

## **TITLE 19**

### **GAMING REVENUE ALLOCATION**

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## CHAPTER 1 - GENERAL PROVISIONS

### Section 19-1-1. Policy.

**A. Compliance with IGRA.** This Title shall comply with the Indian Gaming Regulatory Act of 1988 [25 U.S.C. 2701 *et seq.*] and all other applicable federal law.

**B. Tribal Government and Tribal Economic Development.** The Flandreau Santee Sioux Tribe shall use revenues generated by tribal gaming primarily to strengthen the tribal government, tribal self-sufficiency and to support tribal economic development. The Tribe shall ensure that tribal government and tribal economic development shall receive the necessary financial support from net gaming revenues prior to distributing such revenues for other purposes.

**C. Preservation and Strengthening of Flandreau Santee Sioux Society, Economy and Culture.** The Tribe shall work to reverse the lasting effects of the termination policy of the 1950s and 1960s which promoted migration away from the Reservation in an effort to encourage and expedite assimilation of Indian people into non-Indian society. The Tribe is committed to strengthening its Reservation community socially, economically and culturally in its continuing efforts to realize its goal of self-determination. Tribal members residing on the Flandreau Santee Sioux Reservation or within the two-county area that includes Moody and Minnehaha counties in South Dakota contribute daily to the advancement of the Reservation's society, economy and culture. The Tribe recognizes that increased personal daily contributions of Tribal members to the advancement of the Reservation society, economy and culture will have the long term effect of enhancing the Tribe's survivability. The Tribe shall encourage Tribal members to return to live and contribute socially, economically, and culturally to the Reservation community and shall provide incentives to Tribal members in an effort to realize the goals of this policy.

**D. Caring for Future Generations.** The Tribe also retains the inherent sovereign right to determine the best interests of its qualified minor tribal members by providing for their future welfare by placing monies into trust for the benefit of those minor tribal members. The Tribe shall provide for the future of qualified minors while encouraging tribal member parents to provide for the immediate living needs of their children, as is their responsibility. In cases of hardship or for other reasonable justification, the Tribe shall allow for payment of living necessities and education of minor tribal members from any trust income held for qualified minor tribal members.

**E. Internal Matter.** The determination of those qualified members of the Flandreau Santee Sioux Tribe entitled to share, and the manner in which they share, Tribal gaming profits is strictly an internal tribal matter and an inherent power of the Tribe. In light of its policy to encourage the continued strengthening of its Reservation community, the Tribe retains the inherent sovereign right to determine the best interests of tribal members and to prioritize the allocation of its limited resources in a manner that best satisfies the needs of tribal members living within the Reservation community as that term is defined in this Title.

### Section 19-1-1.1. Definitions

**A. Confirmation of Residency** – A document issued by the Flandreau Santee Sioux Tribal Executive Committee or its designee that confirms that a tribal member has met the residency and other requirements to be eligible for per capita payments.

**B. Flandreau Santee Sioux Reservation** – Any territory as may now be held or hereafter acquired by or for the Flandreau Santee Sioux Tribe under any laws of the Tribe or the United States.

**C. IGRA** – Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2701 *et seq.*

**D. In-patient Treatment** – Means intensive residential rehabilitation treatment in which a patient is provided with 24 hour care at a facility for addiction.

**E. Per Capita Payment** – Means those payments made pursuant to the terms of this Title to Qualified Members. No other commonly accepted or used definition of the term “per capita” affects the use of the term within this Title.

**F. Physical Residence** – Physical residence shall mean at a minimum, actual physical presence and maintenance of a residence within the Reservation community with the intent to make said residence the individual's permanent home and primary residence. A hotel or other transitory address shall not be considered a residence.

**G. Qualified Member or Qualified Tribal Member** – For the purposes of this Title, means those individuals who are duly enrolled in the Flandreau Santee Sioux Tribe, eighteen (18) years of age, and who reside within the Reservation community, and who meet the other residency requirements described in Chapter 3 of this Title.

**H. Reservation community** – Means the Flandreau Santee Sioux Reservation and the counties of Moody and Minnehaha in South Dakota.

#### **Section 19-1-2. Allocation of Net Gaming Revenue.**

The Executive Committee hereby distributes the net revenues derived from Class II and Class III Gaming as follows:

1. Tribal Economic Development	35%
2. Individual Per Capita Payment	40%
3. Minors Trust Fund	5%
4. Tribal Government Operations	15%
5. Community Assistance Fund	4%
6. Higher Education Fund	1%

The funds hereby allocated to the aforesaid categories shall be expended in accordance with the provisions provided in this Title.

### **Section 19-1-3. Annual Budget Appropriations.**

Prior to the beginning of each fiscal year, the Executive Committee shall review the allocations set forth herein and make a determination whether the allocations should be modified. The Executive Committee shall prepare budgets for the following categories prior to the beginning of each fiscal year:

1. Community Fund;
2. Tribal Government Operations;
3. Economic Development;

Budgets set by this section may be modified by Resolution of the Executive Committee.

### **Section 19-1-4. Repeal of Inconsistent Legislation.**

Notwithstanding any previously applicable or inconsistent provisions of tribal law, which are hereby repealed and rescinded, this Title shall govern the allocation of available net revenues from tribally owned gaming establishments including per capita distribution to qualified tribal members of the available proceeds of the gaming businesses of the Flandreau Santee Sioux Tribe.

### **Section 19-1-5. Severability.**

If any section of any part of this Title or the application thereof to any party, person, or entity or, in any circumstances, shall be held invalid for any reason whatsoever by a court of competent jurisdiction, or by the Department of the Interior, the remainder of the Title shall not be affected thereby and shall remain in full force and effect as though no part thereof has been declared to be invalid.

### **Section 19-1-6. No Waiver of Sovereign Immunity.**

Nothing in this Title shall mean or be interpreted to provide a waiver of the Tribe's or any of its governmental officers' and or agents' sovereign immunity from suit except to the limited extent such waiver is explicitly expressed herein.

### **Section 19-1-7. Amendment or Repeal of Title.**

This Title, and any word, provision, part may be amended or repealed only by a resolution vote of the Executive Committee in regular session and subsequent approval by the Secretary of the Department of Interior or his designee.

### **Section 19-1-8. Per Capita Committee – Establishment; Composition; Authority.**

**A. Creation.** There is hereby established a Per Capita Committee. The Per Capita Committee is established by the Flandreau Santee Sioux Tribe specifically to provide fair and unbiased direction in the administration of Per Capita payments.

**B. Composition; Vacancies; Eligibility; Removal.** The Per Capita Committee shall be composed of five (5) members, appointed to the Committee by the Executive Committee. Each Per Capita Committee member shall be appointed by the Executive Committee and shall serve a (4) four-year term. To be eligible to serve on the Per Capita Committee, the office holder(s) must be a Qualified Tribal Member as that term is defined in this Title. The Executive Committee may remove any committee member for neglect of duty, dishonesty, misconduct in office, or two consecutive unexcused absences, or any other matter that has a substantial and adverse effect on the Committee member's ability to perform the duties of office. Notice of removal, written charges and an opportunity to be heard must be provided prior to removal.

**C. Authority.** The Per Capita Committee is empowered by the Flandreau Santee Sioux Tribal Executive Committee to ensure that the distribution process for per capita is fair and equitable. The primary responsibility of the Committee is to ensure that Title 19 policies and procedures are carried out by the Per Capita Office in accordance with this Title. The Per Capita Committee is authorized to:

Determine eligibility for per capita payments based on the criteria established by this Title.  
Hold one meeting per month to conduct the business and duties of the Per Capita Committee.  
Other meetings may be held as determined necessary by the Per Capita Committee or its designee.

Conduct other duties related to per capita benefits as determined by the Executive Committee.

#### **Section 19-1-9. Per Capita Office – Establishment; Authority**

**A. Creation and Composition of Office.** There is hereby established a Per Capita Office. The Per Capita Office is established by the Flandreau Santee Sioux Tribe specifically to administer the provisions of Per Capita payments pursuant to this Title. The Per Capita Office shall be staffed by a Membership Services Clerk. The Membership Services Clerk may staff the Per Capita Office with a Secretary or an Assistant if needed, and as permitted by available tribal funds. Individuals employed in the Per Capita Office are tribal employees.

#### **B. Authority and Duties.**

Relationship and Responsibilities – Executive Committee. It is the responsibility of the Per Capita Office to carry out the provisions of this Title pursuant to the authority delegated to it by the Executive Committee.

Relationship and Responsibilities – Per Capita Committee. It is the responsibility of the Per Capita Office to facilitate and execute eligibility determinations made by the Per Capita Committee, and carry out other provisions of this Title pursuant to the authority delegated to it by the Per Capita Committee.

Relationship and Responsibilities - Tribal Members. With respect to tribal members, the Per Capita Office receives, reviews, and evaluates applications in accordance with this Title.

#### **Section 19-1-10. Hearing and Appeals.**

**A. Limited Waiver of Sovereign Immunity.** In the event a member is given an adverse decision under any provision in this Title, the individual may bring an action in Tribal Court to seek review of such determination after the administrative remedies have been exhausted. The Executive Committee hereby waives its sovereign immunity for the limited purpose of allowing judicial review of any adverse determination relating to the eligibility status of members pursuant to the terms of this Title. This waiver shall not include authority for the Tribal Court to enter any order other than a declaration of eligibility and shall specifically exclude the issuance of all other relief.

**B. Process.** Any individual who has received an adverse decision involving per capita (ex: denial of eligibility or termination of per capita benefits) has the right to an appeal and hearing in FSST Tribal Court. The individual desiring a hearing must request one within 5 business days after being notified of the adverse decision. The five (5) days shall begin from the date of personal service on the individual, the date of the individual's signed receipt of the certified notice of the decision, the date of the individual's refusal of the certified notice of the adverse decision, the date the certified notice of the adverse decision is returned as unclaimed after a second notice, or a certified notice returned for reason of an improper address if the improper address was provided by the applicant. The burden is on the applicant to provide the Per Capita Office with a current address for certified notices and to accept any certified notice attempted by the Per Capita Office. If no hearing request is received within the five (5) day timeframe, the adverse decision shall become final.

All appeals shall be to the Tribal Court. At the hearing, the individual shall be entitled to present evidence regarding his or her case and may be represented by counsel at his/her own expense. The Per Capita Committee shall be present at the hearing in order to present the grounds for its decision.

**C. Notice.** When an individual requests a hearing under 1-19-10, the FSST Tribal Court shall provide written notice of the hearing to the individual by certified mail, not less than fifteen (15) days before the hearing. The notice shall contain the reason for the hearing, describe evidence to be presented, and shall advise the participant of the right to be represented, and to present witnesses in his/her defense.

**D. Final Decision on Appeals.** The decision of the Tribal Court on an appeal shall be final.

## **CHAPTER 2 – USE OF TRIBAL GAMING NET REVENUES – TRIBAL ECONOMIC DEVELOPMENT**

### **Section 19-2-1. Tribal Economic Development.**

In order to provide funding for tribal economic development, the Executive Committee hereby allocates henceforth THIRTY-FIVE (35%) of net gaming business revenues to be paid into a tribal account called the "tribal economic development fund."

If it deems it necessary, the Executive Committee shall have the authority to revise and increase the allocated percentage of net gaming business revenues paid into the "tribal economic development fund" by allocating a larger percentage to the fund. Any revision of the allocated percentage herein shall be documented by an Executive Committee resolution, a copy of which shall be provided to the Secretary of the Interior for review and approval.

The Executive Committee shall have the authority to appropriate and expend funds from the tribal economic development fund to fund proposed tribal economic development projects. The Executive Committee shall establish and/or maintain a process by which it considers tribal economic development proposals. Each tribal economic development proposal shall include a detailed description of the proposal and projected revenue expenditures as a budget request. The Executive Committee shall thereafter allocate whatever monies from the tribal economic development fund to the proposed economic development project as it deems necessary and feasible.

The Executive Committee shall have the authority to appropriate and expend funds from the tribal economic development fund to supplement funding for on-going tribal economic development enterprises. The Executive Committee shall establish and/or maintain a process by which it considers the budgetary needs of the Tribe's on-going businesses and enterprises. Each budget request from an on-going tribal business or enterprise shall include a detailed description of the perceived need and projected revenues from the business or enterprise. The Executive Committee shall thereafter allocate what monies from the tribal economic development fund to the on-going business or enterprise as it deems necessary and feasible.



## **CHAPTER 3 – USE OF TRIBAL GAMING NET REVENUES – INDIVIDUAL PER CAPITA PAYMENTS; MINORS' TRUST FUND**

### **Section 19-3-1. Individual Per Capita Payments.**

The Executive Committee hereby allocates henceforth, in order to advance the personal health, safety and welfare of qualified tribal members, FORTY PERCENT (40%) of all net gaming business revenues to be divided and distributed on a monthly basis in equal shares and paid as per capita payments to all qualified tribal members as defined in Section 19-1-1.1.

**A. Uniform Monthly Per Capita Payments.** Upon the majority vote of the Executive Committee, the per capita payment schedule for all persons entitled to receive such payments may be adjusted to provide for uniform monthly per capita payments. All monies of the stipulated monthly net proceeds of Tribal gaming businesses that are set aside for per capita payments in excess of the uniform monthly amount shall be deposited into a low-risk interest bearing reserve bank account, the principal and interest of which shall be available and shall be drawn upon to supplement individual per capita payments in any month or months during which the available proceeds do not permit distribution at the previously budgeted uniform amount. All monies, if any, remaining in the reserve account described herein shall be distributed to all qualified Tribal members in equal payments near the end of the calendar year.

**B. Compulsory Payment of Per Capita Reserve.** In no event shall the principal placed in the uniform payments per capita reserve account be held for more than 12 calendar months from the date of deposit into the reserve. Interest on the per capita reserve may be retained or uniformly distributed hereunder at the discretion of the Executive Committee.

### **Section 19-3-2. Qualification for Per Capita Payments.**

In accordance with the policy set forth in Section 19-1-1 of this Title, to fairly satisfy the needs of tribal members who contribute to the advancement and self-determination of the Tribe by residing within the Reservation community, to provide incentives to members to return to the Reservation community to further the advancement of tribal self-determination, and to enhance the Reservation community socially, economically and culturally, the Tribe adopts the policy that limits monthly disbursements of per capita payments to qualified tribal members who have physically resided for a period of one (1) year within the Reservation community, as those terms are defined in Section 19-1-1.1 of this Title.

### **Section 19-3-3. Exemption from Physical Residency.**

**A. General.** Members who are physically residing within the Reservation community immediately prior to pursuing an approved exemption that requires the individual to reside temporarily outside the Reservation community may request an exemption from the physical residence requirement. Members who request an exemption, must have been residing within the Reservation community for one (1) continuous year immediately prior to requesting such exemption.

**B. Exemption Application; Appeal.** A request for exemption under this Section shall be subject to approval by the Per Capita Committee. When a request for exemption is made, the Per Capita Committee or its designee shall consider the request at its next regularly scheduled meeting. If the request is denied, the member making the request shall be notified of the reasons thereof and of the right to an appeal pursuant to Section 19-1-10 of this Title. If a request for exemption is granted, the member shall be notified and required to comply with any requests to verify the continuing eligibility for the exemption as required by this Title.

If a person loses his/her exemption and qualified member status, he/she will thereafter be required to re-establish residency and qualified member status in accordance with Section 19-3-2 of this Title.

**C. Allowable Exemptions.** The following exemptions shall be allowed in accordance with the rules set forth herewith:

1. Military service exemption – In order to qualify for the military service exemption, a member must be on active duty in any U.S. armed forces and must have been ordered to move his/her residence to some location outside of the Reservation community. Such exemption shall be valid for a period not to exceed seven (7) years from the commencement of said exemption. Upon completion of military service, the member shall have thirty days to resume physical residence within the Reservation community. Failure to resume physical residency shall result in loss of exempt status and the member shall no longer be deemed to have qualified member status.
2. Higher education exemption - In order to qualify for student exemption, the member must be enrolled as a full-time student as determined by the school's registrar. Vocational education or certificate programs are eligible for the higher education exemption if the student meets all other factors.

Students shall be required to submit adequate proof to the Per Capita Committee or its designee of their continuing eligibility to receive this exemption, and students must authorize the Per Capita Office to obtain any information needed from the school in order to verify the student's full time student status. Failure to do so may result in loss of exempt status.

Enrollment in online, general education degree courses, correspondence courses, or other types of distance learning classes do not allow a member to qualify for the student exemption. Any student who is placed on funding suspension through the tribe's higher education program for failing to maintain the minimum credit hour requirements shall lose his or her exempt status. The student shall thereafter be required to renew his or her residency in accordance with this Title to be eligible for the per capita payment.

Because degree programs have different credit and time requirements, there will be no time limitation on this exemption, so long as the student is enrolled full-time. Upon completion or termination of the student's higher education program, the member shall resume physical residence within the Reservation community within

ninety (90) days. Failure to resume physical residence shall result in loss of exempt status and the member will no longer be deemed a qualified tribal member for per capita purposes.

If the student's higher education exemption expires or terminates and the student wishes to continue receiving the per capita benefits via the higher education exemption, he or she may apply to the Per Capita Committee for a continuation of their exemption. An extension may be granted at the discretion of the Per Capita Committee and is a non-appealable decision.

Students who have qualified for the higher education exemption in the spring semester, and who are enrolled in classes full time in the fall semester immediately following will be allowed to maintain their higher education exemption throughout the summer. Students must furnish proof to the Per Capita Committee that they are actually enrolled in the fall semester full time to be eligible. Students will still be required to apply for the higher education exemption for the upcoming academic year.

Student who have an internship, externship, or student-teaching requirement to obtain their degree will be allowed to continue to receive the higher education exemption during that internship, externship, or student-teaching and will not need to maintain a full-time course load.

3. Temporary Employment Exemption - In order to qualify for an exemption for temporary employment, the member must have been physically residing within the Reservation community for a period of one continuous year prior to the granting of the exemption, and the nature of the member's employment or profession must be such that short term absence from the Reservation community is required to fulfill job duties. The types of employment covered by this provision shall include but not be limited to construction work, truck driving, sales work, and other types of seasonal employment. Temporary absence for employment under this section shall not exceed ninety (90) days.
4. In-patient Treatment Exemption - In order to qualify for an exemption for in-patient treatment, the member must have been physically residing within the Reservation community for a period of one continuous year prior to the granting of the exemption. Before leaving the Reservation Community, the member must notify the Per Capita Office in writing, include a letter regarding which treatment facility they are attending and how long treatment will last, and sign a HIPAA Release for any and all medical information provided to the Tribe. Within fourteen (14) calendar days of successful completion or other program termination, the member will be required to notify the Per Capita Committee that they are living within the Reservation community, and provide Confirmation of Residency and other paperwork as required.

#### **Section 19-3-4. Primary Residence.**

Where a member occupies a second residence for a portion of a year a determination must be made regarding which residence is his/her primary residence.

Such determination shall be based upon whether the member meets at least four (4) of the following five (5) criteria:

1. Whether the member's spouse and children reside in the residence.
2. Whether member is registered to vote in Moody or Minnehaha Counties.
3. Whether the member's driver's license carries the address of the primary residence.
4. Whether member is actually physically present within the Reservation community not less than 75 percent of the year.
5. Whether the member can produce documentation of payment of rent, mortgage, utilities, taxes, or verification of employment for his/her residence within the Reservation community.

In making a determination under this section, the fact that the Reservation community residence which is being claimed as a primary residence is a shared residence shall create a presumption that this residence is not the primary residence.

#### **Section 19-3-5. Applying for Per Capita Payments – General; Process.**

**A. General.** Any enrolled member of the Flandreau Santee Sioux Tribe may apply to participate in the per capita distribution of gaming revenues. The applicant must provide documentation of his/her enrollment, his/her age, his/her address. A member who has reached the age of majority shall be required to apply to participate in per capita distribution. The member must provide clear and convincing evidence that he/she is a bona fide resident of the Reservation community. The burden of proof in establishing physical residence within the Reservation community shall rest with the applicant. The applicant shall show by clear and convincing evidence that he/she satisfies residency and other requirements and is therefore entitled to qualified member status. Any falsification of information provided on the application, Release of Information, Confirmation of Residency, or any other documents related to the per capita benefit application process is a violation of tribal law and will be prosecuted in Tribal Court.

As part of the application process, the applicant agrees to sign a “Release of Information” form provided by the Per Capita Office, which the Office will use to verify the applicant’s age, tribal membership, residency, or other criteria needed for per capita eligibility. The applicant further agrees to cooperate with the Per Capita Office in requesting or releasing any other information needed to verify per capita eligibility. Failure to cooperate with the Per Capita Office in obtaining necessary information about the applicant will deem him/her ineligible for benefits.

**B. Application Process.** Any enrolled Tribal member who so desires must notify the Per Capita Committee or its designee of his/her desire to establish or re-establish residency. The member shall file an application, which shall provide the following information to the Per Capita Committee or its designee: Name, physical address, date of establishing residence within the Reservation community, the sworn affidavit of two qualified tribal members who shall verify the applicant's residence and date of commencement of residency, a Confirmation of Residency Form, and a Release of Information form. Filing a false affidavit by any qualified tribal member in support of an application for per capita benefits is punishable by the loss of the affiant's per capita benefits.

Failure to provide necessary evidence shall result in the non-issuance of a Confirmation of Residency and the denial of qualified tribal member status.

Subsequent to the receipt of the completed application to establish residency, including all required evidence of residency and the Confirmation of Residency form, the Per Capita Committee or its designee shall review the documentation to determine whether the applicant is entitled to qualified tribal member status and should therefore be issued a Confirmation of Residency.

At its discretion, the Per Capita Committee or its designee may hold evidentiary hearings to determine whether the applicant is entitled to qualified member status and should be issued a Confirmation of Residency. No such hearing shall take place unless the applicant shall have been notified at least five (5) business days in advance.

The notice of hearing shall contain the following information:

1. Date, time and location of the hearing;
2. Person(s) designated as Hearing Officer;
3. Statement as to which portion(s) of his/her application is in question, if any;
4. Statement that applicant is entitled to representation;
5. List of documents or other evidence required by the Committee.

Applicants shall be notified of the denial of qualified member status within ten (10) business days of the decision to deny the Confirmation of Residency. If an adverse decision is issued by the Per Capita Committee concerning an application for per capita benefits, the applicant may appeal such decision as authorized in Section 19-1-10 of this Title.

Upon receipt of said Confirmation of Residency, the applicant may request the Per Capita Committee or its designee for final authorization to receive per capita payments as a qualified tribal member. Payments shall commence on the first date of a regularly scheduled payment after he/she has been granted a Confirmation of Residency.

### **Section 19-3-6. Maintaining Residency.**

Persons who have been granted a Confirmation of Residency shall maintain physical residency within the Reservation community. Failure to do so shall result in the loss of qualified tribal member status.

Qualified tribal members must notify the Executive Committee or its designee of any change of residency status, including the following:

1. Moving out of the Reservation community, whether temporary or permanent.
2. Leaving the Reservation community for an extended period of thirty (30) days or more.
3. Leaving the Reservation community to attend school, work for the government, serve in the military, or to receive services relating to illness or physical disability where such services are not available within the Reservation community.
4. Leaving the Reservation community to be incarcerated for thirty (30) days or more. Any qualified member who is incarcerated in a penal institution or otherwise pursuant to a conviction under any criminal law for more than thirty (30) days shall lose qualified member status unless the appropriate procedures within this title are followed.
5. Failure to notify the Executive Committee or its designee of such changes shall result in a loss of qualified member status.

If a member who has been granted qualified member status notifies the Executive Committee or its designee that he or she is moving out of the Reservation community and would like to discontinue receiving per capita payments, the Chairperson of the Per Capita Committee shall be authorized to do so. The Chairperson shall request that the member sign a statement verifying his or her request. If the member fails to provide such a statement, then the Chairperson shall document the request and change in the member's per capita file by verifying the request via certified mail to the member's last known address. The Chairperson shall keep the Per Capita Committee informed of all actions and shall ensure that such actions are recorded in the minutes of the Committee.

Each member who has been granted a Confirmation of Residency shall be required, on a semi-annual basis, to update his/her per capita payment file by providing proof that he/she is still a resident of the Reservation community and is otherwise qualified to receive per capita payments. Additionally, the Per Capita Office is authorized to require members to provide proof of residency more frequently if, in the discretion of the Office, supplemental documentation is needed prior to the next regularly scheduled semi-annual update.

### **Section 19-3-7. Challenging a Member's Residency.**

Any qualified tribal member may notify the Per Capita Committee or its designee - or the Tribe may act upon its own information - when there is reason to believe that a member is not qualified to receive per capita payments. Filing a false statement by any qualified tribal member

challenging another member's eligibility for per capita benefits is punishable by the loss of the maker's per capita benefits.

**A. Evidence.** When the Per Capita Committee or its designee receives such information, an investigation shall be initiated to determine the truth or falsity of such an allegation. Said investigation may include the following information:

1. A sworn statement of the member whose residency is questioned as to the truth or falsity of the allegation.
2. Verification of whether the member whose residency is being challenged is or is not in physical residence within the Reservation community. Such verification may include but shall not be limited to: copies of utility bills, rent receipts, voter registration, automobile registration, or driver's license.
3. Sworn statement(s) of neighbors or others who have reason to know the circumstances of the member's residency.

**B. Determination of Residency.** Upon completion of the investigation, the Per Capita Committee or its designee shall:

1. Make a determination of whether the subject has maintained his or her physical residency within the Reservation community and is therefore entitled to retain his or her qualified member status; or
2. At its discretion, the Per Capita Committee or its designee may hold evidentiary hearings to determine whether the applicant has maintained his or her qualified member status. No such hearing shall take place unless the applicant shall have been notified at least five (5) business days in advance.

The notice of hearing shall contain the following information:

1. Date, time and location of the hearing;
2. Person(s) designated as Hearing Officer;
3. Statement as to which portion(s) of his/her Confirmation of Residency or qualified member status is in question;
4. Statement that applicant is entitled to representation;
5. List of documents or other evidence required by the Committee.

Upon a determination that a hearing shall be held, the Per Capita Committee or its designee shall place the per capita payment(s) due to the member in an escrow account pending a final decision on the member's qualified member status.

**C. Decision and Notification; Default; Right to Appeal.** After a hearing has been conducted, the Per Capita Committee or its designee shall make a determination supported by clear and convincing evidence of whether the member being challenged meets the residency requirements of this Title. The member shall be notified in writing within three (3) business days of the final decision. If a determination is made that the member does not meet the residency requirements, he or she shall be further notified that he or she has the right to appeal the decision to the tribal court as provided in Section 19-1-1.

The member's payment shall continue to be held in escrow until the appeals process is complete. If a member fails to appear for a scheduled hearing, the member's residency eligibility shall be terminated, provided that the member shall be notified and shall have the opportunity to appeal to the tribal court as provided in Section 19-1-1.

### **Section 19-3-8. Incompetent Persons.**

The Flandreau Santee Sioux Tribe Executive Committee has the inherent authority to place into trust, in a low-risk interest bearing account in a federally insured financial institution it finds satisfactory, the per capita payments, or any portion or percentage thereof, of any individual who is declared incompetent by a court of competent jurisdiction.

**A. Petition to Place into Trust.** The Per Capita Committee shall consider placing into trust the per capita payment of any individual declared legally incompetent upon a Flandreau Santee Sioux Tribal Court Order or the petition of at least two qualified tribal members, one of which must be a family member. The Per Capita Committee or its appointed agent shall conduct hearings as it sees fit to gather testimony and evidence as to the reasons petitioners feel it should place into trust the per capita payments of the individual declared incompetent. The Per Capita Committee or its appointed agent retains the authority to place into trust any per capita payment of an individual declared incompetent before holding a hearing, however, the Per Capita Committee or its appointed agent must conduct a hearing and make a decision thereafter within thirty (30) calendar days from the date it has placed into trust the per capita payment.

**B. Authority to Distribute Living Allowance.** The Per Capita Committee or its appointed agent shall consider paying a monthly living allowance from the proceeds of any per capita payment placed into trust upon the petition of the legal guardian of any individual declared legally incompetent. Such petition shall include a detailed budget of monies necessary for the health, education and welfare of the individual declared incompetent.

**C. Account Statements of Trust Account.** The Executive Committee or its appointed agent shall make available a monthly bank statement of any monies placed into trust for an individual declared legally incompetent to the legal guardian of such person.

**D. Power of Executive Committee to Delegate Authority.** The Flandreau Santee Sioux Tribe Executive Committee has the inherent power to delegate authority to make determinations regarding the per capita payments on behalf of persons declared incompetent. It shall be up to the Executive Committee to determine to whom they will delegate this authority, if



to anyone. Any such appointment of an agent with delegated authority shall be documented by Executive Committee resolution

**E. Right of Judicial Review.** Any qualified tribal member adversely affected by this paragraph shall have the right of judicial review as outlined in Section 19-1-10.

### **Section 19-3-9. Minors' Trust Fund.**

In order to provide for the future safety and well-being of the children of the Flandreau Santee Sioux Tribe, while taking the position that the immediate needs and daily living expenses of such minors are the responsibility of the parent, parents or legal guardian and that such minors are not faced with the same financial obligation as are adults, the Executive Committee hereby allocates FIVE PERCENT (5%) of net gaming business revenues to be placed into a "Minors' Trust Fund" to be established in an account which seeks current income, capital appreciation and conservation of capital. Payments into the Minors' Trust Fund shall be divided equally among all enrolled tribal members who are not eighteen years of age and who are participating in the Minors' Trust Fund.

Such equally divided payments shall be deposited into the minors' trust fund and into respective accounts of each individual participant. Account balance statements shall be available to participants or the parent, parents or legal guardian of the participants. Participation in the Minors' Trust Fund shall be limited to those members who apply to participate. Newborn tribal members shall be eligible to participate in the minors' trust fund upon being duly enrolled in the Tribe provided that such newborn's parents or legal guardian shall apply on behalf of the newborn to participate in the Minors' Trust Fund.

**A. Maturity Payments.** Those participating members shall receive one trust account maturity payment of the monies accumulated in the trust fund, including interest, for the eligible minor participant, made to the participant upon reaching his/her 18th birthday, provided however, that all applicable federal income taxes shall be withheld from the maturity payment. Application for maturity shall be approved upon sufficient evidence showing eligibility by the Executive Committee or its designee.

**B. Distribution for Special Education, Medical, Terminal Illness.** The Executive Committee or its designee shall have the authority to disburse proceeds of any funds placed into trust on behalf of an individual under the terms of this Section, upon the request of the parent, parents or legal guardian of such individual minor, provided the funds shall be used for special educational needs, medical necessities, or where there is clear proof that the minor is suffering from a terminal illness.

The request shall include a detailed justification of the parents' or legal guardian's inability to provide the minor with the requested service or product. In addition, the request shall set out in detail the reasons the service or product is required by the minor and must include a Doctor's statement if the request is in connection with medical necessities or terminal illness. The statement of a trained professional shall be required for any requests in connection with special educational needs. The Executive Committee or its designee shall make direct payments to the

provider of the service or product requested. Upon proof, including a doctor's statement, that a minor is suffering from disease or bodily injury which will result in death within 3 to 6 months, the Executive Committee or its designee may release all funds currently held in trust for said minor. A request for release of such funds must be made by the minor's parent(s) or legal guardian.

**C. One-time Annual Release of Minors Trust Not To Exceed Ten Percent of Earnings.** The custodial parent of a minor who is a participant in the minors trust fund shall be allowed to withdraw ten percent of the minors average yearly trust earnings, based upon the previous twelve months, provided that such funds shall be used for the health, education, or welfare of the minor, and provided further that the custodial parent making the request shall provide a written explanation of the circumstances which justify the release and shall account for all expenditures by submitting receipts to the Tribal Treasurer. Failure to account for expenditures shall result in denial of any future releases. This shall be an annual one-time release. Application shall be made to the Tribal Treasurer and subject to approval of the Executive Committee. The custodial parent making the request shall provide proof that he or she is the legal custodial parent of the minor. Non-custodial parents shall not be allowed to withdraw funds.

**D. Application to Participate in Minors' Trust Fund.** Any parent whose minor child is an enrolled Tribal member may complete an application for the child to participate in the Minors' Trust Fund. Such application shall be submitted to the Executive Committee or its designee. The month following completion of the application and approval thereof, the applicant shall be enrolled in the Minors' Trust Fund.

**E. Withdrawing from Minors' Trust Fund.** Any parent or legal guardian of an enrolled tribal member may withdraw the minor's participation in the Minors' Trust Fund at any time, provided a request is made to the Executive Committee in writing. Withdrawal from the Minors' Trust Fund shall be permanent and the minor may not re-apply until he/she reaches the age of 18 years.

#### **Section 19-3-10. No Retroactive Payments.**

Any person enrolling in the Flandreau Santee Sioux Tribe shall not be entitled to any back payments of per capita proceeds.

#### **Section 19-3-11. Death of Participant.**

Upon the death of a member, said member's eligibility or participation in per capita payments or the Minors' Trust Fund ends immediately. Upon the death of a minor, the entire balance of the minor's fund shall be transferred to the minor's estate and distributed in accordance with uniform probate law. The Flandreau Santee Sioux Tribe shall be entitled to immediate reimbursement of any monies distributed to a deceased member after the date of death.

#### **Section 19-3-12. Federal Income Tax.**

The Tribal Treasurer shall insure that notification of the application of federal tax laws to tribal per capita payments be made when such payments are made. The Treasurer shall also implement a procedure by which applicable taxes are automatically deducted from the per capita payments received by qualified tribal members. To ensure that these requirements are met, prior to approving a member for the per capita payment or for participation in the Minors Trust Fund, the member or his/her parent or legal guardian shall complete an Internal Revenue Service form W-9 and return it to the Executive Committee or its designee.

### **Section 19-3-13. Incarcerated Persons.**

Any qualified member who is incarcerated in a penal institution or otherwise pursuant to a conviction under any criminal law for more than thirty (30) days shall lose qualified status. However, such member shall regain qualified status ninety (90) days after his/her release and reapplication for qualified member status, provided he/she immediately satisfies the definition of physical residence within the Reservation Community. Upon release from incarceration, the member shall complete an application and provide documentation for Confirmation of Residency. Failure to provide such documentation, or to notify the Executive Committee or its designee of any change in sentencing which effects residency status within fourteen (14) days of release, will result in denial of confirmation of residency. Incarceration shall include living in a half-way house, court-ordered treatment, house arrest, or any other type of living situation in which the individual is not free to leave on their own will at any time.

## **CHAPTER 4 – USE OF TRIBAL GAMING NET REVENUES – TRIBAL GOVERNMENT OPERATIONS AND PROGRAMS**

### **Section 19-4-1. Tribal Operations and Programs.**

In order to provide supplemental funding for tribal operations, the Executive Committee hereby allocates henceforth, FIFTEEN PERCENT (15%) of net gaming revenues to be paid into a tribal account called the "tribal operations fund."

If it deems it necessary, the Executive Committee shall have the authority to revise and increase the allocated percentage of net gaming revenues paid into the "tribal operations fund" by allocating a larger percentage to the fund. Any revision of the allocated percentage herein shall be documented by an Executive Committee resolution, a copy of which shall be provided to the Secretary of the Interior for review and approval.

### **Section 19-4-2. Budget Appropriations.**

The Executive Committee or its appointed agent shall receive budget reports from each tribal program funded under this provision, thirty days prior to the commencement of the fiscal year. The budget reports shall detail at a minimum: past year and expected revenues and revenue sources, expenditures including a detailed accounting for expenditures. The budget reports shall also include budget supplement requests to be funded by the "tribal operations fund."

Tribal programs to submit budget reports under this section shall include: tribal administration, tribal court, finance department, legal department, social services program, tribal health department, tribal maintenance, and other programs hereafter developed and added to this provision by amendment.

The Treasurer shall within thirty (30) calendar days from receiving all budget requests make recommendations to the Executive Committee for allocation of those funds in the tribal operations fund by dividing the tribal operations fund on a percentage basis in divisions that shall be fair and best meet the budget supplement request submitted by each tribal program in light of projected gaming revenues. The Executive Committee shall have final approval over budget appropriations.

The Treasurer shall devise and disseminate budget report requirements that detail what projected expenditures are allowed to be included in the supplement budget requests. The budget report requirement shall require tribal programs to consider those essential duties, services and responsibilities of tribal programs which cannot be dependent on projected, yet uncertain, gaming revenues; further, the budget report requirements shall require tribal programs to prioritize items included in its supplement budget request to insure essential duties, services and responsibilities will be met by all projected revenues derived from whatever source.

Disbursements shall be made quarterly unless the Executive Committee adopts by resolution an alternative disbursement plan. Any disbursements made hereunder shall be received by the

receiving program and handled in a manner consistent with the programs generally accepted accounting methods.

## **CHAPTER 5 – USE OF TRIBAL GAMING BUSINESS NET REVENUE – COMMUNITY ASSISTANCE FUND**

### **Section 19-5-1. Community Assistance Fund.**

In order to provide supplemental funding for general community assistance, the Executive Committee hereby allocates henceforth, FOUR PERCENT (4%) of net gaming revenues to be paid into a tribal account called the "community assistance fund." The funds allocated shall be expended exclusively for the following programs:

1. Elderly
2. Education
3. Culture/Language Programs
4. Veterans
5. Tribal Member Assistance/Social Services
6. Pow-Wow
7. Other Non-Profit/Charitable Programs

The Executive Committee shall prepare an annual budget in accordance with Section 19-1-3 of this Title for the Community Assistance Fund and allocate funds accordingly to each sub-category described above.

Thirty (30) days prior to the commencement of the fiscal year, The Executive Committee shall meet with all tribal programs set forth above, except Subparagraph 7, to consider the budgetary needs of each program. Each program shall provide budget reports for the previous fiscal year and shall submit budget requests for the new fiscal year with detailed budget justifications.

The Executive Committee, shall within thirty days from receiving all budget requests, appropriate those funds in the community assistance fund by dividing such fund on a percentage basis, or by a dollar amount, in divisions that shall be fair and best meet the budget supplement requests submitted by each tribal program in light of projected gaming revenues.

The Treasurer shall provide notices to said programs, prior to commencement of the fiscal year of the need to submit reports and budget requests and justification. The Treasurer shall devise and disseminate to tribal program personnel, requirements for needs assessments and budget reports that detail what projected expenditures are allowed to be included in the supplement budget requests. The budget report requirement shall require tribal programs/specific tribal assistance needs to consider those essential duties, services and responsibilities of tribal programs/specific tribal assistance needs which cannot be dependent on projected, yet uncertain, gaming revenues; further, the budget report requirements shall require tribal programs to prioritize items included in its supplement budget request to insure essential duties, services and responsibilities will be met by all projected revenues derived from whatever source.

The Executive Committee shall set aside a percentage of funds to make contributions to other non-profit charitable organizations under Subparagraph 7 above. The Executive Committee may show a preference to such charitable contribution requests that benefit tribal members or Native American people generally.

The Executive Committee shall set criteria for making disbursements to Tribal members under Subparagraph 5, which shall include limitations on the number of requests an individual can receive annually.

## **CHAPTER 6 – HIGHER EDUCATION FUND**

### **Section 19-6-1. Higher Education Fund.**

In order to provide funding to Tribal Members to obtain a higher education, the Executive Committee hereby allocates henceforth, ONE PERCENT (1%) of net gaming business revenues to be paid into a tribal account called the “Higher Education Fund.”

The Executive Committee shall have the authority to delegate the administration of these funds to its Education Department to be used for scholarships covering tuition, fees, and other allowable expenses in accordance with Education Department Policies and Procedures.

### **LEGISLATIVE HISTORY**

This Amended TITLE was enacted by the Flandreau Santee Sioux Tribe Executive Committee, on July 12, 2017, by Resolution 17-70, and it was further favorably reviewed and approved by the Bureau of Indian Affairs on March 26, 2018.



# *Flandreau Santee Sioux Tribe*

*P.O. Box 283 Flandreau, SD 57028*

*Ph. 605-997-3891*

*Fax 605-997-3878*

*www.santeesioux.com*

## **RESOLUTION NO. 17-70**

- WHEREAS,** the Flandreau Santee Sioux Tribe is a federally-recognized Indian Tribe organized pursuant to the Constitution and By-laws approved by the Secretary of Interior and Commissioner of Indian Affairs on April 24, 1936, amended February 7, 1941, further amended November 16, 1967, further amended November 14, 1984, and further amended May 17, 1997; and
- WHEREAS,** Article III, Section 1 of the Tribe's Constitution and By-laws provides that the governing body of the Tribe shall be the Executive Committee; and
- WHEREAS,** Article VIII, Section 1(e) of the Constitution vests the Executive Committee with the power to acquire, lease, or otherwise manage all lands or other assets, either real or personal, for the benefit of the Tribe as authorized by law except that where lands or assets are under the jurisdiction of the Federal government; and
- WHEREAS,** Article VIII, Section 1(f) of the Constitution vests the Executive Committee with the power to promulgate and enforce ordinances governing and regulating the conduct of all persons on the reservation; and
- WHEREAS,** Article VIII, Section 2 of the Tribe's Constitution and By-laws provides that the Executive Committee of the Tribe may exercise such other powers as may be delegated to it by the Secretary of Interior or any other duly authorized official or agency of the Federal government; and
- WHEREAS,** the Indian Gaming Regulatory Act ("IGRA"), 25 USC 2710, authorizes the Tribe to create and modify a plan for distribution of tribal gaming revenues, but only if the plan has been approved by the Secretary of Interior; and
- WHEREAS,** the Executive Committee, acting in the best interest of the Tribe, believes that Title 19 "Gaming Revenue Allocation" should be updated to reflect the current needs of the Tribe and its members; and
- WHEREAS,** the determination of those qualified members of the Flandreau Santee Sioux Tribe entitled to share, and the manner in which they share, Tribal gaming profits is strictly an internal tribal matter and an inherent power of the Tribe; and

**WHEREAS,** pursuant to the mandate of IGRA, the Tribe has amended its Gaming Revenue Allocation, Title 19, and hereby transmits it to the Secretary of Interior, for review and approval; and

**WHEREAS,** the amendments to the current Title 19 will focus on the education of tribal members, the desire to provide for rehabilitation for tribal members released from incarceration, and will otherwise improve the Title to reflect the true needs of the Tribe, and its members; and

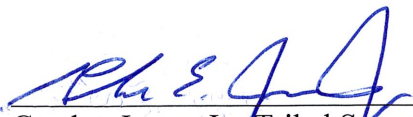
**NOW THEREFORE BE IT RESOLVED** that the Flandreau Santee Sioux Tribe hereby approves the modification of Title 19, "Gaming Revenue Allocation," as attached, in its entirety, subject to approval by the Secretary of Interior.

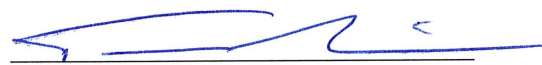
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### CERTIFICATION

The foregoing Resolution was duly enacted and adopted on this 12<sup>th</sup> day of July, 2017 by the Executive Committee of the Flandreau Santee Sioux Tribe during a duly called meeting with a quorum was present of 6 In Favor, 0 Opposed, 0 Abstaining, and 1 Not Voting, as follows:

Vice President, Andrew Weston:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Secretary, Gordon Jones, Jr.:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Trustee I, Jean Paul Roy:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Trustee II, David Kills A Hundred:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Trustee III, Michael Weston:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Trustee IV, John Jason Armstrong:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
President, Anthony Reider ( <i>If Required</i> ):	YES	NO	ABSTAIN	NOT PRESENT

  
Gordon Jones, Jr., Tribal Secretary

  
Anthony Reider, Tribal President

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# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

MAR 26 2018

The Honorable Anthony Reider  
President, Flandreau Santee Sioux  
Tribe of South Dakota  
P.O. Box 283  
Flandreau, South Dakota 57028

Dear President Reider:

On January 23, 2018, the Bureau of Indian Affairs, Great Plains Regional Office transmitted an Amendment to the Flandreau Santee Sioux Tribe of South Dakota's Revenue Allocation Plan to the Office of Indian Gaming for review and approval.

We have completed our review of the Amendment adopted by the Tribe's Resolution No. 17-70 dated July 12, 2017, and conclude that the Amendment does not violate the Indian Gaming Regulatory Act (IGRA) or our regulations at 25 C.F.R. Part 290. Pursuant to my delegated authority and Section 11 of IGRA, the Amendment is approved.

If you have any questions regarding this matter, please contact Ms. Debra DeLeon, Office of Indian Gaming at (202) 219-4066.

Sincerely,

John Tahsuda  
Principal Deputy Assistant Secretary – Indian Affairs  
Exercising the Authority of the Assistant Secretary –  
Indian Affairs

cc: Great Plains Regional Office