

# WAGANAKISING ODAWAK STATUTE 1999011

## TRUST FUND BOARD

### SECTION I. SHORT TITLE, DEFINITIONS AND PURPOSE

**A. Short Title.** This Statute may be cited as the "Trust Fund Board Act." This Statute repeals and replaces Waganakising Odawak Statute 1998013.

**B. Definitions.**

1. "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.

2. "Trust Funds" means the Land Claims Distribution Trust Fund and the Minor, Legal Incompetent and Incarcerated Person's Trust Fund, and their successor funds created under the Plan. Initially, the Minor Legal 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.

3. "Board" means the Trust Fund Board created under this Statute.

4. "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.

5. "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.

6. "Secretary" means the Secretary of the United States Department of the Interior.

**C. Purpose.** 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.

## **SECTION II: CREATION OF TRUST FUND BOARD**

**A. Creation of Trust Fund Board.** The Tribal Council hereby creates the Trust Fund Board, which shall consist of five (5) Tribal members at least eighteen (18) years of age appointed by the Tribal Council. No member of the Tribal Council shall serve on the Trust Fund Board.

**B. Qualifications.** No person can be appointed to the Board who has been convicted of a felony in tribal, state, or federal court within seven (7) years prior to the date of appointment. The Tribal Council shall require background checks of potential appointees prior to finalizing appointments.

**C. Term and compensation.** Members of the Board shall be appointed to serve for four (4) year terms. Members may be reappointed for additional terms without limitation. To stagger terms, when the Tribal Council makes initial appointments, two people shall be appointed to two (2) year terms, and three people shall be appointed to four (4) year terms. All appointments thereafter shall be for four (4) year terms. One of the Board members shall be elected by the Board to serve as Chairperson for a one (1) year term. There shall be no limit on re-election as long as the Chairperson remains on the Board. The Tribal Council may authorize compensation to be paid to members of the Board. This compensation shall be considered a cost to be charged against the current earnings of the Trust Funds.

**D. Oath of Office.** Upon appointment, the Tribal Court shall administer the oath of office to the members of the Board which oath of office shall include a commitment to uphold the Constitution and laws of the Little Traverse Bay Bands of Odawa Indians and to perform faithfully and diligently the duties and fiduciary responsibilities set forth in this Statute.

**E. Vacancies.** In the event a vacancy occurs in the Board, by virtue of death, resignation or removal, the Tribal Council shall appoint a qualified Tribal member to fill the remaining term of office.

**F. Removal.** Board members may be removed for the reasons, and following the procedures set out in the Removal of Commissioners and Nepotism Statute (Waganakising Odawak Statute 1997005), or such successor statute as the Tribal Council may enact.

**G. Application of Commissions Statute.** All provisions of the Commissions, Boards and Committees Procedures Statute (Waganakising Odawak Statute 1998012) not inconsistent with this Statute apply to the Board.

### **SECTION III. 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 creation, 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. §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 report shall be reasonably available for inspection by the members of LTBB, and a financial statement shall be mailed annually to each adult member at their last known address. 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. Publically traded stock 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 other 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. Tribal Government Trust Fund.** The Board shall administer two additional trusts funds, the Tribal Government Trust Fund Non-Expendable, and the Tribal Governmental Trust Fund Expendable, the principal of which shall be derived 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 therefrom. 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 III (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.

## **H. 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. The principal and interest shall be divided by the number of eligible minor or incarcerated members to be paid that year. This amount shall be transferred to the Land Claims Distribution Trust Fund. Any eligible minor or incarcerated submitting a claim after the account is closed shall only be entitled to the share calculated on the date the account was closed.

## **I. New Trust Fund**

1. Upon the accumulation of the original principal pursuant to subsection (d) of the Plan, 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 each year 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 an 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.

## **J. 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.

#### **SECTION IV. 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 including the Chairperson. Provided, an action may be ratified by non-attending 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.** Each Board member 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. The costs of obtaining such bonds and insurance shall be considered costs charged against the earnings of the Trust Funds.

#### **SECTION V: 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.

#### **SECTION VI: EFFECTIVE DATE**

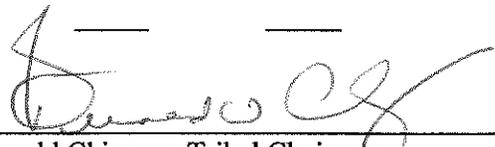
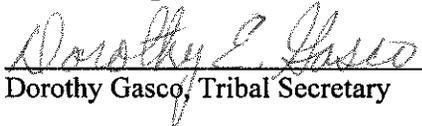
This Statute shall take effect immediately upon enactment.

**Certification**

As Tribal Chairman and Tribal Secretary, the undersigned certify that this Statute was duly enacted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on August 22, 1999, at which a quorum was present, by a vote of 5 in favor, 2 opposed, and 0 abstentions as recorded by this roll call.

	In Favor	Opposed	Abstained	Absent
George Anthony	_____	<u>✓</u>	_____	_____
Gerald Chingwa	<u>✓</u>	_____	_____	_____
Dorothy Gasco	<u>✓</u>	_____	_____	_____
Janet Shomin	<u>✓</u>	_____	_____	_____
Rita Shananaquet	<u>✓</u>	_____	_____	_____
Susan Wysocki	<u>✓</u>	_____	_____	_____
Alice Yellowbank	_____	<u>✓</u>	_____	_____

Date: 9/26/99

  
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 Gerald Chingwa, Tribal Chairman  
  
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 Dorothy Gasco, Tribal Secretary