

TRIBAL CODE

CHAPTER 91:

BUILDING AUTHORITY CHARTER

CONTENTS:

91.101 Name	91-2
91.102 Purpose	91-2
91.103 Findings and Declarations	91-2
91.104 Relation to Tribe	91-3
91.105 Definitions	91-3
91.106 Assets of Authority	91-4
91.107 Composition of Authority	91-4
91.108 Operation of Authority	91-4
91.109 Perpetual Succession	91-5
91.110 Ability to Sue and Be Sued	91-5
91.111 Powers of Authority	91-5
91.112 Obligations	91-7
91.113 Annual Report	91-9
91.114 Personal Interest	91-10
91.115 Bond	91-10
91.116 Judgment Proof Property	91-11

HISTORY NOTE:

Current Ordinance:

Adopted on September 6, 1994, by Tribal Resolution No. 94-96, effective immediately.

Reenacted as part of the Tribal Code July 5, 1995, Resolution No. 95-89.

TRIBAL CODE
CHAPTER 91:
BUILDING AUTHORITY CHARTER

91.101 Name.

This organization shall be known as the Sault Ste. Marie Tribe Building Authority ("the Authority"). This Chapter shall be known as the Building Authority Charter ("the Charter").

91.102 Purpose.

The purpose of the Authority shall be to acquire real and personal property, lease tribal land, and finance the construction and development of buildings and facilities necessary, convenient or desirable for governmental, administrative, economic, community, health, recreational, cultural, ceremonial, and welfare purposes.

91.103 Findings and Declarations.

The Board of Directors finds and declares:

(1) The Tribe benefits from the construction of buildings and facilities on its land for a variety of purposes.

(2) The ability of the Tribe to finance the construction of buildings and facilities will be enhanced by the creation of a separate entity which can lease tribal trust land, encumber fee owned land, obligate leasehold interests, and enter into financial transactions connected with such construction.

(3) The Authority created by this Charter will be able to perform these functions, and so will be of benefit to the Tribe and its members.

91.104 Relation to Tribe.

(1) The Authority is a subordinate organization of the Board of Directors of the Tribe established pursuant to Article VII, Section 1(n) of the Tribal Constitution. The Authority is a public corporation of the Tribe and has the autonomous existence of a public corporation.

(2) For purposes of taxation, civil jurisdiction and regulatory jurisdiction, the Authority shall be deemed a subordinate arm of the Tribe and shall be entitled to all of the privileges and immunities of the Tribe.

(3) This Charter is patterned after Tribal Code Chapter 90: Housing Authority Ordinance, and the entity created is intended to be similar to the Housing Authority established by that ordinance. Precedent addressing Indian housing authorities shall be applied to consideration of the nature of the entity created by this Charter.

91.105 Definitions.

(1) For the purpose of this Charter, certain terms are defined in the subsections which follow. When not inconsistent with the context, words used in the present tense include the future, words in the singular include the plural, words in the plural include the singular, and words in one gender include the other gender. The word 'shall' is always mandatory and not merely directory.

(2) "Authority," when capitalized, means the Sault Ste. Marie Tribe Building Authority created by this Charter.

(3) "Board of Directors" means the Sault Ste. Marie Tribe of Chippewa Indians Tribal Board of Directors, the governing body of the Tribe.

(4) "Obligations" means any notes, bonds, interim certificates, debentures or other forms of obligation issued by the Authority under this Charter.

(5) "Obligee" includes any holder of an obligation, agent or trustee for any holder of an obligation or lessor demising to the Authority property used in connection with a project, or any assignee of such lessor's interest or any part thereof.

(6) "Project" means any work or undertaking of the Authority to acquire land or to acquire, construct or alter a building or facility for the Tribe or a Tribal entity for governmental, administrative, economic, community, health, recreational, cultural, ceremonial or welfare purposes. Such work or undertaking may include buildings, land, leaseholds, equipment, facilities, furnishings, and other real or personal property for necessary, convenient, or desirable appurtenances, for streets, parking facilities, sewers, water service, utilities, parks, site preparation and landscaping. The term also may be applied to the planning of the buildings and improvements, the acquisition of property or any interest therein, the demolition of existing structures, the construction, reconstruction, rehabilitation, alteration or repair of the improvements or other

property and all other connected work, and the term shall include all other real and personal property and all tangible or intangible assets held or used in connection with the project.

(7) "Tribal entity" means any entity created or owned by the Tribe for economic or governmental purposes and any entity which is controlled by the Board of Directors. An entity shall be deemed controlled by the Board of Directors if a majority of persons serving on the body which governs the entity are chosen by or are required to be members of the Board of Directors.

(8) "Tribe" means the Sault Ste. Marie Tribe of Chippewa Indians.

91.106 Assets of Authority.

The Authority shall have only those assets of the Tribe formally assigned or leased to it by the Board of Directors or by a tribal entity, together with whatever assets it acquires by other means as provided in this Charter. No activity of the Authority nor any indebtedness incurred by it shall encumber, implicate or in any way involve assets of the Tribe or another tribal entity not assigned or leased in writing to the Authority.

91.107 Composition of Authority.

(1) The Authority shall consist of five (5) members appointed by the Board of Directors. A majority of members shall also be enrolled members of the Tribe, and at least one member shall also be a member of the Board of Directors.

(2) The term of office shall be four years and staggered. Each member shall serve at the pleasure of the Board of Directors. In the case of an appointment to fill a vacancy, the appointment shall only be for the length of the unexpired term. Unless removed by the Board of Directors, each member shall hold office until his or her successor has been appointed.

(3) No member of the Authority shall be liable to any creditor of the Authority by reason of his or her status as a member, or by reason of acts done in the course of his or her official duties.

91.108 Operation of Authority.

(1) The Authority shall conduct business pursuant to bylaws consistent with this Charter adopted by the Authority and approved by the Board of Directors.

(2) The Authority shall name one of its members as chairperson. The Authority may have such other officers as the bylaws may provide.

(3) The Authority shall meet as often as necessary to conduct its business, but no less frequently than quarterly. A majority of the members of the Authority (notwithstanding the

existence of vacancies) shall constitute a quorum for the transaction of business, but no Authority actions shall be taken by a vote of less than a majority of Authority members. The Authority shall keep complete and accurate records of all meetings and actions taken.

(4) The Authority shall keep full and accurate financial records, make periodic reports to the Board of Directors, and submit a complete annual report, in written form, to the Board of Directors as required by §91.113.

(5) The members of the Authority may receive a stipend for their services as provided in the bylaws, and shall be entitled to compensation for expenses, including travel expenses, incurred in the discharge of their duties.

91.109 Perpetual Succession.

The Authority shall have perpetual succession in its corporate name.

91.110 Ability to Sue and Be Sued.

The Board of Directors hereby gives its irrevocable consent to allowing the Authority to sue and be sued in its corporate name, upon any contract, claim or obligation arising out of its activities under this Charter and hereby authorizes the Authority to agree by contract to waive any immunity from suit which it might otherwise have; but the Tribe shall not be liable for the debts or obligations of the Authority. This action does not constitute a waiver of any immunity of the Tribe or a delegation to the Authority of the power to make such a waiver.

91.111 Powers of Authority.

It is the purpose and intent of this Charter to authorize the Authority to do any and all things necessary or desirable to secure financing and assistance in the acquisition, undertaking, construction, maintenance and operation of any project, except as specifically limited in this Charter. To that end, the Authority shall have the following powers which it may exercise consistent with the purposes for which it is established:

(1) To adopt and use a corporate seal;

(2) To enter into agreements, contracts, and understandings with any governmental agency, Federal, state, or local (including the Tribe) or with any person, partnership, corporation, Indian tribe, tribal entity, or other entity; and to agree to any conditions attached to Federal or state financial assistance.

(3) To lease property from the Tribe, a tribal entity and others for such periods as are authorized by law, and to hold and manage or to sublease the same.

(4) To borrow or lend money, to issue temporary or long term evidence of indebtedness and to repay the same. Obligations shall be issued and repaid in accordance with the provisions of this section of this Charter.

(5) To pledge the assets and receipts of the Authority as security for debts; and to acquire, sell, lease, exchange, transfer or assign personal property or interests therein.

(6) To purchase land or interests in land or take the same by gift; to lease land or interests in land to the extent provided by law.

(7) To undertake and carry out studies and analyses of projects, to prepare project plans, to execute the same, to operate projects and to provide for the acquisition, construction, reconstruction, improvement, extension, alteration or repair of any project or any part thereof.

(8) With respect to any dwellings, accommodations, lands, buildings or facilities embraced within any project; to lease or rent, sell, enter into lease-purchase agreements or leases with option to purchase; and to make such further rules and regulations as the Authority may deem necessary and desirable to effectuate the powers granted by this Charter.

(9) To terminate any lease or rental agreement or lease-purchase agreement when the tenant or buyer has violated the terms of such agreement, or failed to meet any of its obligations thereunder, or when such termination is otherwise authorized under the provisions of such agreement; and to bring action for eviction against such tenant or buyer.

(10) To purchase insurance from any stock or mutual company for any property or against any risk or hazards.

(11) To invest such funds as are not required for immediate disbursement.

(12) To establish and maintain such bank accounts as may be necessary or convenient.

(13) To employ such officers and employees, permanent or temporary, as the Authority may require; and to delegate to such officers and employees such powers or duties as the Authority shall deem proper.

(14) To take such further actions as are commonly engaged in by public bodies of this character as the Authority may deem necessary and desirable to effectuate the purposes of the Authority.

(15) To adopt such bylaws as the Board deems necessary and appropriate, subject to approval by the Board of Directors as provided in §91.108(1).

91.112 Obligations.

(1) The Authority may issue obligations from time to time in its discretion for any of its purposes and may also issue refunding obligations for the purpose of paying or retiring obligations

as it may determine, including obligations on which the principal and interest are payable:

(a) exclusively from the income and revenues of the project financed with the proceeds of such obligations, or with such income and revenues together with a grant or subsidy from the Federal, state or Tribal government in aid of such project;

(b) exclusively from the income and revenues of certain designated projects whether or not they were financed in whole or in part with the proceeds of such obligations; or

(c) from its revenues generally. Any such obligations may be additionally secured by a pledge of any revenues of any project or other property of the Authority.

(2) Neither the commissioners of the Authority nor any person executing the obligations shall be liable personally on the obligations by reason of issuance thereof.

(3) The notes and other obligations of the Authority shall not be a debt of the Tribe and the obligations shall so state on their face.

(4) Obligations of the Authority, together with interest thereon and income therefrom, shall be exempt from taxes imposed by the Tribe. The tax exemption provisions of this Charter shall be considered part of the security for the repayment of obligations and shall constitute, by virtue of this Charter and without necessity of being restated in the obligations, a contract between (a) the Authority and the Tribe, and (b) the holders of obligations and each of them including all transferees of the obligations from time to time.

(5) Obligations shall be issued and sold in the following manner:

(a) Obligations of the Authority shall be authorized by a resolution adopted by the vote of a majority of the full Authority and may be issued in one or more series.

(b) The obligations shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment and at such places, and be subject to such terms of redemption, with or without premium, as such resolution may provide.

(c) The obligations may be sold at public or private sale at such price or prices as the resolution may provide.

(d) In case any of the members of the Authority whose signatures appear on any obligations cease to be members before the delivery of such obligations, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the members had remained in office until delivery.

(6) Obligations of the Authority shall be fully negotiable. In any suit, action or proceeding involving validity or enforceability of any obligation of the Authority or the security therefor, any such obligation reciting in substance that it has been issued by the Authority to aid in financing a project pursuant to this Charter shall be conclusively deemed to have been issued for such purpose, and the project for which such obligation was issued shall be conclusively deemed to have been planned, located and carried out in accordance with the purpose and provisions of this Charter.

(7) In connection with the issuance of obligations or in curing the obligations under leases and to secure the payment of such obligations, the Authority, subject to the limitations in this Charter, may:

(a) Pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence.

(b) Provide for the powers and duties of obligees and limit their liabilities; and provide the terms and conditions on which such obligees may enforce any covenant or rights securing or relating to the obligations.

(c) Covenant against pledging all or any part of its rents, fees and revenues or against mortgaging any or all of its real or personal property to which its title or right then exists or may thereafter come into existence or permitting or suffering any lien on such revenues or property.

(d) Covenant with respect to limitations on its right to sell, lease or otherwise dispose of any project or any part thereof.

(e) Covenant as to what other or additional debts or obligations may be incurred by it.

(f) Covenant as to the obligations to be issued and as to the issuance of such obligations in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(g) Provide for the replacement of lost, destroyed or mutilated obligations.

(h) Covenant against extending the time for the payment of its obligations or interest thereon.

(i) Redeem the obligations and covenant for their redemption and provide the terms and conditions thereof.

(j) Covenant concerning the rents and fees to be charged in the operation of a project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof.

(k) Create or authorize the creation of special funds for monies held for construction or operating costs, debt service, reserve or other purposes, and covenant as to the use and

disposition of the monies held in such funds.

(l) Prescribe the procedure, if any, by which the terms of any contract with holders of obligations may be amended or abrogated, the proportion of outstanding obligations the holders of which must consent thereto, and the manner in which such consent may be given.

(m) Covenant as to the use, maintenance and replacement of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance monies.

(n) Covenant as to the rights, liabilities, powers and duties arising upon the breach by it or any covenant, condition or obligation.

(o) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its obligations become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(p) Vest in any obligees or any proportion of them the right to enforce the payment of the obligations or any covenant securing or relating to the obligations.

(q) Exercise all or part or combination of the powers granted in this section.

(r) Make covenants other than and in addition to the covenants expressly authorized in this section, of like or different character.

(s) Make any covenants and do any acts and things necessary or convenient or desirable in order to secure its obligations, or, in the absolute discretion of the Authority, tending to make the obligations more marketable although the covenants, acts or things are not enumerated in this section.

(t) Pledge, mortgage or grant a security interest in all or any part of its assets.

91.113 Annual Report.

The Authority shall submit an annual report, signed by its chairperson, to the Board of Directors showing:

- (1) a summary of the year's activities,
- (2) the financial condition of the Authority,
- (3) the condition of the projects,
- (4) any significant problems and accomplishments,

(5) plans for the future, and

(6) such other information as the Authority or the Board of Directors deem pertinent.

91.114 Personal Interest.

During his or her tenure and for one year thereafter, no member, officer or employee of the Authority, or any member of the Board of Directors, or any other public official who exercises any responsibilities or functions with regard to the project shall voluntarily acquire any interest direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract relating to any project, unless prior to such acquisition, he or she discloses his or her interest in writing to the Authority and such disclosure is entered upon the minutes of the Authority, and the member, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he or she has any such interest. If any member, officer or employee of the Authority involuntarily acquires any such interest, or voluntarily or involuntarily acquired any such interest prior to appointment or employment as a member, officer or employee, the member, officer or employee, in any such event, shall immediately disclose his or her interest in writing to the Authority, and such disclosure shall be entered upon the minutes of the Authority, and the member, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he or she has any such interest. Any violation of the foregoing provisions of this section shall constitute misconduct in office. This section shall not be applicable to the acquisition of any interest in obligations of the Authority issued in connection with any project, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project or to act as trustee under any trust indenture, or to utility services the rates for which are fixed or controlled by a governmental agency, or to membership on the Authority as provided in §91.107.

91.115 Bond.

The Authority shall obtain or provide for the obtaining of adequate fidelity bond coverage of its officers, agent, or employees handling cash or authorized to sign checks or certify vouchers.

91.116 Judgment Proof Property.

All property including funds acquired or held by the Authority pursuant to this Charter shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the Authority be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right to obligees to pursue any remedies for the enforcement of any pledge or lien given by the Authority on its rents, fees or revenues, nor to any waiver of immunity specifically subjecting Authority property

to levy, execution or judicial process which is contained in a contract as provided in §91.110 and approved by resolution of the Authority under §44.107.

JMJ/slf 081694
a:\wpwin60\dsk8\chptr91.trc