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**SISSETON-WAHPETON SIOUX TRIBE
CHAPTER 68
CAPITAL IMPROVEMENTS AUTHORITY CODE**

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**SISSETON-WAHPETON SIOUX TRIBE
CHAPTER 68
CAPITAL IMPROVEMENTS AUTHORITY**

S. W. S. T. CODE
 Amendment
 New Adoption
Judicial Approved

Council Adopted
05-06-97

**SECTION I
GENERAL PROVISIONS**

68-01-01 Title

68-01-02 It being necessary to strengthen the government of the Sisseton-Wahpeton Sioux Tribe by exercising the specific grant of authority contained in Article VII, Section 1 of the Sisseton-Wahpeton Sioux Tribe Constitution to acquire, own, use, manage, lease and otherwise encumber, and to dispose of tribal property, both real and personal, wherever located, to engage in any business that will further the economic development of the Tribe and its members and to use tribal funds or other resources for such purposes, and through such powers to construct, finance, operate and maintain such public improvements of the Tribe, to provide financing for the current expenses of the Tribal Government, expand Tribal Government operations and services, educate members of the Tribe, promote economic growth, support capital improvements and increase consumer services, in order for the Tribe to efficiently and effectively exercise its confirmed inherent sovereignty and governmental responsibilities and enhance the general well-being of members of the Tribe and others within the jurisdiction of the Tribe, the Tribe hereby adopts this Chapter 68, the Sisseton-Wahpeton Sioux Tribe Capital Improvements Authority Code.

68-02-01 Jurisdiction

68-02-02 In accordance with Article I of the Sisseton-Wahpeton Sioux Tribe Constitution, the Tribal Council hereby affirmatively declares, asserts, and extends the jurisdiction of the Tribe over all areas within the original exterior boundaries of the Lake Traverse Indian Reservation, as described in Article III of the Treaty of February 19, 1867, that are held by the United States in trust for the Tribe or any individual Indian, all other lands owned by the Tribe or any individual Indian, all allotments covered by 18 U.S.C. § 1151(c), and all dependent Indian Communities within the original boundaries of the Lake Traverse Indian Reservation as defined by 18 U.S.C. § 1151(b), as well as all dependent Indian Communities otherwise deemed to be Indian Country and subject to jurisdiction of the Sisseton-Wahpeton Sioux Tribe.

**Section I
General Provisions**

68-03-01 Severability

68-03-02 If any clause, sentence, paragraph, section, or part of this Chapter and Code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgment shall have been rendered.

68-04-01 Construction

68-04-02 This Code shall be interpreted and applied in a manner consistent with all other Codes, Laws, Ordinances, Resolutions, Regulations, and other Tribal policies and plans of the Sisseton-Wahpeton Sioux Tribe.

68-05-01 Amendments

68-05-02 This Code may be amended only upon an affirmative vote of a majority of the Sisseton-Wahpeton Sioux Tribal Council.

68-06-01 Effect of Headings

68-06-02 Headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any portion of this Code.

**SECTION II
CAPITAL IMPROVEMENTS AUTHORITY**

68-07-01 Capital Improvements Authority

68-07-02 The Sisseton-Wahpeton Sioux Tribe Capital Improvements Authority of the Sisseton-Wahpeton Sioux Tribe is hereby established as an instrumentality of the Tribal Government with those powers expressly delegated by the Sisseton-Wahpeton Sioux Tribal Council. The Capital Improvements Authority of the Sisseton-Wahpeton Sioux Tribe is established to acquire, construct, finance, operate and maintain such public improvements of the Tribe as may from time to time be designated by the Sisseton-Wahpeton Sioux Tribal Council.

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68-08-01 Board of Commissioners

68-08-02 The Sisseton-Wahpeton Sioux Tribe Capital Improvements Authority shall be managed by a Board of Commissioners comprised of five (5) board members. The Board of Commissioners membership shall consist of the Tribal Treasurer and four other Board members who shall be nominated by the Tribal Chairperson and ratified by the Tribal Council. At least two of the four other Board members shall be tribal members, but need not be Tribal members residing on the Lake Traverse Reservation, and all of whom must be Native Americans. The remaining members of the board shall be individuals selected from the business community on the basis of their experience, knowledge, education and abilities as demonstrated in past successful business endeavors. The Board of Commissioners shall exercise that inherent sovereign authority of the Tribe delegated to it by this Chapter 68. The Board of Commissioners shall be and hereby is deemed to be an agency of the Tribe, protected by and enjoying all privileges and immunities of the Tribe, whether articulated in this Code or otherwise existing at law. The Capital Improvements Authority Board of Commissioners shall at all times be subordinate to and operate at the direction of the Tribal Council.

68-08-03 Commissioners shall serve a term of four (4) years from the date of appointment. The Board shall select one among its five members who shall serve a four year term, one who shall serve a three year term, two who shall serve a two year term, and one who shall serve a one year term; subsequent appointments after these terms expire shall run for four years

68-08-04 Terms of office shall be staggered upon initial appointment to the Board of Commissioners.

68-08-05 The Board of Commissioners shall select from among its own members a Chair, Vice-Chair, a Secretary and a Treasurer. In the absence of the Chair, the Vice-Chair shall preside, and in the absence of both the Chair and the Vice-Chair, the Secretary shall preside.

68-08-06 A member of the Board of Commissioners may only be removed from office for just cause, including but not limited to inefficiency, neglect of duty, or misconduct in office. A commissioner shall be removed only after a hearing. A copy of the charges must be given to the commissioner at least ten days before the hearing. The commissioner must be given an

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opportunity to be heard in person or by counsel at the hearing. When written charges have been submitted against a commissioner, the Tribal Council may temporarily suspend the commissioner. If the Tribal Council finds that those charges have not been substantiated, the commissioner shall be immediately reinstated. If a commissioner is removed, a record of the proceedings, together with the charges and findings, shall be filed in the office of the Tribal Secretary.

- 68-08-07** A majority of the full Board of Commissioners shall constitute a quorum for the transaction of business, but no Board action shall be taken by a vote of less than a majority of the full Board.
- 68-08-08** The Secretary shall keep full and accurate records of all meetings and actions taken by the Board. Records kept in accordance with this Section shall be prima facie evidence of the information contained therein before any court of competent jurisdiction.
- 68-08-09** The Treasurer shall keep full and accurate financial records, make periodic reports to the Board, and submit a complete annual report in written form to the Sisseton-Wahpeton Sioux Tribal Council. The Treasurer is responsible for authority money, shall disburse authority money by check only, shall keep an account of the source of all receipts, and the nature, purpose and authority of all disbursements, and shall file the authority's detailed financial statement with its secretary at least once a year at times set by the authority. The Treasurer shall give bond to the Tribe conditioned for the faithful discharge of official duties. The bond must be approved as to form and surety by the authority and filed with the secretary. The bond must be for twice the amount of money likely to be on hand at any one time, as determined at least annually by the authority provided that the bond must not exceed \$300,000. The financial records of the Capital Improvement Authority shall be subject to annual audit.
- 68-08-10** Meetings of the Board of Commissioners shall be held as deemed appropriate with an agenda prepared in advance by the Chair. All proceedings of the Board shall be open to the public except when an executive session is authorized by unanimous vote of the Board. All proceedings shall be documented in writing and copies distributed to the Executive Committee and the Tribal Council not more than five days following each meeting. Meetings may be held upon twenty-four (24) hours actual notice.

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68-08-11 An authority check shall be signed by the treasurer and one other officer named by the authority in a resolution. The check must state the name of the payee and the nature of the claim that the check is issued for.

68-09-01 **Enumerated Powers**

68-09-02 The Sisseton-Wahpeton Sioux Tribe Capital Improvements Authority shall have the following specifically enumerated powers:

- A. To adopt and use an official seal;
- B. Subject to Tribal Council approval, or as delegated by the Tribal Council in as appropriate resolution, to enter into any contracts or agreements with any governmental agency, Federal, State, local or tribal, or with any person, partnership, corporation or Indian tribe; and to agree to any conditions attached to Federal or State financial assistance;
- C. To lease property from the Tribe and others for such periods and to hold and manage or to sublease the same;
- D. To borrow or lend money, to guarantee the obligations of other tribal entities of the Tribe, and to issue revenue bonds and other evidences of indebtedness in accordance with the provisions of Section 68-10-01 of this Chapter;
- E. Subject to Tribal Council approval, to pledge the assets and receipts of the Authority as security for debts;
- F. Subject to Tribal Council approval, to acquire, construct, sell, lease as lessor or lessee, exchange, transfer or assign real or personal property or interests therein;
- G. To purchase land or interests in land or take the same by gift, and to lease land or interests in land still tribal and held in trust, to the extent provided by law;
- H. To prudently invest such funds as are not required for immediate disbursement;

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- I. To establish and maintain such bank accounts as may be necessary or convenient;
- J. To employ such officers and employees permanent or temporary, as the Authority may require, to request assistance of Tribal employees as necessary, and to delegate to such officers and employees such powers and duties as the Board deems proper;
- K. To adopt bylaws which shall be submitted to the Tribal Council for approval; and
- L. To take such further actions as are necessary to carry out the purposes as described in Section 68-07-01 of this Chapter.

68-10-01 Borrowing

68-10-02 Subject to the limitations set forth in this Section, the Authority shall have the power to borrow money and incur indebtedness, or to guarantee the indebtedness of another agency, instrumentality or entity of the Tribe, by issuing its obligations, in its own name or in the name of and on behalf of the Sisseton-Wahpeton Sioux Tribe, for the purposes of acquiring, constructing, maintaining, managing and improving any public improvements within the territorial jurisdiction of the Tribe consistent with the purposes of the Authority. Such obligations shall be issued and sold in such manner and shall be in the amount and form and bear interest at the rate or rates set by the Authority. Each obligation must be approved by the Tribal Council prior to its issuance. The bonds must be signed by the president of the authority, be attested by its secretary, and be countersigned by its treasurer; the signatures may be facsimile signatures. The interest coupons, if any, must be attached to the bonds. The coupons must be executed and authenticated by the printed, engrossed, or lithographed facsimile signature of the authority's president and secretary. The bonds do not impose any personal liability on a member of the authority. The proceeds of the sale of obligations issued for a specific purpose or purposes may only be used for that purpose or purposes.

68-10-03 All obligations incurred under this Section shall be payable solely from revenues, income, receipts and profits derived by the Authority from projects operated by it whether or not the projects were financed in whole

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or in part with the proceeds of such obligations; from all or any part of the revenues of any business conducted by the Tribe and assigned or allocated to the Authority by the Tribal Council; from the proceeds of evidences of indebtedness issued and sold by the Authority which are payable solely from any of such revenues, income, receipts and profits; or from federal or state grants or other money received by the authority which are available therefore. The Authority may further secure these obligations with any assets of the Authority as the Authority may specifically pledge to the payment of the obligations.

- 68-10-04** The Authority may pledge to the repayment of such obligations and the interest coming due thereon any or all of the sources set forth in Section 68-10-03, but is without power to pledge or encumber any other revenues, income or assets of the Sisseton-Wahpeton Sioux Tribe, or any other organization or instrumentality of the Tribe to the repayment of such obligations, in order to protect the Tribe from liability to the fullest extent possible. The Tribe may, if it deems it to be in the best interests of the Tribe to do so, pledge to the payment of any such obligations, or authorize any organization or instrumentality of the Tribe to pledge to the payment of such obligations, any specific revenues, income or assets of the Tribe or any organization or instrumentality of the Tribe as it may deem appropriate. In any event, no such obligations shall be payable from, nor be a charge upon, any funds other than the revenues specifically pledged to the payment thereof, nor shall the Tribe be liable thereon other than to the extent specifically provided in accordance with this Section. These limitations shall be expressly stated in each obligation issued pursuant to this Section.
- 68-10-05** The Authority, with the approval of the Tribal Council, may provide for the refunding of any obligation of the Authority through the issuance of other obligations of the Authority, entitled to rights and priorities similar in all respects to those held by the obligations that are refunded.
- 68-10-06** In connection with the issuance of any such obligation, the Authority is authorized to waive its sovereign immunity from suit should an action be commenced to enforce the terms of the obligation, and to consent to the jurisdiction of the courts of the United States of America or the State of South Dakota in connection with any such action; provided that the Authority is without power to waive the sovereign immunity of the Sisseton-Wahpeton Sioux Tribe, to consent to the jurisdiction of any court over the

Tribe, or to consent to the levy of any judgment, lien or attachment upon

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any property or income of the Authority, the Tribe or any other organization or instrumentality of the Tribe other than that specifically pledged pursuant to Section 68-12-04.

68-11-01 Sovereign Immunity

68-11-02 As an instrumentality of the Sisseton-Wahpeton Sioux Tribe, the Authority shall be clothed by federal and tribal law with all the privileges and immunities of the Tribe, except as specifically limited by this Code, including sovereign immunity from suit in any state, federal or tribal court. Nothing contained in this Chapter shall be deemed or construed to be a waiver of sovereign immunity by the Authority from suit, which may be waived only in accordance with this Chapter.

- A. Sovereign immunity of the Authority may be waived only by formal resolution of the Board of Commissioners, and such waiver shall be specific and limited.
- B. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the Authority. Any waiver of sovereign immunity shall be specific and limited as to (i) duration, (ii) the grantee, (iii) the particular transaction, (iv) definite property or funds, if any, of the Authority, (v) a particular court having jurisdiction pursuant thereto and (vi) the law that shall be applicable thereto. Any express waiver of sovereign immunity by resolution of the Board shall not be deemed a waiver of the sovereign immunity of the Sisseton-Wahpeton Sioux Tribe, a consent to the jurisdiction of any court over the Tribe, or a consent of the levy of any judgment, lien, or attachment upon any property or income of the Authority, the Tribe or any other organization or instrumentality of the Tribe other than that specifically pledged or assigned.

68-12-01 Assets and Liabilities of the Authority

68-12-02 The Authority shall have only those assets specifically assigned to it by the Tribe or acquired in its name by the Tribe or the Authority on its own behalf. Nothing in this chapter nor any activity of the Authority shall

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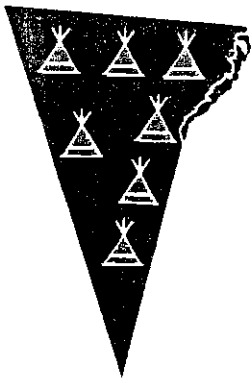
implicate or in any way involve the credit or assets of the Tribe, its District or other entities or obligate the Tribe, its District or other entities for the obligations of this Authority except for any liability or obligation specifically assumed in writing.

- 68-12-03** The property of the Authority is declared to be public property used for essential public and governmental purposes and such property and the Authority are exempt from all taxes and special assessments of the Tribe or the Tax Commission. However, for construction projects, nothing in this Section shall prevent the Tribe from collecting the sales or use taxes or other taxes contained in Chapter 67.
- 68-12-04** All property of the Authority, including funds acquired or held by the Authority pursuant to this Code, shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial powers shall issue against the same nor shall any judgment against the Authority be a charge or lien upon such property. The provisions of this Section shall not apply to or limit the right of a secured party to pursue any remedies for the enforcement of any pledge or lien given by the Authority on its revenues or properties.
- 68-12-05** Upon dissolution of the Authority, the title to all property owned by it shall vest in and become the property of the Sisseton-Wahpeton Sioux Tribe.
- 68-13-01** **Conflict of Interest**
- 68-13-02** A commissioner, officer, or employee of an authority must not acquire any financial interest, direct or indirect, in any project or in any property included or planned to be included in any project, nor shall the person have any financial interest, direct or indirect, in any contract or proposed contract for materials or service to be furnished in connection with any project.
- 68-14-01** **Use of District Revenues for District Projects**
- 68-14-02** A District has no authority to issue bonds. A District may pledge its revenue from any source for the repayment of obligations issued by the SWST Capital Improvements Authority specifically for a District project. Any District proposing a project for inclusion in a bond issue shall approve

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a referendum in which a minimum percentage (20%) of registered District voters must participate. In addition, a majority of registered District voters must also approve the financial commitment. An equal number of persons as participated in the referendum shall be required in order to reverse a district's decision. The financial commitment of a District if a bond issue includes a District project shall be via a Distributions Account to be set up by the Tribe's Gaming Enterprises to transfer designated funds (or a District's gaming money share) directly to the Capital Improvements Authority. A District shall never receive nor handle these funds.

- 68-14-03** However, a district's decision may only be reversed up until the time that the Capital Improvements Authority has entered into an agreement with an underwriter, at which point a district's participation is no longer revocable. A district shall be responsible for all costs incurred by the Authority prior to a reversal, which costs, once determined, shall be withheld from that District's next distribution.
- 68-15-01** **Pledge of Revenue by Districts or other Tribal Entities**
- 68-15-02** Tribal entities, including Districts, proposing a project for inclusion in a bond issue shall provide assurances in the form of independent documentation and verification of revenues pledged.



Sisseton - Wahpeton Sioux Tribe

LAKE TRAVERSE RESERVATION

OLD AGENCY BOX 509 • AGENCY VILLAGE, SOUTH DAKOTA 57262-0509
PHONE: (605) 698-3911

TRIBAL COUNCIL RESOLUTION NO. SWST-97-071

Adopt Chapter 68 Capital Improvement Authority

WHEREAS, The Sisseton-Wahpeton Sioux Tribe is organized under a Constitution and By-Laws adopted by the members of the Tribe on August 1-2, 1966, and approved by the Commissioner of Indian Affairs on August 25, 1966; and,

WHEREAS, The Constitution and By-Laws mandates at ARTICLE VII, Section 1, that the Tribe shall be governed by the Tribal Council, and that the Tribal Council shall have the power to: (a) represent the Tribe in all negotiations with federal, state, and local governments; (c) to engage in any business that will further the economic development of the Tribe and its members and to use tribal funds or other resources for such purposes; (d) to make rules governing the relationship of the members of the Tribe, to Tribal property, and to one another as members of the Tribe; (g) to take actions by ordinance, resolution or otherwise which are reasonably necessary, through committees, boards, agents, or otherwise, to carry into effect the foregoing purposes; (h) to promote public health, education, charity and other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Sioux Tribe; and, (i) to adopt resolutions regulating the procedures of the Tribal Council, its officials and committees in the conduct of the Tribal Affairs; and,

WHEREAS, The Sisseton-Wahpeton Sioux Tribe has well documented and long standing needs for additional, expanded and renovated capital and public improvements (eg. buildings, utilities, roads, etc.) and various Tribal entities (eg. SWCC, Tiospa Zina Tribal School, Enemy Swim Day School, Tribal Government, District Councils, etc.) have requested financial support for specific facilities and projects; and,

WHEREAS, The Tribe's Planning and Development Department has convened and facilitated several meeting with the representatives of those Tribal entities to review and discuss preliminary priorities, possible approaches and funding options; and,

WHEREAS, The Reservation Planning Commission met on December 14, 1995, to assess needs, discuss priorities and financing options and develop recommendations for the Tribal Council; and,

WHEREAS, The Reservation Planning Commission, the Planning and Development Department and the Tribe's legal counsel determined that the issuance of tax exempt, revenue bonds and the establishment of an appropriate operating and governance structure was an appropriate and necessary strategy for addressing the Tribe's capital improvement needs and limiting its financial risk and liability; and,

WHEREAS, The Tribal Council accepted and approved the Reservation Planning Commission's recommendations on January 3, 1996, and authorized the drafting of legal instruments to establish a structure and authority to issue tax exempt revenue bonds for capital improvement developments; and,

WHEREAS, The Tribe's legal counsel prepared a draft ordinance that established a Capital Improvements Authority with the authority to acquire, construct, finance, operate and maintain public improvements on the Lake Traverse Reservation; and,

WHEREAS, The draft Capital Improvements Authority Ordinance was distributed to interested entities for review and comment; and,

WHEREAS, The Reservation Planning Commission prepared and submitted specific recommendations to legal counsel for modifying the draft Capital Improvements Authority Ordinance that were incorporated into a revised draft that was presented to and discussed with the Tribe's Judicial Committee; and,

WHEREAS, A formal public hearing on the draft code was conducted on October 29, 1996, comments were received and submitted to legal counsel for review; and,

WHEREAS, A final, revised draft was presented to the Tribal Council for action by the Judicial Committee on November 11, 1997, but action was deferred.

NOW, THEREFORE BE IT RESOLVED, That the Tribal Council of the Sisseton-Wahpeton Sioux Tribe hereby approves and adopts Chapter 68, the Capital Improvements Authority Code and authorizes its implementation; and,

BE IT FURTHER RESOLVED, That the Tribal Executives with the support and assistance of legal counsel and the Tribe's Finance and Planning and Development Departments develop and initiate a process for selecting the Capital Improvements Authority's Board of Commissioners; and,

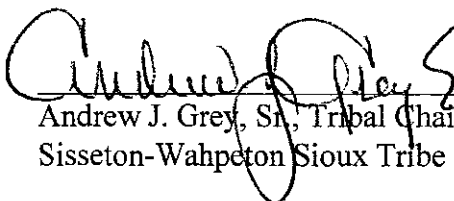


BE IT FINALLY RESOLVED, That the Reservation Planning Commission, YU87he Tribe's Overall Planning Body, shall initiate, coordinate and facilitate a process for the selection of capital and public improvements priorities for consideration by the Capital Improvements Authority.

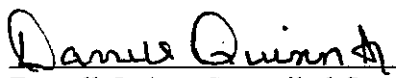
CERTIFICATION

We, the undersigned duly elected Chairman and Secretary of the Sisseton-Wahpeton Sioux Tribal Council, do hereby certify that the above resolution was duly adopted by the Sisseton-Wahpeton Sioux Tribal Council, which is composed of 10 members, (representing a total of 18 Tribal Council weighted votes) of whom 10, constituting a quorum, were present at a Tribal Council meeting, duly noticed, called, convened and held at the TiWakan Tio Tipi, Agency Village, South Dakota, May 6, 1997, by a vote of 17 for, 0 opposed, 0 abstained, 0 absent from vote, 1 not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 6th day of May, 1997.


Andrew J. Grey, Sr., Tribal Chairman
Sisseton-Wahpeton Sioux Tribe

ATTEST:


Darrell Quinn, Sr., Tribal Secretary
Sisseton-Wahpeton Sioux Tribe

cc: Original Copy to Judicial Committee

