



Waganakising Odawak
Little Traverse Bay Bands of Odawa Indians
Frank Ettawageshik, Tribal Chairman
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**Executive Veto of the Indian Preference in Tribal Employment Statute
as passed by Tribal Council on January 11, 2009**

As a Tribe we have done much work on this issue. I support Tribal preference in hiring and support nearly all of the provisions within this current statute as passed by Tribal Council. However there are two issues that I wish to raise.

The first issue with this statute is that after careful review by Executive legal staff we believe that it unconstitutionally waives the immunity of officials and employees. Section IV, 2 of the statute reads:

"The Tribe clearly and expressly waives its sovereign immunity to Equitable Remedies as set forth in the Statute for officials, individual employees and/or managers and the Tribe clearly and expressly waives its sovereign immunity for Damages for officials, individual employees and/or managers who act beyond the scope of their duties and authority..."

In contrast to this Article XVIII.A. of the Constitution reads:

"The Little Traverse Bay Bands of Odawa Indians, including all subordinate entities, shall be immune from suit except to the extent that the Tribal Council clearly and expressly waives its sovereign immunity, and officials and employees of the Tribe acting within the scope of their duties or authority shall be immune from suit."

This language from the Constitution only allows for waiver of immunity for the Tribe and subordinate entities. It does not allow the Tribe to waive the immunity of officials and employees acting within the scope of their authority.

Article XVIII.B. of the Constitution reads:

Officials and employees of the Little Traverse Bay Bands of Odawa Indians who act beyond the scope of their duties and authority shall be subject to suit in Tribal Court **for purposes of enforcing rights and duties** established by this Constitution or other applicable laws.

It is the position of the Executive that Article XVIII.B of the Constitution does not allow suits against individual officials and employees for personal damages. Rather, the final phrase, "for purposes of enforcing rights and duties established by this Constitution or other applicable laws" was included to limit relief to actions that officials and employees can take in their official/employee capacity. Otherwise, this final phrase would serve no purpose at all.

In reading the above sections, the Executive has concluded that the statute as passed is unconstitutional and recommends rewording this section.

The second issue, while not rising to the level of causing a veto, is one that reflects the concerns of the Tribal community. Tribal Council held a public hearing on Tribal Preference on February 22nd and 23rd, 2008. I attended this hearing and took notes on the comments presented from a standing room only crowd of members of the Tribal community. I believe that there was overwhelming support for including spouses in the provisions of a Tribal preference law. The strong support for this provision was not heeded by Council and is missing from the version that we are now considering.

Prepared and signed February 10, 2009

Frank Ettawageshik, Tribal Chairman

WAGANAKISING ODAWAK STATUTE 2009-001
INDIAN PREFERENCE IN TRIBAL EMPLOYMENT

SECTION I: PURPOSE

This Statute rescinds and replaces Waganakising Odawak Statute WOS 2002-004, 1998015, 1996-002 and any previous statutes or amendments. This Tribal Employment Statute is hereby enacted to mandate the preferential employment, promotion training and retention of tribal members and other persons by the Tribe and its business enterprises, as permitted and promoted under federal law based on the unique political relationship between Indian tribes and the United States.

SECTION II: DEFINITIONS

- A.** “Applicant” means person applying for employment with business owned, operated or licensed by the Little Traverse Bay Bands of Odawa Indians.
- B.** “Education” means the credentials to perform the requirements of employment through institutional and/or job experience instruction.
- C.** “Employee” means individual employed by LTBB Tribal Administration and commercial entities including all ancillary enterprise.
- D.** “Employer” means all department and agencies of the LTBB Tribal Government, Administration, enterprise and commercial entities including all ancillary enterprises.

E. “Tribal Business Enterprise” means any business owned, operated or licensed by the Little Traverse Bay Bands of Odawa Indians.

F. “Employment Preference” means a preference given to a job applicant or employee in hiring, promotion, training and retention decisions when choosing qualified applicants or employees.

G. “Qualified applicant” means a person who meets minimum qualifications, experience, background, abilities and/or education.

SECTION III: EMPLOYMENT PRACTICES

A. **Indian preference.** The Tribe and Tribal Business Enterprises shall grant an Employment Preference for hiring, promotion, training and retention to the following persons in the following order:

1. Members of the Little Traverse Bay Bands of Odawa Indians,
2. Other federally recognized members of North American Indian Tribes.

B. **General.** Except for the Indian preference stated in Section III (A), employment, promotion, training and retention opportunities within the Tribe and Tribal Business Enterprises will be offered to qualified individuals without regard to race, religion, color, ancestry, gender, age or national origin.

C. **Contractors and Subcontractors.** The Tribe and its business enterprises may adhere to this Statute when negotiating contracts.

SECTION IV. LIMITED WAIVER OF SOVEREIGN IMMUNITY

1. The Tribe clearly and expressly waives its sovereign immunity to the Equitable Remedies as set forth in this Statute and clearly and expressly waives its sovereign immunity to Damages as set forth within this Statute for Employers and limits such waiver to remedies as set forth within this Statute.
2. The Tribe clearly and expressly waives its sovereign immunity to Equitable Remedies as set forth in this Statute for officials, individual employees and/or managers and the Tribe clearly and expressly waives its sovereign immunity for Damages for officials, individual employees and/or managers who act beyond the scope of their duties and authority in which the actions include either acting with malice or with reckless indifference to the rights afforded under this Statute as set forth within this Statute and limits such waiver to remedies as set forth within this Statute.

SECTION V. REMEDIES BEFORE THE TRIBAL COURT FOR VIOLATIONS BY THE EMPLOYER

1. Any charge of violation must be filed with the Tribal Court within one-hundred and eighty (180) days of the alleged violation.
2. In any action filed under this Statute, the Tribal Court may grant the remedies set forth for violations of the Employer:
 - a. *Equitable Remedies.* If the Tribal Court finds that employment rights violation occurred, its judgment must specify an appropriate remedy or remedies for that violation. The remedies may include, but are not limited to:
 - 1) An order to cease and desist from the unlawful practices specified in the order;
 - 2) An order to employ or reinstate the employee, with or without back pay or reasonable front pay if reinstatement is unfeasible;

b. *Damages.* If the Tribal Court finds a blatant employment rights violation, the Tribal Court may additionally award compensatory, punitive damages or fines as provided in this subparagraph.

1) A complainant may recover compensatory damages against an employer for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

2) A complainant may recover punitive damages against an employer if the complainant demonstrates that the employer engaged in an unlawful employment rights violation with malice or with reckless indifference to the rights of an aggrieved individual protected by this Statute.

c. The total sum of compensatory, punitive damages and/or fines may not exceed \$50,000, excluding the amount for actual loss of wages.

d. The Tribal Court may award reasonable attorney fees and costs in its discretion to the prevailing party.

e. The Tribal Court may award the opposing party any penalties for frivolous claims or any other appropriate remedies as the Tribal Court deems.

SECTION VI. REMEDIES BEFORE THE TRIBAL COURT FOR VIOLATIONS BY AN INDIVIDUAL EMPLOYEE OR MANAGER

1. Any charge of violation must be filed with the Tribal Court within one-hundred and eighty (180) days of the alleged violation.

2. In any action filed under this Statute, the Tribal Court may grant the remedies set forth for violations of an Individual Employee or Manger:

a. *Equitable Remedies.* If the Tribal Court finds that employment rights violation occurred, its judgment must specify an appropriate remedy or remedies for that violation.

The remedies may include, but are not limited to:

- 1) An order to cease and desist from the unlawful practices specified in the order;
- b. *Damages.* If the Tribal Court finds a blatant employment rights violation, the Tribal Court may award punitive damages or fines as provided in this subparagraph.
 - 1) A complainant may recover punitive damages against an individual employee and/or manager if the complainant demonstrates that the individual employee and/or manager engaged in an unlawful employment rights violation with malice or with reckless indifference to the rights of an aggrieved individual protected by this Statute.
- c. The total sum of punitive damages and/or fines may not exceed \$50,000, excluding the amount for actual loss of wages from each individual employee and/or manager.
- d. The Tribal Court may award reasonable attorney fees and costs in its discretion to the prevailing party.
- e. The Tribal Court may award the opposing party any penalties for frivolous claims or any other appropriate remedies as the Tribal Court deems.

SECTION VII. SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the balance of the statute to remain in full and binding force and effect.

SECTION VIII. EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval which ever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

Waganakising Odawak Statute 2009-001 Indian Preference in Tribal Employment
Passed by Tribal Council January 11, 2009

CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on January 11, 2008 at which a quorum was present, by a vote of 6 in favor, 2 opposed, 0 abstentions, and 1 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Fred Harrington, Jr.	X			
Melvin L. Kiogima		X		
Dexter McNamara	X			
Marvin Mulholland		X		
Shirley Oldman				X
Alice Yellowbank	X			
Gerald V. Chingwa	X			
Regina Gasco Bentley	X			
Beatrice A. Law	X			

Date: January 11, 2009

Beatrice Law, Legislative Leader

Date: January 11, 2009

Regina Gasco Bentley, Secretary

Received by the Executive Office on January 12, 2009 by Lisa Flynn

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: February 10, 2009

VETOED

Frank Ettawageshik, Tribal Chairperson