

Title 2 – Tribal Government

Chapter 5 – Finance

Sec.

Subchapter I – Issuance of Bonds

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Legislative History

Enacted:

Regulating Tribal Finances, Ord. 194 (11/5/03), BIA (11/12/03).

Repealed or Superseded:

Bond Ordinance, Ord. 102 (8/3/93), BIA (10/21/93).

Issuance and Sale of Tribal Community Bonds of 1963, Ord. 24 (3/24/64).

[Ed. Note. In addition to this Chapter, there are provisions concerning Local Improvement Obligations in Title 11.]

Subchapter I – Issuance of Bonds

2-05.010 Title.

This Subchapter shall be referred to as the “Swinomish Bond Subchapter.”

[History] Ord. 194 (11/5/03); Ord. 102 (8/3/93).

2-05.020 Purpose and Scope.

The purpose of this Chapter (the “Chapter”) is to establish procedures to enable the Senate (the “Senate”), as the governing body of the Swinomish Indian Tribal Community (the “Tribe”), to issue bonds or incur other obligations from federal and non-federal sources under Article VI, Section I(f) of the Constitution and By-Laws of the Tribe for public purposes (“tribal projects”).

It is further the purpose of this Chapter to confirm that the Senate has the power and authority to interpret and give meaning to the provisions of the Constitution and Bylaws. And it is further the specific purpose of this Chapter to clarify, interpret, and apply Article VI, Section I(f) of the Constitution of the Tribe to authorize the Senate to issue bonds or incur other obligations for tribal projects.

[History] Ord. 194 (11/5/03); Ord. 102 (8/3/93).

2-05.030 Authority.

This Chapter is enacted pursuant to authority provided by Article VI, Section I(f) of the Swinomish Constitution, as most recently amended on October 22, 1985.

[History] Ord. 194 (11/5/03); Ord. 102 (8/3/93).

2-05.040 Definitions.

Unless defined elsewhere in this Chapter or the context clearly requires otherwise, the definitions in this Section apply throughout this Chapter.

- (A) **“Bond”** means a Full Faith and Credit Bond, a Revenue Bond, or other Obligations.
- (B) **“Credit Enhancement Device”** means a letter of credit, line of credit, bond insurance policy, surety bond or other device or facility used to enhance the credit worthiness or marketability of any bonds.
- (C) **“Full Faith and Credit Bond”** means an obligation, including without limitation a lease-purchase obligation or bond anticipation note, incurred or issued to finance a tribal project, and which is specifically designated by the Senate as a full faith and credit obligation payable from taxes, if any, which may be levied, or from the general revenues of the Tribe.

- (D) **“Obligation”** means an agreement that evidences an indebtedness of the Tribe, other than a Full Faith and Credit Bond or a Revenue Bond, and includes, but is not limited to, conditional sales contracts, loan agreements, lease obligations, and promissory notes.
- (E) **“Revenues”** means, with respect to the issuance of Revenue Bonds, all fees, tolls, excise taxes, assessments, property taxes and all other taxes of whatever kind or nature, rates, charges, loan agreements, rentals and all other income and receipts of whatever kind or character derived by or to which a public body is entitled from the operation, sale or use of facilities, projects, utilities or systems owned or operated by or on behalf of the Tribe or a tribal Enterprise and other revenues legally available to be pledged to secure Revenue Bonds.
- (F) **“Revenue Bonds”** means bonds or revenue anticipation notes issued for any public purpose, which are secured by revenues pledged for such public purpose.
- (G) **“Tribal Enterprise”** means an enterprise of the Tribe duly established pursuant to the Constitution and By-Laws of the Tribe.
- (H) **“Tribal Project”** means any project or projects of the Tribe or any tribal enterprise to be financed in whole or in part with the proceeds of bonds issued for a public purpose.

[History] Ord. 194 (11/5/03); Ord. 102 (8/3/93).

2-05.050 Authority to Issue Bonds.

- (A) The Senate may by resolution provide for the issuance of bonds for the payment of all or any portion of the cost and expense of any tribal project. The Senate shall by resolution specify the maximum amount and the maximum net interest cost of the bond issue. The amount may equal, but may not exceed, the total amount specified in the resolution authorizing the issuance of bonds for the tribal project.
- (B) The Resolution shall describe the tribal project for which bonds are to be issued. The Senate or its designee may determine certain particular terms and conditions of any borrowing or issuance of bonds for an approved tribal project pursuant to Section 2-05.090 of this Chapter, subject to any restrictions contained in the resolution approving the bonds.

[History] Ord. 194 (11/5/03); Ord. 102 (8/3/93).

2-05.060 Authority to Establish Lines of Credit.

The Senate, on behalf of the Tribe, is hereby authorized to establish lines of credit with any national bank, association, or state-chartered bank to be drawn upon in exchange for its bonds, to delegate to its Chairman or Secretary authority to determine the amount of credit extended, and to pay interest and other finance or service charges. The interest rates on such bonds may be a fixed rate or rates set periodically, or a variable rate or flexible rates

determined by agreement of the parties.

[History] Ord. 194 (11/5/03); Ord. 102 (8/3/93).

2-05.070 Authority to Secure Interim Financing.

- (A) Bonds authorized under this Chapter which are issued in anticipation of taxes or other revenues, and any bonds that are issued to refund them, shall not be issued prior to the beginning of, and shall mature not later than, the end of the fiscal year in which the taxes or other revenues are expected to be received. Bonds issued in anticipation of taxes or other revenues shall not be issued in an amount greater than eighty percent (80%) of the amount budgeted to be received in the fiscal year in which the bonds are issued.
- (B) Bonds that are issued in anticipation of a grant will mature not later than one (1) year after the date the grant is estimated to be received. Bonds issued to provide interim financing for capital assets shall mature not later than one (1) year from the estimated completion or acquisition of the capital assets. Bonds issued to provide permanent or long-term financing for capital assets or a tribal project are not subject to the maturity limitations stated in this Section.
- (C) Except as provided in this Section, bonds authorized under this Section may be in any form and contain any terms, including provisions for redemption at the option of the owner and provisions for the varying of interest rates in accordance with any index, banker's loan rate or other standard.

[History] Ord. 194 (11/5/03); Ord. 102 (8/3/93).

2-05.080 Security.

Absent a resolution requiring otherwise, the Senate may pledge as security for bonds authorized pursuant to this Chapter, or any line of credit related to such bonds, the Tribe is empowered to take the following actions:

- (A) Cause appropriations from anticipated taxes, grants, other revenues, loan repayments, the proceeds of any bonds or other permanent financing, or any combination thereof;

- (B) Segregate any pledged funds in separate accounts that may be held by the Tribe or any third party trustee designated by resolution of the Senate;
- (C) Enter into contracts with third parties to obtain direct or standby lines of credit, Credit Enhancement Devices, or other financial commitments designed to provide additional security for bonds authorized for tribal projects;
- (D) Establish any reserves deemed necessary for the payment of the bonds;
- (E) Adopt resolutions and enter into agreements containing covenants and provisions for protection and security of the owners of bonds, which shall constitute enforceable contracts with such owners; and
- (F) For Full Faith and Credit Bonds, pledge the Tribe's general revenue-raising and taxing powers to produce sufficient funds to pay debt service on the Full Faith and Credit Bonds in accordance with their terms.

[History] Ord. 194 (11/5/03); Ord. 102 (8/3/93).

2-05.090 Amount, Terms, Conditions, Interest, Etc. of Bonds.

- (A) The Senate may by resolution delegate to the Chairman or, in the Chairman's absence, any other member of the Senate, its authority to determine the interest rate or rates applicable to any bonds issued to finance a tribal project by resolution, provided that such interest rate shall in no event exceed the maximum net interest cost designated by the Senate resolution authorizing such bonds. The Senate may also delegate to the Chairman or, in the Chairman's absence, any other member of the Senate, its authority to determine an amortization schedule for the bonds, provided that the maximum term does not exceed forty (40) years.
- (B) Except as provided in this Chapter, the Chairman or, in the Chairman's absence, any other member of the Senate, may act on behalf of the Senate to perform any and all other necessary acts pertaining to the issuance of the bonds, including, without limitation, the determination of any conditions of the bonds issue, bond denominations, redemption rights, registration privileges, manner of execution, price, manner of sale, covenants and form, including registration of principal and interest, registration of principal only, or bearer.

[History] Ord. 194 (11/5/03); Ord. 102 (8/3/93).

2-05.100 Registration System and Appointment of Financial Institutions.

- (A) The Senate is authorized to establish a system of registering the ownership of its bonds as to principal and interest, or principal only. Registration may include, without limitation: (1) a book-entry system of recording the ownership of a bond, whether or not a physical

instrument is issued; or (2) recording the ownership of a bond together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond and either the reissuance of the old bond or the issuance of a new bond to the new owner.

- (B) The system of registration shall define the method or methods by which transfer of the registered bonds shall be effective, and by which payment of principal and any interest shall be made. The system of registration may permit the issuance of bonds in any denomination to represent several registered bonds of smaller denominations. The system of registration may also provide for any writing relating to a bond that is not issued as a physical instrument, for identifying numbers or other designations, for a sufficient supply of certificates for subsequent transfers, for record and payment dates, for varying denominations, for communications to the owners of bonds, for accounting, canceled certificate destruction, registration and release of securing interests, and for such other incidental matters pertaining to the registration of bonds as the issuer may deem to be necessary or appropriate.
- (C) The Senate or its designee may appoint a national banking association or state-chartered bank, maintaining a minimum capital surplus of \$50,000.00 together with its bank holding company or other affiliate bank (collectively the “Bank”), to act with respect to an issue of its bonds as authenticating trustee, transfer agent, registrar and paying or other agent, and specify the rights and duties and means of compensation of any such bank so acting. The Senate or its designee may also enter into agreements with any such Bank in connection with the establishment and maintenance by the Bank of a nationally recognized central depository system for the transfer or pledge of bonds.
- (D) The Senate or its designee may appoint a national banking association or state-chartered bank, maintaining a minimum capital surplus of \$50,000.00 together with its bank holding company or other affiliate bank (collectively the “Bank”), to act with respect to an issue of its bonds as authenticating trustee, transfer agent, registrar and paying or other agent, and specify the rights and duties and means of compensation of any such bank so acting. The Senate or its designee may also enter into agreements with any such Bank in connection with the establishment and maintenance by the Bank of a nationally recognized central depository system for the transfer or pledge of bonds.
- (E) The Senate may, by resolution, appoint the Treasurer of the Senate, or any other fiscal agency, to serve as the fiscal agency. If the Senate decides to use the services of a fiscal agency other than the Treasurer of the Senate, the Senate shall so notify the Treasurer of the Senate at the time the decision is made.
- (F) Nothing in this Section precludes the Tribe, the Senate, or a trustee appointed by the Senate, pursuant to any other provision of law, from itself performing, either alone or jointly with other issuers, fiscal agencies, or trustees, any transfer, registration, authentication, payment, or other function described in this Section.

[History] Ord. 194 (11/5/03); Ord. 102 (8/3/93).

2-05.110 Form and Content of Bonds.

- (A) Bonds shall be in such denomination as may be provided in the resolution authorizing their issue and shall be numbered from one (1) upwards consecutively. Each bond shall: (1) be signed by the Chairman and Treasurer of the Senate; (2) refer to the tribal project for which it is issued and the resolution ordering it; (3) provide that the principal sum therein named and the interest thereon shall be, unless otherwise provided by the resolution authorizing the tribal project, payable out of the general revenues of the Tribe, or out of a source of security designated for the bonds in the resolution of the Senate authorizing such bonds; and (4) be in any form, including bearer bonds or registered bonds as provided by tribal law.
- (B) Any bonds may be signed by the Chairman or the Secretary of the Senate, or in lieu thereof, may have printed thereon a facsimile of their signatures.

[History] Ord. 194 (11/5/03); Ord. 102 (8/3/93).

2-05.120 Reproduction of Physical Instrument.

When the Senate issues bonds as physical instruments, the bonds shall be printed, engraved, lithographed, photocopied, typed, or reproduced and the manual or facsimile signatures of the Chairman or Secretary of the Senate shall be included on each bond.

[History] Ord. 194 (11/5/03); Ord. 102 (8/3/93).

2-05.130 Sale of Bonds.

The Senate may authorize the Chairman of the Senate to: (A) sell the bonds at a public or private sale on behalf of the Tribe; and (B) negotiate the terms of a purchase contract for the bonds, the terms of which shall be binding upon the Tribe, upon Senate approval, and upon execution by the Chairman or Secretary of the Senate.

[History] Ord. 194 (11/5/03); Ord. 102 (8/3/93).

2-05.140 Payment of Costs of Issuance and Sale.

The proceeds of any bonds issued may be used to pay incidental costs and costs related to the sale and issuance of the bonds. Such costs include payments for the fiscal agent, paying agent, registrar fees, legal expenses, bond ratings, printing, engraving, advertising, credit enhancement fees, and bond insurance premiums. These costs shall also include the establishment and funding of reserve accounts and other accounts, an amount for working capital, capitalized interest, necessary and

related engineering, architectural, planning and inspection costs, and other similar activities or purposes.

[History] Ord. 194 (11/5/03); Ord. 102 (8/3/93).

2-05.150 Personal Liability.

Neither the holder nor the owner of any bond shall have any claim (other than a writ of mandamus, injunction, or other similar writ or proceeding) against any member of the Senate or any officer, employee, or agent of the Tribe, for personal, contractual or monetary liability on the bonds; but this Section does not apply to the liability of an officer, employee, or agent which otherwise arises in tort or under federal or Washington law, or by reason of actions taken outside the course or scope of such officer's, employee's or agent's authority.

[History] Ord. 194 (11/5/03); Ord. 102 (8/3/93).

2-05.160 Revenue Bonds.

- (A) The Senate is hereby authorized to provide by resolution for the issuance of bonds for the payment of the whole or any portion of the costs and expense of any tribal project. The Senate will, by resolution, determine the maximum amount of the Revenue Bond issue, which amount may equal, but may not exceed, the total amount specified in the tribal resolution authorizing the issuance of Revenue Bonds for the tribal project.
- (B) The Senate may pledge for the payment of Revenue Bonds issued in connection with a tribal project all or any portion of (1) the revenues of any revenue producing facility providing services related to the services financed by the Revenue Bonds; (2) the revenues of a public utility or system, or an addition or extension thereto; (3) all or any portion of the revenues of the Tribe; or (4) any other legally available moneys.
- (C) If the Senate determines that it is necessary to provide additional security for the Revenue Bonds, the Senate may, to the extent permitted by law, mortgage, grant security interests in or otherwise encumber facilities, projects, utilities or systems owned or operated by the Tribe. Such security may be given in favor of the holders of the Revenue Bonds, a trustee therefore or as security for its obligations arising under any Credit Enhancement Device. The Senate may obtain a Credit Enhancement Device for Revenue Bonds provided that such Credit Enhancement Device is payable solely from revenues. The Senate may loan the proceeds of any Revenue Bonds to any enterprise of the Tribe or to any member of the Tribe on the terms and conditions specified in a resolution of the Senate.
- (D) When issuing Revenue Bonds, the Senate may do any one (1) or more of the following:

- (1) By resolution delegate to the Chairman or, in the Chairman's absence, any other member of the Senate, the authority to determine the principal amounts, the applicable interest rate or rates, or the method to determine variable or adjustable interest rates (provided that in no event will the fixed or flexible interest rate or rates exceed the maximum net interest costs designated by the Senate resolution authorizing such Revenue Bonds), an amortization schedule for the Revenue Bonds (provided that the maximum term does not exceed forty (40) years), redemption provisions, and denominations and other terms and conditions of such Revenue Bonds that are not appropriately determined at the time of the enactment of the resolution. The authority delegated under this Subsection shall be exercised subject to any applicable limitations set by law or by the resolution authorizing the Revenue Bonds;
 - (2) Pledge as security for its obligations arising under, or with respect to, any Credit Enhancement Device any revenues pledged to the payment of the related Revenue Bonds, and such obligations shall be payable from the same sources from which the Revenue Bonds are payable;
 - (3) Enter into agreements with bond trustees and deposit funds with trustees for the benefit of such bond owners; or
 - (4) Establish a debt reserve for the payment of all amounts due and owing under such Revenue Bonds, which debt service reserve may be funded out of the proceeds derived from the issuance and sale of such Revenue Bonds or from such other sources as the Senate may determine.
- (E) The substance of the limitations included in this Subsection shall be plainly printed, written, engraved, or reproduced on: (1) each Revenue Bond that is a physical instrument; and (2) each official statement associated with the Revenue Bonds.

[History] Ord. 194 (11/5/03); Ord. 102 (8/3/93).

2-05.170 Dispute Resolution.

- (A) **Senate.** Unless otherwise provided by the terms of the specific bond issue: A party with a claim arising from the issuance of bonds under this Chapter shall first file a written petition with the Senate or its designee for a hearing on the claim. The hearing shall be granted within ninety (90) days of the filing of the petition. The hearing will be on the record and shall be transcribed verbatim. The petitioner shall pay the costs of transcription. The Senate or its designee shall issue a written decision on the matter.
- (B) **Tribal Court.** A party dissatisfied with the decision of the Senate or its designee may seek judicial review in the Tribal Court. The appeal must be filed within ten (10) days of the

written decision by the Senate or its designee. The Tribal Court shall issue a written decision on the matter.

[History] Ord. 194 (11/5/03); Ord. 102 (8/3/93).

2-05.180 Repealer.

Ordinance 24 and 102 are hereby superseded.

[History] Ord. 194 (11/5/03).

2-05.190 Severability.

[Reserved]