

## **Chapter 2. Trust Fund Board**

### **7.201 PURPOSE AND TITLE**

The “Plan for the Use of the Little Traverse Bay Bands of Odawa Indians Judgment Fund Distribution” mandates the creation of the Trust Fund Board to maintain and manage the Trust Funds created under the Plan, and issue the Share Certificates described in the Plan. This Statute creates the Board and defines its composition, terms, duties and functions. This Statute may be cited as the “Trust Fund Board Act.” This Statute repeals and replaces WOS 2008-008, 1998013, 1999011, and all other amendments.

(Source: WOS 2017-004, August 25, 2017, Section I)

### **7.202 DEFINITIONS**

- A.** “Board” means the Trust Fund Board created under this Statute.
- B.** “Plan” means the Plan for the Use of the Little Traverse Bay Bands of Odawa Indians Judgment Fund Distribution, being Waganakising Statute 1998007, as amended.
- C.** “Secretary” means the Secretary of the United States Department of the Interior.
- D.** “Tribal Government Trust Fund Expendable” means a Tribal trust fund to be administered by the Board, from which principal may be spent, created exclusively from funds separate and apart from those received by the Tribe under the Michigan Indian Lands Claims Settlement Act, Public Law 105-143.
- E.** “Tribal Government Trust Fund Non-expendable” means a Tribal trust fund to be administered by the Board, from which principal may not be spent, created exclusively from funds separate and apart from those received by the Tribe under the Michigan Indian Lands Claims Settlement Act, Public Law 105-143.
- F.** “Trust Funds” means the Land Claims Distribution Trust Fund and the Minor, Legally Incompetent and Incarcerated Person’s Trust Fund, and their successor funds created under the Plan. Initially, the Minor Legally Incompetent and Incarcerated Person’s Trust Fund will consist

of nineteen (19) segregated accounts, one of which will be closed annually as provided for in this Statute.

(Source: WOS 2017-004, August 25, 2017, Section II)

### **7.203 SUSPENSION OF TRUST FUND BOARD**

**A.** In 1998, the Trust Fund Board set up the Trust Funds to consist of nineteen (19) segregated accounts for minors and incarcerated persons. Each year the Board closed one of the segregated accounts and distributed the funds. Since 1998, all of the segregated accounts have been closed and any remaining amounts were transferred to an interest-bearing account.

**B.** The Tribal Council hereby suspends the duties of the Trust Fund Board, and transfers any remaining administrative duties and/or functions to the Little Traverse Bay Bands of Odawa Indians Accounting Department.

**C.** When the Trust Fund reaches the original principal of \$14,946,239.18, the amount received by the Tribe from the United States government, pursuant to Michigan Indian Land Claims distribution, the Trust Fund Board will resume its duties.

(Source: WOS 2017-004, August 25, 2017, Section III)

### **7.204 DUTIES OF THE TRUST FUND BOARD**

The Trust Fund Board shall have the following powers, duties and functions:

**A.** The Board shall devise and draft rules and regulations governing the Board, including, but not limited to, investment, certificate creations, bearer responsibility, redemption and disbursement. The Board shall submit these drafts and any subsequent amendments to the Tribal Council for review and approval.

**B.** The Board shall administer the Trust Funds created under the Plan, which shall consist solely of funds distributed to the Tribe pursuant to the Michigan Indian Land Claims Settlement Act, Public Law 105-143 and the Plan prepared and approved under the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. Sec. 1403(b)) and interest and other investment income earned thereon. The Trust Funds shall be audited at least once during each calendar year by an

independent certified public accountant that shall prepare a report on the results of such audit. The full tribal council shall be reasonably available for inspection by Citizens of LTBB, and a financial statement shall be distributed annually to all head of household addresses by the most efficient means. Payment for audit services shall be made from the current income accounts of the Trust Funds and charged against the earnings of the fiscal year in which the payment becomes due. Provided, that any contracts for professional services shall provide that payment shall only be made out of income from the Trust Funds, and not from principal.

**C.** The Board may retain or hire a professional trust manager or company and may pay the prevailing market rate for such services. Such payment for services shall be made from the current income accounts of the Trust Funds and charged against the earnings of the fiscal year in which the payment becomes due. Provided, that any contracts for professional services shall provide that payment shall only be made out of income from the Trust Funds, and not from principal. The Trust Fund Board shall obtain written qualifications of the potential trust fund manager or company before retention. The Trust Fund Board shall conduct such research and require such background checks as it deems necessary to assess the qualifications and suitability of the potential trust fund manager or company.

**D. Investment Strategy.**

1. The Trust Fund Board shall develop an overall prudent investment policy to provide for consistent long-term growth of capital without undue exposure to risk.
2. Allowable funds must be legal investments which may include, but not be limited to:
  - a. Bonds, bills, or notes of the United States; obligations, the principal and interest of which are fully guaranteed by the United States, or obligations of States or Tribes.
  - b. Certificates of deposit issued by a tribal, state, or national bank organized and authorized to operate as a bank.
  - c. Commercial paper rated prime at the time of purchase.
  - d. Publicly traded stocks and or bonds as well as other federally regulated marketable securities.

3. The Trust Fund Board is authorized to designate depositories for the Trust Funds and any successor funds and to determine that the funds are invested appropriately.

4. The Trust Fund Board is prohibited from using or allowing the Trust Funds and their successor fund investments to be used as collateral or guaranty against any form of debt secured in the name of the Tribe or Tribal entities. Furthermore, the Tribal Council or any Tribal governmental entity is prohibited from using the Trust Funds and their successor fund investments as collateral or guaranty against any form of debt secured in the name of the Tribe or Tribal entities.

5. No person or entity can borrow funds from the Trust Funds and their successor fund investments, be it the Trust Fund Board, other Tribal entity, or a non-Tribal entity.

**E. Initial Tribal Investment.** The initial Tribal investment will consist of twenty per cent (20%) of the total amount of the distribution from the Federal Government. Up to one hundred thousand dollars (\$100,000.00) of this amount is authorized to be spent to pay costs associated with the initial Share Certificate issuance and redemption for a one year period. After the first year, all costs of maintaining and redeeming Share Certificates shall be considered costs charged against the earning of the Trust Funds.

**F. Share Certificates.**

1. The Board will create Share Certificates. The face value of each Share Certificate shall be calculated by the following two steps:

a. By dividing 80% of the total dollar amount of the distribution from the United States on the date of such distribution by the number of Tribal members who are eligible to participate in the distribution under section 3(g) of the Plan, and

b. This amount will then be divided by two to determine the amount of each Share Certificate. The estimated value of each Share Certificate is \$2,000 but the exact amount will depend on the exact amount of the distribution and number of members eligible to participate in the distribution. Each eligible member will receive two Share Certificates, which added together will be worth approximately \$4,000.

2. Each eligible member will have the option of immediately redeeming one or both of their Share Certificates, or leaving one or both of their Share Certificates in the Trust Fund. Share Certificates are redeemable at no more than face value unless they are left in the Trust Fund for ten years or until the Trust Fund reaches the value of the total amount of the original distribution from the United States, at which point each unredeemed Share Certificate will be worth \$500 more than its original face value.
3. The Board will take all necessary technological and other measures to ensure the integrity of the Share Certificates so they cannot be duplicated, copied, altered, or forged.

**G. Minor and Incarcerated Person's Trust Fund**

1. The Board shall establish a separate Trust Fund with segregated amounts equal to each minor and incarcerated share. The following types of investment are permitted: Bonds, Bills or notes of the United States, Bankers acceptance, Commercial Paper that is rated prime at the time of purchase, Certificates of Deposit that are issued by a bank with assets greater than one billion dollars.
2. Each year one of the 19 segregated accounts of the Minor and Incarcerated Trust Fund shall be closed. This amount shall be transferred to an interest bearing checking account.
3. Starting January 1, 2002, eligible recipients who turn eighteen may redeem their share certificates based on the face value of the share certificates plus interest accrued on their share until the date of redemption or until December 31<sup>st</sup> of the year they reach their 18<sup>th</sup> birthday. If the shares are not redeemed then the principal and interest will be deposited into the Land Claims Distribution Trust Fund where it shall be paid out in accordance with Section IV(F)(2) of this Statute.
4. Starting January 1, 2002, eligible recipients who are released from incarceration may redeem their share certificates based on the face value of the share certificates plus interest accruing until the date of redemption or until December 31<sup>st</sup> of the year that they are released from incarceration. If the shares are not redeemed then the principal and interest will be deposited into the Land Claims Distribution Trust Fund where it shall be paid in accordance with Section IV(F)(2) of this Statute.

5. It is the recipient's responsibility to notify the Trust Fund Board of this election by the redemption date or no later than December 31<sup>st</sup> of the year of eligibility.

#### **H. New Trust Fund**

Upon the accumulation of the original principal received by the Tribe from the United States government pursuant to Michigan Indian Land Claims distribution in the amount of \$14,946,239.18, the following shall occur:

1. The Land Claims Distribution Fund shall become the Odawa Perpetuation Fund, to be managed by the Board. Not more than 85% of the interest from the investment of the Trust Fund shall be distributed according to the specific formula described herein, while no more than 5% of the interest each year shall be spent on the administration of the Trust Fund. At least 10% of the interest shall be re-invested in the Trust Fund.
2. Children born to members after the date of Secretarial approval of the Plan who are themselves enrolled members in the Tribe shall receive a one time per capita payment of the amount equal to the original distributed two shares upon reaching the age of eighteen. Due to the effects of inflation, the Board may request that the Tribal Council increase this amount.

#### **I. No Secretarial Responsibility for Trust Fund**

The Secretary shall have no trust responsibility for the investment, supervision, administration, or expenditure of the Lands Claims Distribution Trust Fund of the Odawa Perpetuation Fund.

(Source: WOS 2017-004, August 25, 2017, Section IV)

### **7.205 ADDITIONAL TRUST FUNDS**

**Tribal Government Trust Fund.** From time to time the Board may administer additional trust funds, Non-Expendable and Expendable, wherein the Tribal Council has allocated the principal that may come from Tribal gaming and other economic enterprises, grants, donations and bequests. No portion of the principal of these funds shall ever be derived from monies received by the Tribe

under the Michigan Indian Lands Claims Settlement Act, Public Law 105-143, or any income generated there from. The Trust Fund Board or its financial advisor shall consult with the Tribal Council to determine the amounts to be invested, as determined by the Tribal Council, in each of the Tribal Government Trust Funds. The investment strategy shall be the same as set out in Section IV(d).

1. **Tribal Government Trust Fund Non-expendable.** Each year up to 5% of the interest may be spent on administration of the Fund. At least 10% of the interest shall be re-invested.
2. **Tribal Government Trust Fund Expendable.** Each year up to 5% of the interest may be spent on administration of the Fund. Any interest not distributed shall be re-invested in the Fund.
3. The remaining interest from both funds shall be distributed as follows:
  - a. Up to 50% may be spent on programs for the general Tribal benefit, including land acquisition or defense of treaty rights.
  - b. Up to 50% may be distributed through in house grants for the benefit of elders and youth programs. In the event that funding shortages threaten basic government operation and services, the allowable expenditures may first be used to cover such shortfalls.

(Source: WOS 2017-004, August 25, 2017, Section V)

## **7.206 MEETINGS, QUORUM, VOTING AND CONFLICT OF INTEREST**

**A. Meetings.** The Board shall meet at least quarterly and as often as necessary to properly carry out its duties and functions. All Board meetings shall be open to the Tribal membership and any other persons that the Tribal Council may designate to attend.

**B. Voting and Quorum.** Actions of the Board shall be decided by a majority vote of those present at the meeting. The Chairperson is entitled to vote on all matters before the Board. A quorum shall consist of three (3) members. If ratification is sought, all non-attending members shall be contacted personally, or by phone or fax, and all ratifications shall be reduced to writing

and placed in the minutes and approved at the next regularly scheduled Board meeting.

**C. Conflict of Interest.** Board members shall not participate in any decisions in which they have a direct financial interest, other than interests that they share in common with the Tribal membership.

**D. Bonding.** The Trust Fund Board shall be bonded and carry errors and omissions insurance in amounts adequate to safeguard the financial interests of LTBB and its members in the Trust Funds and their earnings through the insurance policy carried by the tribe. Additionally, the Trust Fund Board members shall be bonded up to \$100,000 either by a rider endorsement to the tribe's policy or a separate bond policy through an independent insurance agency of the Board's choice. The costs of obtaining such bonds and/or insurance shall be considered costs charged against the earnings of the Trust Funds.

(Source: WOS 2017-004, August 25, 2017, Section V)

#### **7.207 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 or governing the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, 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.

(Source: WOS 2017-004, August 25, 2017, Section VII)

#### **7.208 EFFECTIVE DATE**

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

(Source: WOS 2017-004, August 25, 2017, Section VIII)