

**JAMESTOWN S'KLALLAM TRIBE
TRIBAL CODE
TITLE 40 – BOND CODE**

Chapters

40.01 General Provisions

40.02 Authority and Power

40.03 Implementation

40.04 Miscellaneous

40.05 Codification

Chapter 40.01

General Provisions

Sections:

Section 40.01.01 Purposes

Section 40.01.02 Definitions

Section 40.01.01 Purposes

The purpose of this Title is to establish procedures to enable the Tribal Council, as the governing body of the Jamestown S'Klallam Tribe (the "Tribe"), to issue bonds or incur other obligations from federal and non-federal sources under Article VII, Section 1(c), (e), and (v) of the Constitution of the Tribe (the "Tribal Constitution"), for public purposes ("Tribal Projects").

Section 40.01.02 Definitions

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

- A. "Authorized Representative" means the Chair or the Vice-Chair of the Tribal Council or any designee of the Tribal Council.
- B. "Bond" means a Full Faith and Credit Bond, a Revenue Bond, or other obligations.
- C. "Credit Enhancement Device" means a letter of credit, line of credit, bond insurance policy, or other device or facility used to enhance the creditworthiness or marketability of any Bonds.
- D. "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 Tribal Council as a full faith and credit obligation payable from taxes, if any, which may be levied, or from the general revenues of the Tribe.
- E. "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.
- F. "Operative Document" means a resolution, ordinance, trust indenture, security agreement, or other document in which the Tribe Pledges Property as security for a Bond.
- G. "Pledge" means to create a security interest in or a lien on Property to secure payment or performance of an Obligation or Bond. The security interest or lien is created by mortgaging, assigning, or encumbering Property or by creating a security interest in any other manner.

- H. "Pledgee" means:
1. A trustee for the holder of a Bond or Obligation; or
 2. The holder of a Bond or Obligation if a trustee was not appointed in the Operative Document or if the Operative Document authorizes the holder of the Bond or Obligation to foreclose the lien of the Pledge and enforce the remedies consequent to the Pledge in lieu of the trustee.
- I. "Property" means real or personal property of the Tribe, tangible or intangible, whether owned by the Tribe when a Pledge is made or acquired subsequently by the Tribe, and includes Revenues, contract rights, receivables, and securities.
- J. "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 the Tribe, and other revenues legally available to be pledged to secure Revenue Bonds.
- K. "Revenue Bonds" means Bonds issued for any public purpose, which are secured by Revenues pledged for such public purpose.
- L. "Swap Agreement" means a contract or an option or forward commitment to enter into a contract, for the exchange of interest rates that provides for:
1. Payments based on levels of or changes in interest rates; or
 2. Provisions to hedge payment, rate, spread or similar exposure including, but not limited to, an interest rate floor or cap or an option, put or call.
- M. "Tribal Enterprise" means an enterprise of the Tribe duly established under Article VII, Section 1(j) of the Tribal Constitution.
- N. "Tribal Project" means any project or projects of the Tribe or any enterprises of the Tribe to be financed with the proceeds of Bonds issued for a public purpose.

Chapter 40.02 Authority and Power

Sections:

Section 40.02.01 Authority to Issue Waiver of Sovereign Immunity for Certain Purposes

Section 40.02.02 Authority to Issue Bonds

Section 40.02.03 Authority to Establish Lines of Credit

Section 40.02.04 Authority to Secure Interim Financing

Section 40.02.05 Authority to Enter into Swap Agreements

Section 40.02.06 Tribal Council Powers

Section 40.02.01 Authority to Issue Waiver of Sovereign Immunity for Certain Purposes

The Tribal Council, on behalf of the Tribe, is hereby authorized to waive the sovereign immunity of the Tribe, its officers, attorneys, agents, and employees, for the limited purpose of providing for the sale, issuance, security, and performance of the Bonds, but any such waiver may only be approved by a duly authorized resolution of the Tribal Council.

Section 40.02.02 Authority to Issue Bonds

- A. The Tribal Council is hereby authorized to provide by resolution to issue Bonds for the payment of the whole or any portion of the cost and expense of any Tribal Project. The Tribal Council will by resolution determine the maximum amount of the Bond issue.
- B. The Tribal Council or its designee may determine certain particular terms and conditions of any borrowing or issuance of Bonds for a Tribal Project pursuant to this Title.
- C. The words “maximum amount of the Bond issue” as used in Subsection (A) of this Section refers only to the principal amount of the Bonds and the Tribal Council is authorized to provide for the payment of interest and prepayment premiums, if any, in addition to such principal amount.

Section 40.02.03 Authority to Establish Lines of Credit

Pursuant to its authority under Article VII, Section 1(c), (e), and (v) of the Tribal Constitution, the Tribal Council, 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 Authorized Representative 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.

Section 40.02.04 Authority to Secure Interim Financing

Bonds authorized under this Title which are issued in anticipation of taxes or other Revenues, and any Bonds which 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 80 percent of the amount budgeted to be received in the fiscal year in which the Bonds are issued.

Bonds which are issued in anticipation of a grant will mature not later than one 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 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.

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.

Section 40.02.05 Authority to Enter into Swap Agreements

- A. The Tribal Council may by resolution delegate to its Authorized Representative the authority to enter into a Swap Agreement related to an Obligation or Bond that the Tribe has issued or will issue to manage payment, interest rate, spread, or similar exposure undertaken in connection with the Obligation or Bond.
- B. The Swap Agreement shall include such provisions related to payment, term, security, collateralization, termination, default, and remedy as the Authorized Representative determines are necessary or appropriate.
- C. Subject to covenants applicable to the related Obligation or Bond, payments required to be made under the Swap Agreement by the Tribe may be made from revenues or other moneys committed to or legally available to pay the underlying debt obligation and may rank in an order of priority of payment relative to the payment of the underlying debt obligation as the Authorized Representative determines.

Section 40.02.06 Tribal Council Powers

To secure the Bonds or any Credit Enhancement Device, the Tribal Council shall have the power and is authorized to exercise the Tribe's powers 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 which may be held by the Tribe or any third-party trustee designated by resolution of the Tribal Council;
- C. Enter into contracts with third parties to obtain direct or standby lines of credit, Credit Enhancement Devices, or other financial commitments designated 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.

Chapter 40.03 Implementation

Sections:

Section 40.03.01 Perfection, Priority, and Enforcement of Pledge

Section 40.03.02 Amount, Terms, Conditions, Interest, etc. of Bonds

Section 40.03.03 Registration System and Appointment of Financial Institutions

Section 40.03.04 Form and Content of Bonds

Section 40.03.05 Reproduction of Physical Instrument

Section 40.03.06 Sale of Bonds

Section 40.03.07 Payment of Costs of Issuance and Sale

Section 40.03.08 Revenue Bonds

Section 40.03.01 Perfection, Priority, and Enforcement of Pledge

This Section governs the creation, perfection, priority, and enforcement of a lien of a Pledge made by the Tribal Council pursuant to this Title.

- A. The Tribal Council may Pledge all or a portion of the Tribe's Property as security for payment of its Bonds or Obligations, or any line of credit related to such Bonds or Obligations, and for performance of a covenant or agreement entered into in relation to the issuance of Bonds or Obligations, or any line of credit related to such Bonds or Obligations. The lien created by the Pledge is valid and binding from the time the Pledge is made.
- B. Pledged Property is subject immediately to the lien of the Pledge without physical delivery, filing, or any other act.
- C. Except as expressly provided in the Operative Document, the lien of the Pledge is superior to and has priority over other claims and liens of any kind.
- D. When Property subject to a Pledge is acquired by the Tribe after the Pledge is made, the Property is subject to the lien upon acquisition by the Tribe without physical delivery, filing, or any other act, and the lien shall relate to the time the Tribe originally made the Pledge.
- E. The Tribe may reserve the right to Pledge a Pledged Property as security for Bonds subsequently issued by the Tribe pursuant to this Title. If the Tribe reserve that right, subject to the terms of the Operative Document that created the previous Pledge, the lien of the subsequent Pledge may be on parity or pari passu basis with the lien of the previous Pledge, on a prior or superior basis with the lien of the previous Pledge, or on a subordinate basis with the lien of the previous Pledge, as specified in the Operative Document creating the subsequent Pledge. The lien of the subsequent Pledge:
 - 1. Has the priority specified in the Operative Document creating the subsequent Pledge; and

2. Is superior to and has priority over other claims and liens of any kind except the lien of a Pledge with which the lien of the subsequent Pledge is on a parity or subordinate basis, as specified in the Operative Document.
- F. Except as provided in Subsection (G) of this Section, a Pledgee may commence an action in a court of competent jurisdiction, as specified and consented to by the Tribal Council in the Operative Document, to foreclose the Pledge and exercise rights and remedies available to the Pledgee under the Operative Document.
- G. When Pledged Property consists of moneys or Property in a fund for debt service reserves or payments, a Pledgee may foreclose the lien of the Pledge by applying the moneys or Property in the fund to the payment of Bonds subject to the terms, conditions, and limitations in the Operative Document.

Section 40.03.02 Amount, Terms, Conditions, Interest, etc. of Bonds

- A. The Tribal Council may by resolution delegate to its Authorized Representative its authority to determine the interest rate or rates applicable to any Bonds issued to finance a Tribal Project; provided that such interest rate shall in no event exceed the maximum true interest cost or maximum interest rate designated by the Tribal Council resolution authorizing such Bonds. The Tribal Council may also delegate to the Authorized Representative its authority to determine an amortization schedule for the Bonds; provided that the maximum term shall not exceed 40 years.
- B. Except as provided in this Title, the Authorized Representative may act on behalf of the Tribal Council 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.

Section 40.03.03 Registration System and Appointment of Financial Institutions

- A. The Tribal Council 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 Tribal Council or its designee may:
 - 1. Appoint a national banking association or state chartered bank, maintaining a minimum capital surplus of \$50,000,000 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; and
 - 2. 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 Tribal Council may by resolution appoint the Treasurer of the Tribe, or any other fiscal agency, to serve as the fiscal agency.
- E. Nothing in this Section precludes the Tribe, the Tribal Council, or a trustee appointed by the Tribal Council, 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.

Section 40.03.04 Form and Content of Bonds

- A. Bonds shall be in such denominations as may be provided in the resolution authorizing their issue and shall be numbered from one upwards consecutively. Each Bond shall:
 - 1. Be signed by the Authorized Representative of the Tribal Council;
 - 2. Have the seal of the Tribe affixed thereto;
 - 3. Refer to the Tribal Project for which it is issued and the resolution ordering it;
 - 4. Provide that the principal sum therein named and the interest thereon shall be 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 Tribal Council authorizing such Bonds; and

5. Be in any form, including bearer bonds or registered bonds as provided by Tribal law.
- B. Any Bonds may be signed by the Authorized Representative of the Tribal Council, or in lieu thereof, may have printed thereon a facsimile of his or her signature.

Section 40.03.05 Reproduction of Physical Instrument

When the Tribal Council issues Bonds as physical instruments, the Bonds shall be printed, engraved, lithographed, photocopied, typed, or reproduced and the manual or facsimile signatures of the Authorized Representative of the Tribal Council shall be included on each Bond.

Section 40.03.06 Sale of Bonds

The Tribal Council may authorize the Authorized Representative 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 Tribal Council approval and execution by the Authorized Representative.

Section 40.03.07 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 fiscal agent, paying agent, bond trustee, interest rate swap agreement fees or costs, registrar fees, legal expenses, bond ratings, printing, engraving, underwriting fees or discounts, 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.

Section 40.03.08 Revenue Bonds

- A. The Tribal Council is hereby authorized to provide by resolution to issue Revenue Bonds for the payment of the whole or any portion of the cost and expense of any Tribal Project. The Tribal Council will by resolution determine the maximum amount of the Revenue Bond issue.
- B. The Tribal Council may Pledge for the payment of Revenue Bonds issued in connection with a Tribal Project all or any portion of:
 1. The Revenues or 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 Tribal Council determines that it is necessary to provide additional security for the Revenue Bonds, the Tribal Council may, to the extent permitted by law mortgage, grant security interests in, Pledge, 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 or a trustee therefore or as security for its obligations arising under any Credit Enhancement Device. The Tribal Council may obtain a Credit Enhancement Device for Revenue Bonds provided that such Credit Enhancement Device is payable solely from Revenues. The Tribal Council 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 Tribal Council.
- D. When issuing Revenue Bonds, the Tribal Council may do any one or more of the following:
1. By resolution delegate to the Authorized Representative, the authority to determine the principal amounts, the applicable interest rate or rates or the method to determine variable, auction, or adjustable interest rates (provided that in no event will the fixed or flexible interest rate or rates exceed the maximum net interest cost designated by the Tribal Council resolution authorizing such Revenue Bonds), an amortization schedule for the Revenue Bonds (provided that the maximum term shall not exceed 40 years), redemption, purchase or tender provisions, denominations, and other terms and conditions of such Revenue Bonds which 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. Such obligations shall be payable from the same sources from which the Revenue Bonds are payable;
 3. Assign its rights under project agreements and other contracts related to the project being financed by the Revenue Bonds;
 4. Enter into indentures or other agreements with bond trustees and deposit funds with trustees for the benefit of such bond owners; and
 5. 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 Tribal Council may determine, and establish such other reserves as may be approved by the Tribal Council.

Chapter 40.04 Miscellaneous

Sections:

Section 40.04.01 Personal Liability

Section 40.04.02 Dispute Resolution

Section 40.04.03 Governing Law

Section 40.04.04 Effective Date; Savings Clause

Section 40.04.01 Personal Liability

Neither the holder nor 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 Tribal Council or any officer, employee, or agent of the Tribe, for personal, contractual, or monetary liability on the Bonds.

Section 40.04.02 Dispute Resolution

- A. Unless otherwise provided by the terms of the specific Bond issue, a party with a claim arising from the issuance of Bonds under this Title shall first file a written petition with the Tribal Council or its designee for a hearing on the claim, which hearing shall be granted within 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 Tribal Council or its designee shall issue a written decision on the matter. A party dissatisfied with the decision of the Tribal Council or its designee may seek judicial review in the Jamestown S'Klallam Tribal Court. For purposes of this review the Tribal Council agrees not to raise any sovereign immunity defenses which the Tribe may possess in the Tribal Court. The appeal must be filed within 10 days of the written decision by the Tribal Council or its designee. The Tribal Court shall issue a written decision on the matter. A party dissatisfied with the decision of the Tribal Court may invoke arbitration under the rules and auspices of the American Arbitration Association. The arbitrator shall conduct a de novo review upon the written record before the Tribal Court and shall issue a written decision. For purposes of this arbitration, the Tribal Council shall not raise a sovereign immunity defense; provided that this agreement shall be strictly construed and shall not be construed as an agreement not to assert any such immunity in any action brought or maintained in the courts of the United States or of the several states.
- B. In connection with authorizing a specific Bond issue, the Tribal Council (by authorization of the terms and agreements pertaining to the Bond issue or otherwise) may provide for a dispute resolution system differing from that provided in Subsection (A) of this Section. Such other dispute resolution system may provide, among other things, for waiving the necessity of any proceedings before the Tribal Council or the Tribal Court, for other or greater waivers of sovereign immunity, for lesser or greater powers of the arbitrators than those stated by the rules of the American Arbitration Association, and for federal and state court jurisdiction.

Section 40.04.03 Governing Law

The law governing a specific Bond issue shall be as designated in the Operative Documents and approved by the Tribal Council in the resolution authorizing the Bond issue pursuant to this Title.

Section 40.04.04 Effective Date; Savings Clause

This Title shall take effect on March 14, 2023. Such enactment shall not apply to transactions consummated prior to that date.

Chapter 40.05 Codification

Sections:

Section 40.05.01 Codification

Section 40.05.01 Codification

Title 40 - Bond Code was approved and codified on March 14, 2023, at a Tribal Council meeting under Resolution #11-2023.