

JULY 2015 CROW TRIBAL LEGISLATURE

BILL NO. CLB 15-08

Introduced by Chairman Darrin Old Coyote
Crow Tribal Executive Branch

Co-Sponsored by

A Bill for an Act Entitled:

“THE CROW TRIBAL GAMING AUTHORITY ACT.”

Legislative Findings:

WHEREAS, Article V, Section 2(a) of the Crow Tribal Constitution vests the Crow Tribal Legislature (hereinafter “Legislature”) with the power and duty to promulgate and adopt laws and resolutions in accordance with the Crow Tribal Constitution and federal law for the governance of the Crow Tribe; and

WHEREAS, Article IV, Section 4(a) of the Crow Tribal Constitution provides that the “general duties” of the Executive Branch Officials shall include the duty to implement all laws, resolutions and policies duly adopted by the Legislature; and

WHEREAS, Article IV, Section 3(c) of the Crow Tribal Constitution authorizes Executive Branch Officials to engage in business activities and undertake economic development activity to promote the well-being of the members of the Crow Tribe; and,

WHEREAS, the Executive Branch and the Legislature are authorized to execute waivers of sovereign immunity for business purposes under Articles IV and V of the Crow Tribal Constitution, respectively; and,

WHEREAS, the Crow Tribe is vested with the inherent authority to engage in class I, class II, and class III gaming on its own lands, subject to the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 et seq; and

WHEREAS, the Crow Tribe has executed, and the United States Department of the Interior has approved, a class III gaming compact with the State of Montana; and,

WHEREAS, the Crow Tribe is seeking to develop a destination gaming and entertainment facility on its lands in order to generate revenues for its government, create jobs for its citizens, and promote economic development; and

July 2015 Session

A Bill for an Act Entitled: “THE CROW TRIBAL GAMING AUTHORITY ACT.”

Page 1 of 3

WHEREAS, the Crow Tribe seeks to ensure that its destination gaming and entertainment facility is operated in a professional manner, independent of the tribal government, so as to maximize its economic potential; and

WHEREAS, the Crow Tribe intends to charter an independent corporation under federal law, pursuant to the Indian Reorganization Act at 25 U.S.C. § 477 to own and operate its destination gaming facility; and

WHEREAS, the Crow Tribe intends establish an independent business entity under tribal law to pursue development of the destination gaming and entertainment facility on the Crow Reservation, and to own and operate such facility independent of the tribal government, while the federal charter for the independent corporation is pending; and,

WHEREAS, the independent business entity formed under tribal law will be known as the Crow Tribal Gaming Authority, and shall have a separate legal existence from the Crow Tribe; and,

WHEREAS, the Crow Tribal Gaming Authority will be vested with all of the privileges and immunities of the Crow Tribe, including sovereign immunity from suit, and shall also be vested with the authority to exercise the powers necessary to effectuate the purpose stated in this Ordinance, including the authority to waive its own sovereign immunity from suit; and,

WHEREAS, the Crow Tribal Gaming Authority shall not be authorized to act on behalf of the Crow Tribe, or to exercise any powers not expressly delegated pursuant to this Ordinance.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE EXECUTIVE BRANCH AND LEGISLATURE:

Section 1. The "Crow Tribal Gaming Authority Act" attached hereto and incorporated by reference, is hereby enacted.

Section 2. This Act shall be effective immediately upon approval.

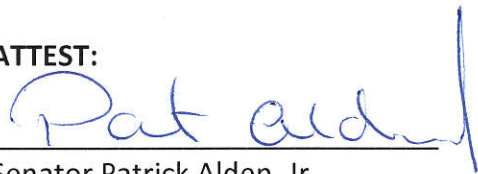
CERTIFICATION

I hereby certify that this Bill for an Act entitled "THE CROW TRIBAL GAMING AUTHORITY ACT" was duly enacted by the Crow Tribal Legislature with a vote of 14 in favor 0 opposed, and 0 abstaining and that a quorum was present on this 21st day of July, 2015.



Senator R. Knute Old Crow, Sr.
Speaker of the House
Crow Tribal Legislature

ATTEST:



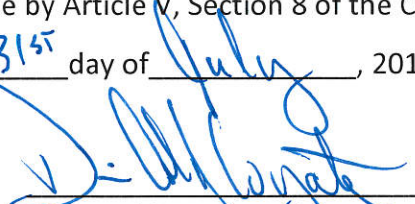
Senator Patrick Alden, Jr.
Secretary
Crow Tribal Legislature



EXECUTIVE ACTION

I hereby
X approve or
_____ veto.

This Bill for an Act entitled "THE CROW TRIBAL GAMING AUTHORITY ACT" pursuant to the authority vested in the Chairman of the Crow Tribe by Article V, Section 8 of the Constitution and Bylaws of the Crow Tribe of Indians, on this 31st day of July, 2015.



Darrin Old Coyote, Chairman
Crow Tribal Executive Branch

**A BILL FOR AN ACT ENTITLED:
"THE CROW TRIBAL GAMING AUTHORITY ACT"**

Bill or Resolution: CLB15-08 **Introduced by:** Chairman Darrin Old Coyote **Date of Vote:** 7/21/2015
Number

<u>Representative:</u>	Yes	No	Abstained
G. Three Irons	<u> X </u>	<u> </u>	<u> </u>
B. Rogers	<u> </u>	<u> </u>	<u> </u>
C. J. Stewart	<u> </u>	<u> </u>	<u> </u>
P. Hill	<u> X </u>	<u> </u>	<u> </u>
E. Birdinground	<u> X </u>	<u> </u>	<u> </u>
A. Coyote-Runs, Sr.	<u> </u>	<u> </u>	<u> </u>
V. Nomee	<u> X </u>	<u> </u>	<u> </u>
T. Gros Ventre	<u> X </u>	<u> </u>	<u> </u>
V. Crooked Arm	<u> X </u>	<u> </u>	<u> </u>
P. Spotted Horse, Sr.	<u> X </u>	<u> </u>	<u> </u>
L. DeCrane	<u> X </u>	<u> </u>	<u> </u>
C. Goes Ahead	<u> X </u>	<u> </u>	<u> </u>
B. Hugs	<u> </u>	<u> </u>	<u> </u>
G. Real Bird, Jr.	<u> X </u>	<u> </u>	<u> </u>
B. Good Luck	<u> X </u>	<u> </u>	<u> </u>
G. Stewart	<u> X </u>	<u> </u>	<u> </u>
P. Alden, Jr. <i>Secretary of the House</i>	<u> X </u>	<u> </u>	<u> </u>
R. Old Crow, Sr. <i>Speaker of the House</i>	<u> X </u>	<u> </u>	<u> </u>
Totals:	<u> 14 </u>	<u> 0 </u>	<u> 0 </u>


Result of Vote:

Passed

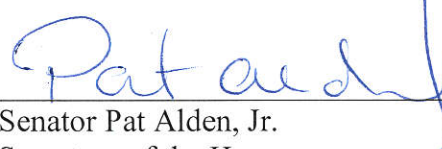
Not Passed

Tabled

Veto-Override


Senator R. Knute Old Crow, Sr.
Speaker of the House

7-21-15
Date


Senator Pat Alden, Jr.
Secretary of the House

7-29-15
Date

Section 1. Title. This law shall be known as the Crow Tribal Gaming Authority Act.

Section 2. Background and Purpose.

- (a) The Crow Tribe of Indians ("Tribe") has entered into a class III gaming compact with the State of Montana, which authorizes the Tribe to operate up to 925 gaming machines; and, the Tribe intends to develop a destination gaming and entertainment facility on the Crow Reservation ("Enterprise").
- (b) The Tribe intends to develop the Enterprise for the purpose of generating revenues for the Tribe's government, creating jobs on the Crow Reservation, and promoting economic growth for the Tribe.
- (c) The Tribe intends for the Enterprise to be operated by an independent entity chartered under 25 U.S.C. § 477 ("Corporation"), to ensure operational independence from the Tribe's government. At the time of enactment of this Ordinance, the Corporation has not received its charter from the United States.
- (d) The Tribe seeks to establish the Crow Tribal Gaming Authority ("Gaming Authority" or "Authority") as an independent entity authorized under the Tribe's laws to engage in activities necessary to develop and operate the Enterprise, prior to the issuance of a charter for the Corporation under 25 U.S.C. § 477.
- (e) The Gaming Authority is created to act on behalf of the Tribe, through the exercise of powers delegated by the Legislature and the Executive Branch, for the following purposes:
 - a. To exclusively own and operate the Enterprise;
 - b. To own all tangible and intangible assets thereof and all other tangible and intangible assets of the Enterprise (to the extent such assets do not constitute an interest in real property);
 - c. To manage all tangible and intangible assets of the Enterprise;
 - d. To be a party to, or an assignee of, any Financing and Project Documents;
 - e. To ensure compliance with all obligations, terms and conditions therewith.

Section 3. Definitions. For purposes of this Act, these terms shall have the following meanings.

"Authority" or "Gaming Authority" shall interchangeably mean the Crow Tribal Gaming Authority, a wholly owned unincorporated enterprise of the Tribe.

"Business Assets" means, collectively: (a) any assets of the Authority, and (b) to the extent not included in (a), all mixed and personal tangible and intangible property, including intellectual property, now or hereafter constituting a part of the Facility and permitted to be reflected on the financial statements of the Authority in accordance with generally accepted accounting principles, (ii) all real, mixed, and personal tangible and intangible property, including intellectual property, that is used in or is primarily related and reasonably beneficial to, the Gaming Business, or is derived from the Gaming Business, (iii) all books and records relating to the Gaming Business, the Authority or the foregoing assets, (iv) all cash, instruments, receivables or other items constituting revenues of the Authority, (v) all deposit or security accounts of the Authority or the Gaming Business, and (vi) proceeds of the foregoing; but excluding, to the extent the same do not occur in violation of any Financing or Project Documents, property that has been the subject of a distribution to the Tribe. Business Assets shall not include (a) any personal property constituting assets of the Tribal Gaming Commission and reasonably required to be owned or otherwise in the possession of the Tribal Gaming Commission for the proper discharge of the Tribal Gaming Commission's responsibilities under the Tribal Gaming Ordinance; (b) any personal property benefiting the Authority primarily because of its use in connection with the Tribe's provision of customary essential governmental services such as those related to health, safety, and welfare; and (c) any assets of the Authority assigned to the Tribe in compliance with all contractual restrictions applicable to the Authority.

"Board" or "Board of Directors" shall mean the governing body of the Authority.

"Corporation" shall mean a tribally owned corporation chartered under 25 U.S.C. § 477 for the purpose of owning and operating the Enterprise.

"Development Agreement" shall mean an agreement with an independent business or entity for the purpose of developing the Enterprise.

"Enterprise" means the Gaming Business, and all related businesses, excluding the Tribe's existing gaming facility known as the Apsaalooke Nights Casino.

"Facility" or "Gaming Facility" means the buildings, structures, appurtenances, fixtures and improvements supporting or relating to the Enterprise or accounted for under generally accepted accounting principles as an asset of the Enterprise.

"Financing and Project Documents" means, collectively, those documents evidencing the terms of or securing any financing for all or any portion of the Facility or the Enterprise or any agreement by which the Enterprise is developed, operated, managed, or maintained.

"Gaming Business" means, collectively: (a) all gaming (other than class I gaming within the meaning of IGRA) conducted by or on behalf of the Tribe, the Authority or any affiliates of the Tribe or the Authority, excluding the Tribe's existing gaming facility known as the Apsaalooke Nights Casino, and (b) all parking, dining, food and beverage, retail sales, entertainment, permanent or temporary lodging (including hotels, motels and/or recreational vehicle parks),

hospitality, transportation, recreation, or any other trade, business or other commercial activity conducted by or on behalf of the Tribe, the Authority or any of their affiliates, which is related to such gaming, reported in accordance with generally accepted accounting principles with the conduct of such gaming, and is intended to market, support, develop, or enhance such gaming, or is located at the site of or in close proximity to the conduct of such gaming.

“Gaming Business Contracts” means all contracts or agreements entered into by the Tribe as of the date hereof in connection with the establishment and development of the Gaming Business or relating to the Business Assets; provided, however, that Gaming Business Contracts shall not include the Compact (as defined below), and the various other agreements between the Tribe, State and local municipalities (although liabilities of the Tribe relating to the Gaming Business and arising under the Compact or various other agreements between the Tribe, State and local municipalities shall be deemed liabilities of the Authority and recorded on the books of the Authority).

“Gaming License” means every license, permit, franchise or other authorization deriving from the Legal Requirements required to own, lease, operate or otherwise conduct Gaming activities of the Authority or the Tribe, including all licenses granted under applicable federal, tribal, state, foreign, or local laws.

“Legal Requirements” means the requirements set forth in the Indian Gaming Regulatory Act of 1988, 25 U.S.C. Section 2701 *et seq.*, (“IGRA”); the implementing regulations of IGRA duly promulgated by the National Indian Gaming Commission (“NIGC”); the Tribal-State Compact between the State of Montana and the Tribe (the “Compact”); the Tribal Gaming Ordinance of the Tribe (the “Gaming Ordinance”), including all current and future amendments to any of the above and all present and future permits, licenses and certificates relating thereto; rules and regulations of the Tribal Gaming Commission; and any and all present and future federal, state, local, and tribal laws, codes, rules and regulations, in any way applicable to the Tribe, the Authority, the Facility, the Enterprise or the Business Assets.

“Management Agreement” shall mean an agreement with an independent business or entity for the purpose of managing the Enterprise.

“Tribe” means the Crow Tribe of Indians.

Section 4. Creation of Authority.

- (a) There is hereby created the Gaming Authority, which shall be called and shall conduct its affairs under the name Crow Tribal Gaming Authority.
- (b) The Gaming Authority is and shall be considered a wholly owned unincorporated enterprise of the Tribe and shall be deemed an authorized agency of the Tribe.

- (c) The Gaming Authority shall be governed by a five-member board that shall serve as the Board of Directors of the Authority. The Tribe's Chairman, the Speaker of the Legislative Branch, and the Chairman of the Legislature's Gaming Committee shall, by majority vote, appoint five individuals to serve as the Board of Directors for the Gaming Authority. Members of the Tribe's Executive, Judicial, and Legislative branches of government, employees and agents of the Tribe's Gaming Commission, employees of the Corporation, Members of the Board of Directors of ACE, Inc., employees of ACE, Inc., and individuals convicted of a felony offense or crime involving theft or dishonesty in any tribal, federal, or state court in the previous ten (10) years, may not serve as voting members of the Board of Directors. The Tribe's Chairman and the Speaker of the Legislature, or their respective designees, shall sit as non-voting members of the Board of Directors.
1. Each voting member of the Board of Directors shall be at least twenty-five (25) years of age. Following the expiration of all of the initial terms of office, at least one voting member of the Board of Directors shall be a member of the Nation.
 2. Members of the Board of Directors shall have a reputation for integrity and honesty, shall be eligible to receive a valid gaming license under applicable law, and shall also possess at least three (3) of the following qualifications:
 - a. A four-year degree from an accredited college or university;
 - b. Demonstrable experience in business administration, business management, and personnel management;
 - c. Demonstrable experience in the gaming, hospitality, or entertainment industry;
 - d. Demonstrable experience working with Indian tribes or tribally-owned businesses;
 - e. Specialized training or education relating to the Authority's business activities.
- (d) The members of the Board of Directors shall serve staggered, four year terms of office, unless they resign or are removed by a vote of the Board of Directors or action of the Tribe.
- (e) The Board shall select other officers from among its membership.
- (f) The Tribe, in its own name, shall be a party to the Compact and any amendment or supplement thereto or replacement or restatement thereof.

- (g) All rights, powers, or privileges not expressly allocated and/or assigned herein to the Authority with respect to the Gaming Business shall be reserved to and held by the Tribe.

Section 5. Powers of Authority. The Gaming Authority, acting through its Board of Directors, shall have the following powers. Such powers shall be limited in accordance with Section 7 below:

- (a) To take such action, not inconsistent with this Act, as it deems necessary and appropriate to promote the Enterprise or general welfare of the Tribe and its members;
- (b) To develop, own, and operate the Facility and the Enterprise and those Business Assets not consisting of interests in real property on behalf of the Tribe;
- (c) To adopt resolutions not inconsistent with this Act and enforce the same;
- (d) To hold or lease from or to any person any interest in real or personal property;
- (e) When necessary to the transaction of its business, including the Gaming Business, to borrow money, to issue promissory notes and other evidences of indebtedness and to secure the same by pledging the Business Assets and assets of the Authority not constituting interests in real property;
- (f) To issue, purchase, hold, sell, exchange, lease, assign, pledge, transfer or deal in bonds, notes, shares, securities or other investments;
- (g) To manage the assets, revenues, accounts, property and other interests of the Authority and the Enterprise, including the Business Assets;
- (h) To employ or contract for the services of consultants, advisors, experts, professionals, laborers, agents or any other person, and to enter into any other contractual or other relationship with another person or entity in connection with any lawful activities of the Authority, or the Enterprise or related to the Business Assets, and to assume any of the foregoing relationships entered into by the Tribe with respect to the Facility, the Enterprise, or the Business Assets;
- (i) To do any and all things necessary or desirable to fulfill the purposes of the Gaming Authority, including to secure financing and development and management expertise for the development, management, and operation of the Enterprise, and to enter into contracts for the same;
- (j) If necessary, to make bylaws and establish policies and procedures not inconsistent with this Act;

- (k) To form and own subsidiaries, which subsidiaries shall enjoy the same privileges and immunities of the Authority to the extent permitted by law;
- (l) In connection with any contractual obligation of the Authority, to waive the Authority's sovereign immunity from suit, including with respect to any or all Business Assets not constituting interests in real property, to consent to the jurisdiction of any court over the Authority or the Enterprise or the Business Assets, to consent to the resolution of disputes by either mediation or arbitration, to waive any and all requirements that a dispute related to the Authority, Enterprise, or Business Assets be heard or considered before any tribal court or other dispute resolution or mediation procedures of the Tribe, or to consent to the levy of any judgment or lien attachment upon any property or income of the Authority, subject to the provisions of Section 14 of this Act;
- (m) To hire, supervise and terminate employees and agents of the Gaming Authority, including but not limited to a Chief Executive Officer ("CEO"), a Director of Development ("DOD"), and other officers and employees, permanent or temporary, as the Authority may require, and to delegate to such officers and employees powers or duties as the Board of Directors shall deem proper;
- (n) To assign its power to develop, own, and operate the Facility and the Enterprise and the Business Assets to the Corporation; and,
- (o) To do everything necessary, proper or desirable in the discretion of the Board of Directors for the accomplishment of the purpose enumerated in Section 2 above, subject at all times to applicable Legal Requirements, including Section 7 of this Act.

Section 6. Management.

- (a) The Board of Directors of the Gaming Authority is hereby delegated the power to manage and control the business, property and affairs of the Authority. In the management and control of the business, property, and affairs of the Authority, the Board is hereby delegated the powers necessary to grant approvals and make decisions. Regulation of the Gaming Business shall be the sole responsibility of the Tribal Gaming Commission.
- (b) The Authority may adopt separate personnel policies to govern employees and employment relationships with the Authority; provided, that such policies are consistent with the Tribe's laws and policies regarding labor and employment.
- (c) Consistent with the terms of any Financing and Project Documents, employees of the Authority shall be entitled to participate in any third party employee benefit plans, whether relating to insurance, retirement, or otherwise.

Section 7. Limitation on Powers and Activities. So long as any obligations of the Tribe or the Gaming Authority remain outstanding under any Financing and Project Documents, the Gaming

Authority shall limit its activity and interests to ownership of the Facility, the Business Assets, and the Enterprise; and no other division, agency, instrumentality, component unit or subsidiary of the Tribe shall engage in ownership of the Facility. The Authority shall not have the power to do any of the following:

- (a) The Authority may not enter into any agreement on behalf of the Tribe, either expressly or by implication, other than in the circumstances and to the extent specified in this Charter or as authorized through a lawful act of the Tribe.
- (b) The Authority may not hold itself out as an agent of the Tribe, except as otherwise permitted in this Act or as authorized through a lawful act of the Tribe.
- (c) The Authority may not pledge the Tribe's credit.
- (d) The Authority may not dispose of, pledge, or otherwise encumber the Tribe's real or personal property, other than the Corporation's interest in such property.
- (e) The Authority may not waive any right, privilege, or immunity of the Tribe.
- (f) The Authority may not release any obligation owed to the Tribe.
- (g) The Authority may not enter into any sublease or other instrument respecting lands leased to the Corporation by the Tribe without the Tribe's authorization.
- (h) The Authority may not operate any gaming facility within forty-five (45) miles of a class III gaming facility operated by Absaloka Casino Enterprises, Inc. (ACE, Inc.) that is in operation as of the date of this Act.

Section 8. Assets of Authority. The property, monies, funds, accounts, other assets of the Authority and all Business Assets (collectively, the "Authority Assets") shall be held and maintained solely in the name of the Gaming Authority, and the Tribe shall use commercially reasonable efforts to transfer any of such assets owned by the Tribe to the Authority. Authority Assets consisting of cash, securities, instruments or other financial assets shall be held and maintained in segregated accounts separate from those of the Tribe, or its government agencies, and shall not be commingled with the assets of any person or entity.

Section 9. Meetings.

- (a) *Regularly Scheduled Meetings.* The Gaming Authority may hold regular and special meetings at such times and places as it may deem convenient, but at least one regular meeting shall be held every three (3) months. A majority of the members constitute a quorum for purposes of meetings of the Board of Directors. Special meetings may be called by the Chairperson of the Board, and shall be called by the Chairperson at the written request of at least two members of the Board of Directors.

(b) *Special or Closed Meetings.* The Gaming Authority may hold executive or closed meetings for any of the following purposes:

1. Consulting with experts and principals from the Tribe or the Enterprise concerning matters of special and unique necessity.
2. Discussing business strategies, marketing and pricing strategies of the Enterprise or the Facility and their activities.
3. Negotiating the terms of any financing arrangement for the benefit of the Authority or the Tribe.
4. Discussing personnel issues or other matters that a reasonable individual of average sensibilities would deem a private matter.
5. Discussing and consulting on matters of importance with attorneys and accountants.
6. Discussing any other matter that the Board of Directors deems confidential and or proprietary in nature.

Section 10. Conflicts of Interest.

- (a) During his or her tenure, no member of the Board of Directors, officer or managing employee of the Authority, nor any member of the Tribe's Executive Branch or Legislature, shall participate in any action of the Board of Directors that affects his or her personal financial interest or any personal financial interest in any entity which transacts business with the Authority.
- (b) If any member of the Board of Directors, officer, or employee of the Authority acquired any such personal financial interest prior to appointment or employment as a member of the Board of Directors, officer, or employee, that person, in any such event, shall immediately disclose his or her personal financial interest in writing to the Authority, and such disclosure shall be entered upon the minutes of the Authority, and that person shall not participate in any action by the Board of Directors relating to the entity or contract in which he or she has any personal financial interest unless authorized to do so by a disinterested majority of the Board of Directors.
- (c) No member of the Board of Directors, officer or employee of the Authority, shall participate in any action of the Board of Directors relating to the Gaming Business if an Immediate Family Member has any personal financial interest in that action unless authorized to do so by a disinterested majority of the Board of Directors. For purposes of this Ordinance, "Immediate Family Member" of any person means that person's spouse, parent, child, sibling, step-child or foster child, grandparent, grandchild, step-grandchild,

any person so related to the spouse of that person, and any other person raised in that person's home or residing in that person's home. "Personal financial interest" means an interest, distinct from that of other members of the Tribe, held by a person, or by an Immediate Family Member of that person, that has (1) any ownership, income, investment, security or other beneficial interest in a business, or (2) any employment or prospective employment for which negotiations have already begun.

Section 11. Audits. The Authority shall require annual outside audits of all of its business activities. The audits shall be conducted by an independent auditing firm, prepared in conformity with the American Institute of Certified Public Accountants' standards, and shall be prepared at such times and in such manner as shall be required by the National Indian Gaming Commission and the laws of the Tribe. The audits shall be submitted to the Chairman of the Executive Branch and the Speaker of the Legislative Branch of the Tribe.

Section 12. Reports of Authority.

- (a) The Board of Directors of the Gaming Authority shall prepare and submit to the Tribal Legislature each year a report showing, with respect to the prior year:
 - 1. a summary of the Gaming Business's activities;
 - 2. the financial condition of the Gaming Business;
 - 3. any significant problems and accomplishments;
 - 4. plans for the next year; and
 - 5. such other information as the Board of Directors deems pertinent.
- (b) The Board of Directors shall submit all reports that are the subject of this Section 12 to the Tribal Legislature by January 1 of each year, and may submit supplemental reports as it deems appropriate from time-to-time.

Section 13. Authority Records. Information and records of the Gaming Authority are confidential and may not be disclosed to any person or entity except the Tribe's Legislature, or as required by applicable Legal Requirements or the terms of the Financing and Project Documents.

Section 14. Privileges and Immunities.

- (a) As a wholly owned unincorporated business and agency of the Tribe, the Authority shall be covered by tribal and federal law with all the privileges and immunities of the Tribe, including sovereign immunity from suit in any state, federal, or tribal court. Nothing

contained in this Act shall be deemed to be a waiver of sovereign immunity by the Authority from suit, which may be waived only in accordance with Section 14(c).

- (b) Except as the person or entity may otherwise specifically agree in the contract, Tribal laws enacted after a valid legal contract between the Authority and any person or entity is executed are inapplicable unless a court of competent jurisdiction holds that the Tribal laws effect a material impairment of such contract and have a primary purpose other than protecting the political integrity, the economic security, or the health or welfare of the Tribe.
- (c) The Authority is a separate and distinct legal entity that is wholly owned by the Tribe. The activities, transactions, obligations, liabilities, and property of the Authority are not those of the Tribe; provided, that the Authority may act on behalf of the Tribe in the circumstances and to the extent specified in this Act, or as expressly authorized by the Tribe, acting pursuant to its own laws and procedures. The Authority's revenues will ultimately benefit the Tribe, in the same manner in which tax revenues benefit non-Indian governments, by supporting the Tribe's governmental activities undertaken for the welfare of its citizens.
- (d) The Authority may sue in its own name, and may authorize suits against itself in its business name, in the courts of the Tribe, the United States, or any other appropriate court; provided, this authorization does not constitute a waiver of the Authority's or Tribe's sovereign immunity from suit. The Authority may condition, limit, modify, or waive its immunity from suit, subject to the following:
 - 1. Such actions must comply with governing tribal law;
 - 2. Such actions must be in writing, and expressly state the manner in which the Authority's sovereign immunity is conditioned, limited, modified, or waived, including the duration of the waiver, and a description of the property or funds of the Authority available to satisfy any judgment or order;
 - 3. Such actions must be approved by a vote of the Board of Directors;
 - 4. Contractual agreements providing for the court enforcement of dispute resolution awards shall not be construed as a condition, limitation, modification, or waiver of sovereign immunity without other language expressly taking such action; and,
 - 5. Individual agents, employees, or officers of the Authority are not authorized to condition, limit, modify, or waive the Authority's sovereign immunity from suit.

- (e) The Authority is hereby authorized to waive, in the same manner as provided for sovereign immunity under this section, any defense the Authority, its directors, officers, employees, attorneys, or agents may otherwise assert that federal, state, or Tribal law requires exhaustion of tribal court remedies prior to suit against the Authority in a state or federal court otherwise having jurisdiction over the subject matter and the parties.
- (f) Nothing in this Act shall be understood to waive, or to permit the Authority to waive, the Tribe's sovereign immunity.

Section 15. Indemnification.

- (a) The Authority shall indemnify a present or past member of the Board of Directors, or a past or present Authority employee, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, by reason of the fact that he or she is or was a member of the Board of Directors or an Authority employee, except in relation to matters as to which that person shall be adjudged in such action, suit or proceeding to be liable for gross negligence or intentional misconduct in the performance of their duties, or except in relation to matters in which such employee was acting beyond the scope of his or her employment.
- (b) To the extent that a member of the Board of Directors or an Authority employee has been successful on the merits or otherwise in defense of any action, suit or proceeding, or in defense of any claim, issue or matter, brought by reason of the fact that he or she is or was a member of the Board of Directors or an Authority employee, the Authority shall indemnify him or her against expenses, including attorneys' fees, actually and reasonably incurred by him or her in connection with the defense, except in relation to matters as to which that person shall be adjudged in such action, suit or proceeding to be liable for gross negligence or intentional misconduct in the performance of their duties, or except in relation to matters in which such employee was acting beyond the scope of his or her employment.

Section 16. Delegation of Authority. The Board of Directors may delegate authority to an individual member of the Board of Directors to act on behalf of, or represent, the Board of Directors. Such delegation of authority by the Board of Directors shall be enacted pursuant to a formal resolution of the Board of Directors.

Section 17. Board of Directors Compensation. Subject to applicable tribal and federal law, Directors may receive such expense reimbursement, stipend, salary, or compensation as may be determined reasonable and appropriate by the Board. The Board shall disclose to the Tribe each Director's compensation and reimbursements. The Tribe's Constitution prohibits the Tribe's elected officials from receiving compensation for serving as members of the Board.

Section 18. Assignment. Upon the issuance of a charter for the Corporation, pursuant to 25 U.S.C. § 477, the Authority shall take action to assign its right to develop, own, and operate the

Facility and the Enterprise and those Business Assets to the Corporation within a reasonable time. Such assignment shall be subject to the Financing and Project Documents, Gaming Contracts, and applicable law. The assignment shall be effectuated in a manner intended to limit disruption to the Enterprise.

Section 19. Amendments. This Act may be amended only by duly enacted resolution of the Tribe's Legislature.