

SEPTEMBER 14TH SPECIAL SESSION OF THE CROW TRIBAL LEGISLATURE

LR No. 11- 14

Introduced by the Crow Tribal Legislature

A Legislative Resolution Titled:

A Resolution of the Crow Tribal Legislature to Establish a Branch Policy Recognizing a Property Interest in Tribal Employment Protected by the Due Process Clause of the 2001 Crow Constitution and the Federal Indian Civil Rights Act

Legislative Findings:

WHEREAS, Article V, Section 2(a) of the 2001 Crow Constitution provides that the Crow Tribal Legislature (“Legislature”) is vested with the power and duty to promulgate and adopt resolutions and guidelines in accordance with the 2001 Constitution and federal laws for the governance of the Crow Tribe of Indians; and

WHEREAS, Section 1 of Legislative Resolution 10-20 (enacted in special session on August 10th, 2010) provides that Legislative Branch policy-making resolutions are a specific category of legislative resolutions and shall be categorized as such; and

WHEREAS, Article XI, Section 2 of the 2001 Constitution provides that the 2001 Constitution shall not in any way alter, abridge, or otherwise jeopardize the rights and privileges of Crow tribal members as citizens of the United States; and

WHEREAS, the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution have been interpreted by the United States Supreme Court as affording a property interest in public employment which is protected from arbitrary governmental action provided that the employee has a “legitimate claim of entitlement” to employment established by law or by reasonable expectations on continued employment based on practice or custom; and

WHEREAS, Article XI, Section 4(h) of the 2001 Constitution provides that the Crow tribal government may not deprive any person of property without due process of laws; and

WHEREAS, the federal Indian Civil Rights Act of 1968, Title 25 United States Code Section 1301 to 1303 (2010), provides that no Indian tribe in exercising its powers of

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self-government shall deprive any person of property without due process of law;
and

WHEREAS, the Legislature seeks to establish policy and procedure wherein all Legislative Branch employees shall be protected from arbitrary terminations or discipline in the same way as federal and state employees under the Due Process Clause of the United States Constitution; and

WHEREAS, the Legislature seeks to ensure that the Crow Tribe avoids the consequences of the civil class-action case titled *Dorma Takes Enemy v. Crow Tribe*, which was settled in the Ninth U.S. Circuit Court of Appeals in 2005 and which arose due to violations of the rights of tribal employees and which cost the Crow Tribe hundreds of thousands of dollars; and

WHEREAS, the Legislature strongly encourages the Executive Branch to establish policy recognizing the constitutional right to security in tribal employment from arbitrary and political firing or disciplinary actions.

**NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CROW TRIBAL
LEGISLATURE IN SPECIAL SESSION:**

The established written policy of the Crow Legislature shall be to provide the maximum levels of due process protections in all notices and hearings made to Legislative Branch employees potentially subject to a loss of their property interest in tribal employment.

BE IT FURTHER RESOLVED:

The Executive Branch is hereby requested and urged to amend its personnel policies and procedures in order to implement the policy established in this resolution. Further, the Legislature strongly encourages that all executive orders, directives, or other administrative actions of the Executive Branch relating to personnel to be in conformity with the written policy established by this resolution, in accordance with Article IV, Section 3(b) and Article IV, Section 4(a) of the 2001 Crow Constitution.

The following principles are essential elements of a personnel policy which dutifully adheres to due process and are hereby adopted by the Legislature as official Branch policy:

1. There shall be timely, written notice to the employee of the precise reason for the proposed administrative action.

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2. There shall be timely, written notice to the employee of the precise time and place of the hearing.
3. The employee shall have the right to refute, in writing and with the support of witnesses and evidence, any allegations or the proclaimed basis for administrative action.
4. The employee shall have the right to an impartial decision maker or decision makers at any pre-termination hearing or other review hearing.
5. The employee shall always have the right to a hearing prior to the termination or discipline potentially resulting in suspension except where impractical due to an actual emergency.
6. The employee shall have an opportunity to suggest any desired hearing procedures.
7. The employee shall be afforded the right to be represented by legal counsel present at the hearing.
8. The employee shall be allowed to have the record of any hearing transcribed at his or her own expense.
9. The decision maker(s) shall prepare findings based upon the hearing record consisting of a short written summary of the relevant facts and reasons for termination or discipline.
10. Upon being subject to disciplinary action, including termination, supported by findings as required by item #9 above, the employee shall have no fewer than thirty (30) calendar days to file notice to the employer that he or she has sought review before with the Crow Tribal Employment Rights Office in accordance with Chapter 13 of the Crow Nation Workforce Protection Act (CLB 09-01, as amended) or judicial review, if applicable. During such time, the employee shall be considered to be on unpaid leave with compensation and benefits retroactively applied to all such time if the initial allegation or proclaimed basis for disciplinary action is found to be without merit or otherwise dismissed.

BE IT FURTHER RESOLVED:

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That the secondary preference provided to veterans in hiring, promotion, training, and other aspects of employment with the Crow tribal government, as established by CLB 10-04 (Crow Nation Workforce Protection Act amendments), shall be fully honored and adhered to by the Crow Tribal Legislature at all times in the implementation of all personnel policies and procedures.

BE IT FURTHER RESOLVED:

The Legislature hereby provides notice to the Executive Branch and the Crow Tribal General Council that it has made it a top legislative priority to promulgate and adopt legislation amending the Crow Nation Workforce Protection Act (CLB 09-01, as amended) in order to establish, as Crow tribal law, that all employees of any agency, department, or instrumentality of the Crow Tribal Executive Branch have a legitimate claim of entitlement to continued employment and, therefore, a property interest subject to the Due Process Clause of Article XI of the 2001 Crow Constitution and the federal Indian Civil Rights Act of 1968, as amended. Accordingly, such legislation would establish that the Executive Branch in exercising its enumerated power in Article IV, Section 3(b) to administer and oversee all functions of the Executive Branch, including firing, shall provide pre-termination and pre-disciplinary notice to affected employees and shall afford such employees a meaningful hearing in accordance with established principles of due process in order to avoid arbitrary or political firing and disciplinary action.

BE IT FURTHER RESOLVED:

This policy-making resolution is not tribal legislation and shall not be considered as an amendment to the Crow Nation Workforce Protection Act (CLB 09-01, as amended). Chapter 7 of the Legislative Branch Personnel Practices and Policy Manual, LR 08-06, shall be amended as appropriate by the Secretary of the Legislature to incorporate the policy of this resolution.

BE IT FURTHER RESOLVED:

Upon its due adoption by the Crow Tribal Legislature, a certified copy of this resolution shall be immediately provided to the Executive Branch.

BE IT FINALLY RESOLVED:

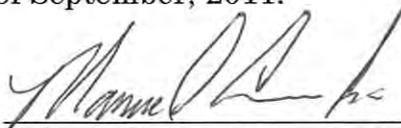
That the Secretary of the Legislature be directed to codify this resolution in the next edition of the Crow Law and Order Code in an appendix reserved for Legislative Branch policies.

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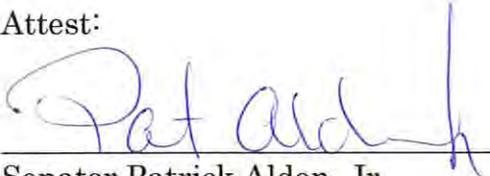
CERTIFICATION

I hereby certify that this Resolution titled A Resolution of the Crow Tribal Legislature to Establish a Branch Policy Recognizing a Property Interest in Tribal Employment Protected by the Due Process Clause of the 2001 Crow Constitution and the Federal Indian Civil Rights Act was duly adopted by the Crow Tribal Legislature with a vote of 15 in favor, and 0 opposed, and 0 abstained, and that a quorum was present on this 14th day of September, 2011.



Senator Manuel Covers Up, Sr.
Speaker of the House
Crow Tribal Legislature

Attest:



Senator Patrick Alden, Jr.
Secretary
Crow Tribal Legislature



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Bill or Resolution: LR11-14 **Introduced by:** Crow Tribal Legislature **Date of Vote:** 9/14/2011
Number

<u>Representative:</u>	Yes	No	Abstained
H. Two Leggins	<u> X </u>	<u> </u>	<u> </u>
V. Pretty Paint	<u> X </u>	<u> </u>	<u> </u>
C. J. Stewart	<u> X </u>	<u> </u>	<u> </u>
K. Shane	<u> X </u>	<u> </u>	<u> </u>
S. Backbone	<u> X </u>	<u> </u>	<u> </u>
O. Half, Jr.	<u> X </u>	<u> </u>	<u> </u>
W. Plainfeather	<u> X </u>	<u> </u>	<u> </u>
R. Old Crow, Sr.	<u> X </u>	<u> </u>	<u> </u>
M. Not Afraid	<u> X </u>	<u> </u>	<u> </u>
V. Crooked Arm	<u> X </u>	<u> </u>	<u> </u>
L. DeCrane	<u> X </u>	<u> </u>	<u> </u>
C. Goes Ahead	<u> X </u>	<u> </u>	<u> </u>
B. Hugs	<u> </u>	<u> </u>	<u> </u>
G. Real Bird, Jr.	<u> X </u>	<u> </u>	<u> </u>
M. Backbone	<u> </u>	<u> </u>	<u> </u>
D. Wilson	<u> </u>	<u> </u>	<u> </u>
P. Alden, Jr. <i>Secretary of the House</i>	<u> X </u>	<u> </u>	<u> </u>
M. Covers Up, Sr. <i>Speaker of the House</i>	<u> X </u>	<u> </u>	<u> </u>
Totals:	<u> 15 </u>	<u> 0 </u>	<u> 0 </u>

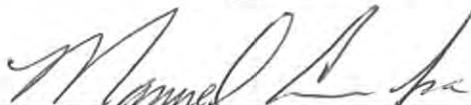
Result of Vote:

Passed

 Not Passed

 Tabled

 Veto-Override



 Senator Manuel Covers Up, Sr. Date
 Speaker of the House



 Senator Pat Alden, Jr. Date
 Secretary of the House