

SECTION CODE
 Amendment
 New Adoption
Judicial Approval

Council Adopted
06-06-96

CHAPTER 70

AMENDED AND RESTATED SPECIAL FINANCING ORDINANCE

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 New Adoption
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06-21-96

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**SISSETON-WAHPETON SIOUX TRIBE
CHAPTER 70
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**SECTION I
GENERAL**

70-01-01 Title and Purpose

It being necessary to strengthen the government of the Sisseton-Wahpeton Sioux Tribe by exercising the specific grant of authority contained in Sections 1(g) and 1(h) of the Sisseton-Wahpeton Sioux Tribe Constitution to levy and collect taxes, to license and regulate certain conduct within the jurisdiction 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 70, the Sisseton-Wahpeton Sioux Tribe Amended and Restated Special Financing Ordinance.

70-02-01 Jurisdiction

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.

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70-03-01 Severability

If any clause, sentence, paragraph, section, or part of this Amended and Restated Special Financing Ordinance 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.

70-04-01 Continuity of Law

It is hereby declared that the legislative intent of the Sisseton-Wahpeton Sioux Tribal Council is that enactment of the Sisseton-Wahpeton Sioux Tribe Amended and Restated Special Financing Ordinance of 1996 shall have prospective effect only.

70-05-01 Construction

This Amended and Restated Special Financing Ordinance shall be interpreted and applied in a manner consistent with all other Codes, Laws, Ordinances, Resolutions, and Regulations of the Sisseton-Wahpeton Sioux Tribe.

70-06-01 Effect of Headings

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 Amended and Restated Special Financing Ordinance.

70-07-01 Effective Date

The effective date of this Amended and Restated Special Financing Ordinance shall be the date of adoption by the Tribal Council.

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70-02-01 Special Provisions

This Amended and Restated Special Financing Ordinance is adopted in connection with (i) the execution by the Tribe and BNC National Bank (the "Bank") of a Construction and Term Loan Agreement dated as of June 7, 1996 (the "Loan Agreement"), and (ii) the execution by the Tribe of a \$1,000,000 promissory note authorized by the Tribal Council on June 21, 1996 (the "Bridge Note"), for the purpose of providing for the interpretation and enforcement of the Loan Agreement; the Bridge Note; the Note; Security Agreement and Depository Agreement referred to in the Loan Agreement; the Security Agreement to be executed in connection with the Bridge Note (the "Bridge Loan Security Agreement"); and any other instruments and writings which have been or may be executed and delivered in connection with the transactions contemplated by the Loan Agreement and the Bridge Note (collectively, the "Writings").

1. The Writings shall be governed by the internal law of the Tribe, except that the Depository Agreement shall be governed by the law of the state of North Dakota and the Bank's rights as a secured party to enforce its security interest in collateral located outside the boundaries of the Lake Traverse Reservation shall be governed by the laws of the jurisdictions where such collateral is located.
2. In the event of any conflict between the provisions of this Amended and Restated Special Financing Ordinance and any other internal law of the Tribe, this Amended and Restated Special Financing Ordinance shall govern. To the extent that it is consistent with this Amended and Restated Special Financing Ordinance, the provisions of Chapter 69 (the "UCC") shall govern in the event of any conflict between the provisions of the UCC and any other internal law of the Tribe.
3. This Amended and Restated Special Financing Ordinance shall continue in effect until all of the Bank's and Tribe's obligations under the Loan Agreement and the Bridge Note

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have been discharged, and may not be rescinded or amended, except with prior written approval of the Bank.

4. For the purpose of collecting any indebtedness incurred by the Tribe under the Loan Agreement, however evidenced, and under the Bridge Note, and enforcing its rights as a secured party, the Bank shall be entitled to all of the rights granted to it in the Writings as well as the rights granted to a secured party under the UCC.
5. The Tribe hereby (i) grants to the Bank an irrevocable, perfected, first priority statutory lien on and security interest in all "Collateral", as that term is defined in the Security Agreement to secure payment of any indebtedness incurred by the Tribe under the Loan Agreement; and (ii) grants to the Bank a perfected, irrevocable statutory lien and security interest in all "Collateral," as that term is defined in the Bridge Loan Security Agreement.
6. Primary jurisdiction of any controversy or claim arising out of or relating to any of the Writings, or any alleged breach of any Writing, shall be before a single arbitrator in Fargo, North Dakota, or such other place as the parties may agree in writing, with the arbitration to be administered by the Minneapolis, Minnesota office of the American Arbitration Association under its Commercial Arbitration Rules, and judgment on any award rendered by the arbitrator may be entered in any court having secondary jurisdiction under paragraph 7 of this Amended and Restated Special Financing Ordinance; provided, however, that either the Tribe or the Bank may seek from a court with such secondary jurisdiction any provisional remedy that may be necessary, in such party's reasonable judgment, to protect any rights under any Writing, including any of the Bank's rights as a secured party, pending appointment of the arbitrator or the arbitrator's rendition of the award; and provided further, however, that if the parties are unable to agree on an arbitrator within 15 days following either party's demand for arbitration, either party may seek from a court

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with such secondary jurisdiction any relief to which such party believes it is entitled. In order to effectuate this paragraph 6, the Tribe hereby waives primary Tribal Court jurisdiction over any controversy or claim arising out of the Writings, or any alleged breach of any Writing.

7. The Tribe's duly constituted Tribal Court, the state courts of the State of North Dakota, and the United States District Court for the District of North Dakota shall have secondary jurisdiction of any controversy or claim arising out of or relating to any of the Writings, or any alleged breach of any Writing.
8. In the exercise of secondary jurisdiction pursuant to paragraph 7, any such court may: (i) render judgment on any arbitration award and issue such orders as may be necessary and applicable to enforce any such judgment; (ii) hear any requests for provisional remedies as contemplated by paragraph 6 of this Tribal Ordinance, and issue any orders or process that it finds necessary, in order to effectuate any such remedies; and (iii) assume jurisdiction of any controversy or claim if the parties are unable to agree on an arbitrator within 15 days. No court shall have jurisdiction to interfere in any way with any pending arbitration, and all arbitration awards shall be non-appealable.
9. In the event the courts of the State of North Dakota and/or the United States District Court for the District of North Dakota find they do not have subject matter jurisdiction over any such claim or controversy, that finding will not affect the jurisdiction granted to the Tribal Court by this Tribal Ordinance.
10. In the event that any North Dakota State Court or United States District Court with secondary jurisdiction issues a final judgment, the Tribe's duly constituted Tribal Court will give such judgment full faith and credit, and will issue such

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orders and legal powers as may be necessary in order to effectuate the same.

11. The Tribe's Tribal Police are hereby authorized and directed to carry out any orders that may be entered by the Tribal Court pursuant to paragraphs 6 or 8 of this Tribal Ordinance, including any judgment entered by the Tribal Court.
12. The Sisseton-Wahpeton Sioux Tribe hereby expressly waives its sovereign immunity from suit in an action by the Bank, or its successors and assigns, to protect and enforce its rights granted pursuant to the Writings in the event of the Tribe's default under any of the Writings, which waiver shall be valid for Binding Arbitration and Judicial Enforcement pursuant to the Writings. This specific and limited waiver shall not be deemed to be a consent by the Sisseton-Wahpeton Sioux Tribe to suit, other than to the extent necessary to secure and exercise rights to that collateral specifically pledged in the Writings. All assets of the Tribe not specifically assigned, pledged, appropriated, designated, or encumbered by the Tribe pursuant to the Writings shall be specifically and expressly excluded from this limited waiver of sovereign immunity from suit. In the case of an inconsistency or conflict between the terms of this provision and any other provision of the Writings, the terms of this provision shall control and prevail.
13. The Bank shall not be subject to any of the Tribe's taxes.
14. The Writings are hereby approved in all respects. The Tribe has no internal laws that would have the effect, if given force by any forum, of invalidating any provision of the Loan Agreement, the Bridge Note or any related Writing.