

RESOLUTION OF THE
NAVAJO NATION COUNCIL

20th NAVAJO NATION COUNCIL - Fourth Year, 2006

AN ACT

RELATING TO ECONOMIC DEVELOPMENT AND GAMING; APPROVING
THE TSE'DAA'KAAN GAMING ENTERPRISE AMENDING 1 N.N.C.
§552 AND 5 N.N.C. §§1731 TO 1749; APPROVING A
LIMITED WAIVER OF SOVEREIGN IMMUNITY

BE IT ENACTED:

Section 1. Establishing the "Tse'daa'kaan Gaming
Enterprise"

The Navajo Nation hereby establishes the Tse'daa'kaan Gaming Enterprise as a "Tribal Gaming Enterprise" to conduct gaming operations within the Navajo Nation pursuant to the Indian Gaming Regulatory Act of 1988 (Public Law 100-497, 25 U.S.C. §§2701-2721 and 18 U.S.C. §§1166-1168), Navajo Gaming Ordinance, (5 N.N.C. §§2001-2057) and the gaming compacts entered into between the Navajo Nation and any State; and to generate gaming revenue and provide a fair return to the Navajo Nation.

Section 2. Amendments to Titles 1 and 5 Navajo Nation Code

The Navajo Nation Council hereby approves the following amendments to Title 1 of the Navajo Nation Code, Section 552 and Title 5 of the Navajo Nation Code, Sections 1731 to 1749:

Title 1. Navajo Nation Code
Chapter 5 Navajo Nation
Subchapter 2. Navajo Sovereign Immunity Act

§ 552 Definitions

For the purposes of this Subchapter, "Navajo Nation" means:

- P. Navajo Housing Authority;
- Q. Navajo Nation Gaming Enterprise.
- R. Tribal Gaming Enterprises.

Title 5. Navajo Nation Code
Chapter 9. Navajo Nation Enterprises
Subchapter 7. Navajo Nation Tribal Gaming Enterprises

§ 1731. Establishment

The Navajo Nation, a federally-recognized Indian tribe, hereby establishes the Tse'daa'kaan Gaming Enterprise as a tribal gaming enterprise of the Navajo Nation ("Enterprise.")

§1732. Status of the Enterprise

A. The Enterprise is a legal entity wholly owned by the Navajo Nation, a federally recognized Indian tribe.

B. The duration of the Enterprise is perpetual.

C. As a legal entity of the Navajo Nation, the Enterprise is entitled to the privileges and immunities of the Navajo Nation. The Enterprise shall possess all of the attributes of Navajo sovereignty, including but not limited to immunity from suit, freedom from levy and execution, and exemption from state and federal taxes, unless, either by contract approved by the Enterprise in conformity with this enabling legislation or by resolution of the Navajo Nation Council, any such attribute of sovereignty is expressly waived or abrogated as to any transaction involving the Enterprise.

D. Neither the Executive Director of the Gaming Regulatory Office nor any other public official or public employee of the Navajo Nation (individually or collectively) shall have any role in the management of the Enterprise or any licensed gaming establishment.

§1733. Purpose

The purpose for which the Enterprise is organized and created is as follows:

A. To be a Tribal Gaming Enterprise to conduct gaming operations within the Navajo Nation under the auspices of the Indian Gaming Regulatory Act of 1988 (Public Law 100-497, 25 U.S.C. §§2701-2721 and 18 U.S.C. §§1166-1168), Navajo Gaming Ordinance, (5 N.N.C. §2001 et seq.) and the gaming compacts entered into between the Navajo Nation and any State.

B. To generate gaming revenues and provide a fair return to the Navajo Nation in accordance with the Indian Gaming Regulatory Act, Navajo Gaming Ordinance, and other applicable laws of the Navajo Nation.

§1734. Place of business

A. The Enterprise's principal place of business shall be the Tse'daa'kaan Chapter, Navajo Nation (New Mexico), unless otherwise designated by the Board of Directors.

B. The Enterprise may maintain other offices within or outside the Navajo Nation, as may be designated from time to time by the Board. The business of the Enterprise may be transacted at such other offices with the same effect as that conducted at the principle place of business.

§ 1735. Powers

Consistent with the purposes for which the Enterprise is created and subject to the limitations in §1736, the Enterprise shall have the following powers:

A. To engage in related business activities in its own name or under such other names as the Board of Directors may choose either within or outside the Navajo Nation.

B. To maintain bank accounts that are separate from Navajo Nation accounts, such accounts shall be used for the operation of gaming and related business activities.

C. To buy, sell, lease and otherwise acquire and maintain real property, buildings, offices, shops and other appurtenances necessary and proper for the carrying on of gaming and related activities.

D. To acquire, by assignment, gift, exchange, purchase or otherwise, to own, hold, operate, use, improve, lease, rent, sell, convey, dispose of, encumber and otherwise deal in real and personal property of any and all kinds, including but not limited to business, securities, goodwill, franchises, patents, trademarks, copyrights and assets of any kind, and in connection therewith undertaking, either wholly in part, liabilities of whatever kind.

E. To enter into, make, assign, and take assignments of any and all forms of contracts, agreements, joint ventures, guarantees, commitments, assurances, and any and all forms of lawful undertaking with any person, partnership, corporation, state government or political subdivision thereof, or any form of legal entity, for any purpose that is reasonably related to the lawful purposes of the Enterprise.

F. To waive the Enterprise's immunity from suit so as to permit suit against the Enterprise in the courts of the Navajo Nation, the courts of the United States or of any state. Such waiver shall be approved by not less than three-fourths vote of the full membership of the Board of Directors by a duly adopted resolution.

G. To borrow money and to make, accept, endorse, execute and issue bonds, debentures, promissory notes, and other corporate obligations for money borrowed, or in payment for property acquired for any of the purposes of the Enterprise, and to secure payment of any obligation by mortgage, pledge, deed, indenture, agreement, or other instrument of trust, or by other lien upon, assignment of, or agreement in regard to all of any part of the property, rights or privileges of the Enterprise.

H. To have a corporate seal at the discretion of the Board of Directors.

§1736. Limitation Powers

A. The acts or omissions of the Enterprise (whether pursuant to the powers enumerated in this plan of operation or otherwise) shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation, and only the assets, revenues and income held by or in the name of the Enterprise shall be subject (to the extent otherwise permitted herein or by law) to the debts, obligations or other liabilities created or incurred by the Enterprise.

B. Unless expressly authorized by the Navajo Nation Council and except as to the Enterprise and its property, the Enterprise may not:

1. Enter into any agreement of any kind whatsoever on behalf of or that purports to bind the Navajo Nation;

2. Enter into any agreement of any kind whatsoever on behalf of or that purports to bind the gaming revenues of the Navajo Nation;

3. Pledge the credit of the Navajo Nation;

4. Dispose of, sell, mortgage, pledge, or otherwise encumber any real or personal property of the Navajo Nation;

5. Waive any rights, privileges or immunities of the Navajo Nation, or release any obligations to the Navajo Nation;

6. Sell or otherwise dispose of all or substantially all of the Enterprise's assets; or

7. Engage in any activity that violates any Navajo Nation law.

§1737. Board of directors and officers; number; appointment; composition term and removal

A. Oversight Authority. The business and affairs of the Enterprise shall be overseen exclusively by its Board of Directors. In general, the Board of Directors shall be responsible for establishing overall policies and objectives for the management of the affairs and assets of the Enterprise and for periodically reviewing and evaluating management results.

B. Number. The Board of Directors shall consist of seven members. The Board shall select from among its membership a Chairperson, Vice-Chairperson, and Secretary/Treasurer. The Chairperson shall preside at meetings of the Board and shall act on behalf of its Board with such authority as is conferred by the Board. The Chairperson shall not vote on any matter voted on by the Board of Directors unless there is a tie. The Vice-Chairperson shall act in the Chairperson's absence. The Secretary/Treasurer shall arrange the meetings of the Board, keep minutes of the Board meetings, send notices of meetings to the Board members, maintain the records of the Board, and prepare correspondence and documents for the Board and its members.

C. Board of Directors Selection. The President of the Tse'daa'kaan Chapter shall select Board members. Such selections are subject to confirmation by the Navajo Nation Council.

D. Composition. At least one director shall be a Certified Public Accountant; at least one member shall possess a Juris Doctorate; at least one director shall have experience in gaming management or gaming operations; and at least four members be enrolled members of the Navajo Nation;

E. Quorum. The presence of four members of the Board shall constitute a quorum for transacting any business. The act of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the Board. All actions, with the exception of procedural motions, shall be recorded and documented in written resolutions certified by the presiding Chairperson.

F. Vacancies. In the event a vacancy occurs in the Board of Directors, the vacant position shall be filled in the same manner set forth in Subsection C of this Section. A director selected to fill a vacancy shall serve the remaining term of his/her predecessor.

G. Qualifications. At all times the nominees and the Directors shall not be a public official or public employee of the Navajo Nation.

H. Licensure. Each appointee for the position of member of the Board of Directors of the Enterprise shall obtain a Gaming Facility Operator's License from the Gaming Regulatory Office before submission of the appointment to the Navajo Nation Council for confirmation. The appointee shall obtain a Gaming Facility Operator's License within 90 days of the appointment. Each member of the Board of Directors shall maintain a Gaming Facility Operator's License from the Gaming Regulatory Office.

I. Term of Office. Directors shall be appointed for four years staggered terms and shall hold office until the qualification and selection of their successors. The initial Board of Directors shall be divided into three groups. The first group of two shall serve for two years, the second group of two shall serve for three years, and the third group of three shall serve four years. Thereafter all terms shall be for four years.

J. Discretionary Removal. Any Director may be removed at a duly called meeting of the Board of Directors, by a majority vote of the full membership of the Board of Directors, for just cause. Just cause includes, but is not limited to: failure to attend three consecutive meetings of the Board, or an inability to fulfill the duties of a Director.

K. Automatic Removal. Any Director shall be automatically removed for the following: failure to maintain a Gaming Facility Operator's License, death, submission of resignation, or failure to maintain the qualifications of a Board of Director as set forth in this Section.

L. Compensation. Directors shall receive a quarterly stipend of \$4,500 plus expenses for travel and training. Directors shall not receive any other type of compensation for their service, except quarterly stipends for attendance at regular and special meetings of the Board of Directors, and for other official business of the Enterprise.

§1738. Chief Executive Officer; functions; duties

A. The Chief Executive Officer of the Enterprise shall be employed under a written employment contract for a four-year term approved by the Board of Directors. The commencement of the employment contract is contingent upon the Chief Executive Officer obtaining a Navajo gaming license within 90 days of the execution of the contract. The Board of Directors shall periodically review the job performance of the Chief Executive Officer. The Chief Executive Officer shall be removed only for breach of contract.

B. The Chief Executive Officer shall possess the following qualifications: a bachelor's degree, and a minimum of ten years of experience in upper management of a hospitality or gaming business.

C. The Chief Executive Officer shall, among other things, execute the general policies formulated by the Board of Directors and organize the operation of the Enterprise.

D. The Chief Executive Officer shall exercise best judgment to determine the manner by which general policies set forth by the Board of Directors are to be effectuated.

E. The Chief Executive Officer shall be the active, operating executive of the Enterprise and shall prepare plans and annual budgets, as well as make suggestions as to policies and any proposals for improvements.

F. The Chief Executive Officer shall have full authority and control of all employees of the Enterprise and be responsible for all department heads or other executives carrying out their assignments.

G. The Chief Executive Officer shall be responsible for the general supervision of the performance of staff with respect to all matters such as adherence to a corporate vision, marketing, conformance to standards, department inspection, cost control, employee relations and in-service training.

H. The Chief Executive Officer shall render regular reports to the Board of Directors and perform all other functions and duties specified in this Chapter.

I. The Chief Executive Officer shall have the authority to hire all such employees necessary and proper to carry out the business needs of the Enterprise.

§1739. Interim Chief Executive Officer

A. Hiring of Interim Chief Executive Officer. Until a contract is executed between the first Chief Executive Officer and the Board of Directors, the duties of the Chief Executive Officer may be performed by an Interim Chief Executive Officer appointed by the President of the Tse'daa'kaan Chapter and confirmed by the Tse'daa'kaan Chapter. The Interim Chief Executive Officer must possess the minimum qualifications for the Chief Executive Officer, and shall have all the powers and responsibilities of that position.

B. Subsequent Vacancies in the Chief Executive Officer Position. When subsequent vacancies occur in the Chief Executive Officer position, the Board of Directors shall appoint an Interim Chief Executive Officer, who shall serve until a contract is executed between the Chief Executive Officer and Board of Directors. The Chief Financial Officer shall serve as Acting Chief Executive Officer until the Board of Directors appoints an Interim Chief Executive Officer.

§1740. Chief Financial Officer; functions; duties

A. The Chief Financial Officer of the Enterprise shall be employed under a written employment contract with the Chief Executive Officer. The job performance of the Chief Financial Officer shall be periodically reviewed by the Chief Executive Officer.

B. The Chief Financial Officer shall oversee the management of the day-to-day operations of the financial and related functions of the Enterprise.

C. The Chief Financial Officer shall be responsible for the overall direction of the financial results of the Enterprise including strategic planning, operations, investment portfolios, cash management, financial reports, financial analysis, and other financial concerns.

D. The Chief Financial Officer shall complete all financial reporting requirements to Navajo Nation, state, and federal agencies.

E. The Chief Financial Officer shall ensure compliance and review for internal controls as required by the Navajo Nation, state and federal agencies.

F. The Chief Financial Officer shall assist operational management with financial reports and analysis and make presentations before the Navajo Nation Council as required.

§1741. Indemnification of directors, officers and employees

While acting in their official capacities, the Enterprise shall indemnify any officer, employee or member of the Board of Directors or former officer, employee or member of the Board of Directors, or any person who may have served at its request as an officer, employee or member of another entity, against reasonable expenses incurred by him or her in connection with the defense of any action, suit or proceeding in which he or she is made a party by reason of being, or having been such officer, employee or member of such entity; except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty. The Enterprise shall also reimburse any officer, employee or member of the Board of Directors or such other entity, for reasonable costs of settlements of any such action, suit or proceeding if it shall be found by a majority of the Board of Directors, other than directors involved in the matter of controversy (whether or not a quorum exists), that it is in

the best interest of the Enterprise and the Navajo Nation that such settlement be made. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such person may be entitled to receive, but shall be subject to any applicable limitation thereon.

§1742. Bylaws, meetings

A. The Board of Directors shall adopt bylaws for the Enterprise and such bylaws may be amended or repealed as provided therein. The bylaws of the Enterprise shall provide among other things for the time and place of the annual meeting of the Board of Directors. The Board shall hold four regular meetings per year, one of which shall be the annual meeting, plus any other special meetings as may be called by the Chairperson of the Board of Directors.

B. The bylaws shall further provide for notice of meetings, waiver of notice, fiscal year, and for all other matters necessary for the orderly and efficient operation and management of the Enterprise.

§1743. Inspection of books, records and reports

The Enterprise shall open to the inspection of the President of the Navajo Nation and the Attorney General of the Navajo Nation or their authorized representative, the accounts, books and papers of the Enterprise at all reasonable business hours. The accounts and records of the Enterprise shall be maintained on the Navajo Nation and audited at the close of each fiscal year. Copies of the audit report shall be furnished to the President of the Navajo Nation, the Budget and Finance Committee of the Navajo Nation Council and to such other persons or entities as the President of the Navajo Nation or chairperson of the Economic Development Committee of the Navajo Nation Council shall direct.

§1744. Distribution of Revenue

The gaming revenues of the Enterprise shall be disbursed by the Enterprise to the Navajo Nation in accordance with the Tse'daa'kaan Chapter gaming revenue distribution plan pursuant to the approved Memorandum of

Agreement between the Navajo Nation and Tse'daa'kaan Chapter.

§1745. Insurance

The Enterprise shall carry adequate insurance consistent with applicable laws and gaming compacts.

§1746. Sovereign Immunity

A. While acting in their official capacities, the Enterprise, its Board of Directors, officers, and employees are immune from suit, and the assets and other property of the Enterprise are exempt from any levy or execution, except as provided:

1. In the Navajo Sovereign Immunity Act (1 N.N.C. §§551 et seq.); or

2. When the Enterprise's Board of Directors has, in any particular matter by duly adopted Resolution, waived the Enterprise's immunity from suit so as to permit suit against the Enterprise in the courts of the Navajo Nation, the courts of the United States or of any state as may be appropriate and agreed to by the Board of Directors.

B. Any waiver of immunity by the Enterprise shall not be construed to waive any immunity of the Navajo Nation or other person or entity, nor shall the provisions of the Navajo Sovereign Immunity Act, (1 N.N.C. §§ 551 et seq.) be deemed altered or amended.

§1747. Compliance with Navajo law

The Enterprise, its Board of Directors, officers, employees, and agents shall conduct the business of the Enterprise in compliance with all applicable laws of the Navajo Nation.

§1748. Legislative Oversight

The Enterprise shall operate under the legislative oversight Navajo Nation Council.

Agreement between the Navajo Nation and Tse'daa'kaan Chapter.

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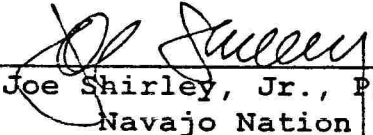
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ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this _____ day of _____ 2006.

Joe Shirley, Jr., President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of ~~JAN 16 2007~~ 2006 for the reason(s) expressed in the attached letter to the Speaker.



Joe Shirley, Jr., President
Navajo Nation

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