Band Member Legal Services may represent Band members in criminal matters in tribal court, state court, and federal court, provided that:
 - (1) the charge or charges do not implicate an act against another Band member;
 - (2) the representation is in accordance with any standards promulgated by the board; and
 - (3) the representation is not for a charge that constitutes a drug crime, unless it is a first-time possession offense that is a charge of second or lesser degree.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 912. Declination and Termination of Representation.

- (a) Band Member Legal Services may decline or terminate representation of a client to the extent permissible under:

- (1) § 911 of this Chapter; or
 - (2) the Minnesota Rules of Professional Conduct.
- (b) If Band Member Legal Services declines or terminates representation pursuant to paragraph (2) of subsection (a) of this section, the director shall, in a manner consistent with the Minnesota Rules of Professional Conduct, assign another attorney to provide representation.

Historical and Statutory Notes

Source:

Band Act 23-23.

CHAPTER 4

TRIBAL EMPLOYMENT RIGHTS OFFICE

<u>Subchapter</u>	<u>Section</u>
1. General Provisions	1001
2. Admiration; Mille Lacs Band of Ojibwe Tribal Employment Rights Office	1011
3. Indian Preference in Employment and Contracting	1021
4. Fees	1031
5. Compliance Plan, Notice, and Contract	1041
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SUBCHAPTER 1

GENERAL PROVISIONS

<u>Section</u>
1001. Policy.
1002. Purpose.
1003. Severability.
1004. Definitions.

§ 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 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 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 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 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 and with Band-owned entities and other persons and entities doing business with the Band within the Band's Reservation are important resources for members of the Band and of other federally recognized Indian tribes, who have historically suffered from discrimination in employment and contracting opportunities. As a result, Indian 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 tribes, especially those residing on or near the Band's Reservation. Unemployment and underemployment within the boundaries of the Band's Reservation are consistently many times higher than the national and state average. 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 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 tribes, especially within the Band's Reservation, and to protect the workforce rights of Indian and non-Indian employees within the jurisdiction of the Band.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1002. Purpose.

This chapter is adopted by the Mille Lacs Band of Ojibwe (the 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 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 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 Reservation; and
- (f) to supersede all other provisions of Band law that are inconsistent with the provisions of this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1003. Severability.

If any provision of this chapter, or the application thereof to any person, business, corporation, 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1004. Definitions.

- (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) **“Band”** means the Mille Lacs Band of Ojibwe, a federally recognized Indian 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.
- (c) **“Commission”** or **“TERO Commission”** means the Commissioner of the Tribal Employee Rights Office.
- (d) A **“Conflict of Interest”** occurs when a TERO Commission member is in a position to influence a decision that may result in a personal gain for that member or for a member of his or her immediate family.
- (e) **“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.
- (f) **“Covered employer”** means the Band and any entity, company, contractor, sub-contractor, corporation, or other business doing business 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.

- (g) **"Days"** means calendar days, including holidays and weekends, unless otherwise indicated.
- (h) **"Director"** means the director of the Band's Tribal Employment Rights Office.
- (i) **"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) 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.
- (j) **"EEOC"** means the federal Equal Employment Opportunity Commission.
- (k) **"Elected Officials"** means the Mille Lacs Band Chief Executive, Secretary-Treasurer, and District Representatives.
- (l) **"Immediate Family"** includes 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 brother.
- (m) **"Indian"** means a member of a federally recognized Indian tribe.
- (n) **"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.
- (o) **"Reservation"** means all lands within the exterior boundaries of the Mille Lacs Indian 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.

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

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

SUBCHAPTER 2

ADMINISTRATION; MILLE LACS BAND OF OJIBWE TRIBAL EMPLOYMENT RIGHTS OFFICE

Section

- 1011. TERO Commission and Recusal of Commission Members.**
- 1012. Powers and Duties of the TERO Commission, and Compensation.**
- 1013. Tribal Employment Rights Office; Director.**
- 1014. Powers and Duties of TERO Director.**
- 1015. Intergovernmental Relationships.**

§ 1011. TERO Commission and Recusal of Commission Members.

- (a) **TERO Commission Members.** The TERO shall be managed by the TERO Commission. At all times there shall be at least one (1) commission member on the Commission from each district. The Commission shall consist of seven (7) commission members as appointed under paragraph (1) below.
 - (1) **Appointment Process; Terms.** 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 Lacs 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 Lacs 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 31, 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.

- (2) **Qualifications.** Commissioners shall be public officials subject to the Mille Lacs Band Ethics Code in 6 MLBS §§ 1151-1163. At least three (3) of the Commissioners 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 Chair, Vice-Chair, and Secretary at the first meeting of the Commission, and annually thereafter. The Chair shall preside at all meetings of the Commission and shall be authorized to sign required documents in accordance with the powers of the Commission.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 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;
 - (2) 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 recessions thereof;
 - (3) 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;

- (4) to order any relief or sanctions authorized by this chapter, and to petition the Mille Lacs Band 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;
- (5) to make recommendations to the Band Assembly on amendments to this chapter;
- (6) to establish a system for certifying firms as Indian Owned Businesses or Mille Lacs Band Owned businesses;
- (7) to maintain a list of Certified Businesses;
- (8) to assist Band Members in obtaining certification;
- (9) to coordinate training and mentorship programs for Band Members and Indians;
- (10) to monitor all contracting activities on Band Lands in consultation with the elected officials;
- (11) 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 employment and contract preference requirements;
- (12) to oversee the Certified Businesses receiving invitations to bid on contracts;
- (13) to establish a Band labor surplus pool and refer Band Members and other Indians to an Employer or Contractor for employment considerations;
- (14) to assist procurement officers or delegated agents in the designation of contracts appropriate for the set aside program;
- (15) to develop and maintain an audit and reporting system which measures the effectiveness of the Indian Preference Policy in meeting its goals and objectives;
- (16) to establish procedures for TERO's regulatory proceedings;
- (17) to establish procedures, forms, and policies necessary to carry out the purposes of the chapter; and
- (18) to enforce any employment and procurement laws, policies, and procedures in accordance with this chapter.

- (b) **Compensation.** Commission members may receive a stipend for their services at a rate established by the Band Assembly. Commissioners shall be reimbursed for actual expenses incurred on Commission business, including necessary travel expenses in a manner consistent with applicable Band policies and procedures.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1013. Tribal Employment Rights Office; Director.

There is hereby established as an agency of the Mille Lacs Band of Ojibwe government the Tribal Employment Rights Office (also known as “TERO”). The 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 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;
- (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 budget, and obtain and expend funding from federal, state, and other sources;
- (d) to maintain a list of current Covered Employers, current employer permits and work permits issued, and current Indian Certified Entities;
- (e) to maintain a record of all contracting projects subject to this chapter and the TERO fees assessed for each project;
- (f) to process applications for certification of Indian Certified Entities by the Board;
- (g) to grant TERO permits and collect TERO fees as authorized by this chapter;

- (h) to establish training and workforce development programs, in conjunction with the Mille Lacs Band Department of Labor, for Band members and other Indians to assist them in obtaining and retaining employment;
- (i) to process applications for and maintain a list of Band members and other Indians living on or near the Reservation who are available for employment and to assist such persons with job placement; and
- (j) to contract with federal and state entities for the provision of additional job procurement services and funding consistent with the purposes of this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1015. Intergovernmental Relationships.

The TERO, 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 the EEOC 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 on and off the Reservation, as well as to develop training programs for Indians. 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

SUBCHAPTER 3

INDIAN PREFERENCE IN EMPLOYMENT AND CONTRACTING

Section

1021. Indian Preference in Employment.

1022. Covered Employer's Responsibilities.

- 1023. Core Crew.**
- 1024. Indian Preference in Contracting.**
- 1025. Indian Certified Entities.**
- 1026. Applicability of Indian Preference in Contracting.**
- 1027. Other Preferences to be Consistent.**

§ 1021. Indian 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 the Reservation, provided that these individuals have the necessary qualifications. The priority for Indian preference is as follows:
 - (1) Mille Lacs Band Member;
 - (2) member of another federally recognized Indian Tribe; and
 - (3) all others.
- (b) Every covered employer shall encourage Indians to seek promotional opportunities. For every opening in a supervisory position, the employer shall inform Indian 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 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 employment opportunities pursuant to any contract.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1022. Covered Employer's Responsibilities.

- (a) Covered employers shall notify the TERO of openings in employment positions subject to this chapter and provide job descriptions for such openings at or before the time at which they advertise the openings. Job descriptions shall not be written in a way to unnecessarily exclude Band members or other Indians 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 director and 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 director.
- (d) The requirements in this chapter shall not apply to any direct employment by the 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 the reservation.
- (e) Covered employers shall include and specify an Indian 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 preference policy notice prepared or approved by the TERO.
- (g) Covered employers, except for construction contractors, shall advertise and announce all openings in employment positions subject to this chapter on the Mille Lacs Band website. Construction contractors, prior to starting work within the Reservation, shall provide a TERO Compliance 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 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 applicant, any Indian 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 employed in that class of positions are laid-off.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1023. Core Crew.

- (a) Covered employers, may, if necessary, designate a core crew, which is exempt from the Indian 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/jobsite except as otherwise provided in subsection (c) of this section.
- (c) The director may, at his or her 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1024. Indian 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 certified entities.
- (b) If one (1) or more qualified Indian certified entities submit a bid that is within ten (10%) percent of the lowest competitive bid, the covered employer shall give one of the qualified Indian certified entities submitting such a bid the opportunity to negotiate an acceptable bid.
- (c) In accordance with §§ 1012 and 1014 of this chapter, the director shall formulate and the Board shall approve regulations providing guidance on implementing the requirements of this section and for implementing Indian 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 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 Certified Entities the opportunity to prepare bids for such related contracts and subcontracts.

- (e) Any covered employer or Indian certified entity entering into a contract under the Indian 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1025. Indian Certified Entities.

The Board shall establish a system for certifying firms as Indian certified entities. This system shall include detailed provisions to ensure that entities that are not truly 51% or more owned by Indians, or in which daily management and control is not provided by Indians, are not granted Indian preference certification.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1026. Applicability of Indian Preference in Contracting.

- (a) Except as otherwise provided in this section, the Indian preference in contracting required under § 1024 of this chapter shall apply only to contracts and subcontracts to be performed on 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 preference in contracting required under § 1024 of this chapter shall not apply to any contracts or subcontracts where the Board determines that application of that preference is specifically prohibited by federal law.
- (c) The Indian 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 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1027. Other Preferences to be Consistent.

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

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

SUBCHAPTER 4

FEES

Section

1031. Fees.

1032. Exempt Employers and Entities.

1033. Fee Collection and Expenditure.

§ 1031. Fees.

Except as otherwise provided in § 1032 of this chapter, and except as 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 within the reservation 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 totaling \$25,000.00 or more shall pay a one-time project fee of one-half percent (0.5%) 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 director 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 for less than \$25,000.00 shall pay the 0.5% fee on the total amount of the contract if the contract is amended or enlarged to \$25,000.00 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 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 the Reservation under a contract with the Band, 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 the reservation 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1032. Exempt Employers and Entities.

The fees imposed in § 1031 of this chapter shall not be collected where applicable provisions of a federal contract or grant prohibit the collection of such fees.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1033. Fee Collection and Expenditure.

- (a) The TERO fees shall be collected by the director pursuant to TERO regulations. The fees shall be paid over to 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 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 each calendar quarter.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

SUBCHAPTER 5

COMPLIANCE PLAN, NOTICE, AND CONTRACTS

Section

1041. Compliance Plan.

1042. Notice to Proposed Contractors and Subcontractors.

1043. Contract Language Imposing TERO Requirements.

1044. Model Language.

1045. TERO Approval of Notices of Contracts and Awarded by Covered Entities.

§ 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 reservation, prepare and submit to the 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 employment and Indian 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 the reservation, prepare and submit to the 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 employment and Indian contracting preference in connection with such contract. A covered employer already doing business on the reservation on the effective date of this chapter that has not prepared a compliance plan that has been approved by the 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 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 director.

- (c) All covered employers other than the Band are required to report relevant changes regarding their employees and employment positions to the 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1042. Notice to Proposed Contractors and Subcontractors.

- (a) Any covered employer, when issuing a notice of a proposed contract to be awarded by it, shall include provisions in the notice that inform a prospective contractor about the requirements established by this chapter.
- (b) Any covered employer, when issuing a notice of a proposed subcontract to be awarded by it, shall include provisions in the notice that inform any prospective subcontractor about the requirements established by this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1043. Contract Language Imposing TERO Requirements.

Any covered employer, when awarding a contract or subcontract, shall include provisions that impose the requirements of this chapter on the contractor or subcontractor, such that the legal document will fully bind the party to comply with the requirements of this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1044. Model Language.

In order to implement the requirements of §§ 1042 and 1043 of this chapter, the 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 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, contract or subcontract to the director for approval.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

SUBCHAPTER 6

PROHIBITION OF EMPLOYMENT DISCRIMINATION

Section

1051. Prohibited Discrimination.

1052. Religious Accommodation.

1053. Discrimination based on Disability.

1054. Discrimination based on Pregnancy.

1055. Harassment.

1056. Retaliation.

§ 1051. Prohibited Discrimination.

Except as necessary to comply with the Indian 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 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 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. A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to practice his or her 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 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 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 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1054. Discrimination based on Pregnancy.

A covered employer shall treat women affected by pregnancy, childbirth, or related medical conditions the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected, but similar in their ability or inability to work. This requirement shall include, but is not limited to, the requirement that a covered employer must treat an employee temporarily unable to perform the functions of her job because of a pregnancy-related condition in the same manner as it treats other temporarily disabled employees.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1055. Harassment.

- (a) It shall be unlawful employment discrimination for a covered employer to subject an employee or applicant to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, as well as unwelcome comments, jokes, acts, and other verbal or physical conduct related to race, color, national origin, religion, sex, age, sexual orientation, or disability when:
 - (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
 - (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- (b) A covered employer is responsible for acts of workplace harassment by its employees when the employer, its agents, or its supervisory employees knew of the conduct. A covered employer may rebut apparent liability for such acts by showing that it took immediate and appropriate corrective action upon learning of the harassment.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

SUBCHAPTER 7

EMPLOYEE WAGE AND HOUR

Section

- 1061. Minimum Wage.**
- 1062. Prevailing Wage.**
- 1063. Maximum Hours.**
- 1064. Exemptions.**
- 1065. Private Right of Action.**
- 1066. Statute of Limitations.**
- 1067. Guidance.**
- 1068. Fringe Benefits.**

§ 1061. Minimum Wage.

Any employee who is employed by a covered employer shall be paid an hourly wage of not less than \$7.50 per hour or the current United States Federal Government's minimum wage requirement, whichever is higher.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1062. Prevailing Wage.

All covered employers are required to compensate construction laborers 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 implements Band prevailing wage rates by rule, regulation, or guideline, in which case the Band prevailing wage determination shall apply.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 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 compensated.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1064. Exemptions.

The provisions of this subchapter shall not apply with respect to any employee employed in a bona fide executive, administrative, or professional capacity, or any other exemption category in the Federal Fair Labor Standards Act (FLSA) of 1938, 29 U.S.C., § 213, including all future amendments thereto, or in regulations implementing that Act as promulgated by the U.S. Department of Labor.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1065. Private Right of Action.

Any individual aggrieved under this subchapter may seek retroactive payment of unpaid minimum wages or unpaid overtime compensation against a covered employer pursuant to the enforcement provisions set out in subchapter 9 of this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1066. Statute of Limitations.

Any action to secure unpaid wages or unpaid overtime compensation must be commenced within one (1) year after the date on which such wages or overtime compensation should have been included in an employee's paycheck, regardless of the date of actual discovery.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1067. Guidance.

For the purposes of interpreting this subchapter only, the Board 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1068. Fringe Benefits.

A covered employee 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 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 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

SUBCHAPTER 8

OCCUPATIONAL SAFETY AND HEALTH OF EMPLOYEES

Section

1071. Duties of Employers and Employees.

1072. Adoption of Rules of Federal Occupational Safety and Health Administration.

1073. Enforcement.

§ 1071. Duties of Employers and Employees.

- (a) Each covered employer shall:
 - (1) furnish employees with a place and condition of employment that is free from recognized hazards that may cause or are likely to cause death or serious physical harm to the employees; and
 - (2) comply with all occupational safety and health rules promulgated or adopted by the Band pursuant to this subchapter.
- (b) Each employee of a covered employer shall comply with all occupational safety and health rules promulgated or adopted pursuant to this subchapter that are applicable to the actions and conduct of the employee.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1072. Adoption of Rules of Federal Occupational Safety and Health Administration.

The rules and regulations of the Federal Occupational Safety and Health Administration ("OSHA") of the U.S. Department of Labor, including all future rules or amendments to existing rules, promulgated pursuant to the authority granted to OSHA by the Occupational Safety and Health Act of 1975, (29 U.S.C., §§ 651-678) are hereby adopted by the Band and apply to all covered employers.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1073. Enforcement.

- (a) The 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 Federal law.
- (b) For any employer over whom the director's authority to enforce the requirements of this subchapter has been preempted by 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

SUBCHAPTER 9

ENFORCEMENT

Section

1081. Applicability.

1082. Investigations.

1083. Complaints.

1084. Complaints Against the Band.

1085. Resolution of Violations.

1086. Hearing Procedures.

1087. Sanctions.

1088. Appeals.

1089. Monitoring and Coordination with other Tribal, State and Federal Laws.

§ 1081. Applicability.

The provisions set out in this subchapter shall be used to enforce the requirements set out in this chapter, unless a specific enforcement provision is contained in a particular subchapter, in which case the latter provision shall take priority.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 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 director or any field compliance officer designated by the director may make such public or private investigations within the reservation as the 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 director shall conduct regular compliance reviews to ensure that all covered employers are complying with the requirements of this chapter.
- (c) The director or any field compliance officer designated by the director may 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 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 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 director or the TERO Commission, are necessary and proper for the enforcement of this chapter, the 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 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 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.

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.

- (f) 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1083. Complaints.

Any individual, group of individuals, business, or organization that believes any covered employer other than the Band, or the 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 director or, if the complaint is against the director or other TERO staff, 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 (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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1084. Complaints Against the Band.

Any individual who believes the Band, including any office, division, branch, subsidiary entity, or commercial enterprise of the Band, other than the 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 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
- (b) filed a complaint with the involved office, division, branch, subsidiary entity, or commercial enterprise of the Band and 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.

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 of the Band that is the subject of the complaint.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1085. Resolution of Violations.

- (a) If, after conducting an investigation or compliance review, the director has reasonable cause to believe a violation of this chapter or any regulation issued pursuant to it 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, 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 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. It 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 for 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1086. Hearing Procedures.

- (a) Any hearing held pursuant to this chapter shall be conducted by the TERO Commission. The hearing shall be governed by rules of practice and procedure that are adopted by the TERO Commission. The 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 Solicitor General's Office. If the covered employer is an office or subsidiary of the Band Government and the Band Solicitor General's Office determines it would create a conflict to represent the director, the Solicitor General may obtain outside legal counsel for the 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 would be a conflict of interest for the Band Solicitor General's Office to provide such representation, the Solicitor General shall attempt to retain outside legal counsel.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 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 noncompliance 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 reservation, provided that the party is not an office, division, branch, subsidiary, entity, or commercial enterprise 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 reservation, provided that the party is not an office, division, branch, subsidiary, entity, or commercial enterprise 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 reservation, provided that the party is not an office, division, branch, subsidiary, entity, or commercial enterprise 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 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 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 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 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 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 court.

- (c) Except as provided elsewhere in this chapter, the order of the TERO Commission shall be stayed pending the determination of the Court. The director 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 review the decision of the TERO Commission de novo.
- (e) 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 20 days after receipt of notice of such decision, the 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.
- (f) 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.

§ 1089. Monitoring.

If, when carrying out inspections at work sites or otherwise carrying out their responsibilities under this chapter, the director or TERO compliance officers have reason to believe that a requirement of a Tribal, 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.

Historical and Statutory Notes

Source:

Band Ordinance 41-22.