



Waganakising Odawak

Little Traverse Bay Bands of Odawa Indians

Frank Ettawageshik, Tribal Chairman

7500 Odawa Circle, Harbor Springs, Michigan 49740

Phone 231-242-1401 • Fax 231-242-1412

Executive Veto of the Child Welfare Commission Statute As passed by Tribal Council on February 22, 2009

This revision of the Child Welfare Commission Statute has been discussed and considered for many months before passage. While I am somewhat uncomfortable with provisions that have limited the functions of the Commission, I would be signing this statute today except for one issue that I believe could put our foster children in jeopardy and put in question the funding that we rely upon to provide for them.

In the existing statute the Commission has the authority and responsibility to license Tribal foster care homes. In the February 22nd revised statute this authority has been removed from the Commission's duties but it was not placed anywhere else. Abolishing the licensing authority without establishing it elsewhere in Tribal law would mean that, at least until further legislative action was taken, no more foster care homes could be licensed. This is a critical issue as I've been told that we may need new licenses to be approved for pending cases within the next 30 days.

Additionally, when the authority to license is abolished, the legal status of current licenses could be questioned even before those licenses are set to expire. This puts our funding in jeopardy because we can only receive funding for placements in licensed foster homes.

When considering how to remedy this situation, my first preference would be to leave the licensing responsibility with the Commission. However, in any case, I urge the Tribal Council not to abolish the authority for licensing but rather, if it is to be removed from the Commission, to transfer the authority elsewhere. A suggestion would be to create authority for foster home licensing as an administrative function governed by regulations. The Commission could retain the authority for licensing until the administrative process is set in place by regulations.

Per the above discussion, the Executive hereby vetoes the Child Welfare Commission Statute as passed by Tribal Council on February 22, 2009.

Prepared and signed March 19, 2009

Frank Ettawageshik, Tribal Chairman

**WAGANAKISING ODAWAK STATUTE 2009-005
CHILD WELFARE COMMISSION**

SECTION I. SHORT TITLE AND PURPOSE

A. Short Title

This Statute may be cited as the “Child Welfare Commission Act” and amends WOS 1996006.

B. Purpose

Children are the Tribe’s most vital and cherished resource. The Tribe’s future depends on the health and well-being of its children. Children have a sacred right to receive the care and guidance necessary for their spiritual, emotional, mental and physical development. Feeling pride from their identity as Odawa will help them grow into strong, healthy, responsible adult Tribal members. The purpose of the Child Welfare Commission created under this statute is to protect and promote the welfare of Tribal children and families by fully exercising the Tribe’s rights and responsibilities under the Indian Child Welfare Act of 1978 and Tribal Law.

Section II. Definition

“Department” means the Human Services Department.

SECTION III. CREATION OF CHILD WELFARE COMMISSION

A. Creation of Commission. The Tribal Council hereby creates the Child Welfare Commission, which shall consist of five (5) Tribal members at least eighteen years of age appointed by the Tribal Council

B. Term and compensation. Members of the Child Welfare Commission shall be appointed to serve for three (3) year terms. Members may be reappointed for additional terms

WOS 2009-005 CHILD WELFARE COMMISSION

without limitation. One of the Commission members shall be appointed by the Commission to serve as Chairperson for a one year term. There shall be no limit on reappointment as long as the chairperson remains on the Commission. The Tribal Council may determine and authorize compensation to be paid to members of the Commission based upon the Tribal Council's determination of the time to be expended upon Commission duties and the qualifications of the appointed Commissioners.

C. Oath of Office. Upon appointment, The Tribal Court shall administer the oath of office to the members of the Child Welfare Commission 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 responsibilities set forth in this Statute.

D. Vacancies. In the event a vacancy occurs in the Child Welfare Commission, by virtue of death, resignation or removal, the Tribal Council shall appoint a qualified Tribal Citizen to fill the remaining term of office.

E. Removal. Members may be removed in accordance with applicable laws.

SECTION IV. DUTIES OF THE CHILD WELFARE COMMISSION

The Child Welfare Commission shall have the following duties:

A. Be advised of pending state court proceedings as provided in the Indian Child Welfare Act and may make recommendations to the Tribal Prosecutor regarding intervention in such proceedings and transfer of jurisdiction from state court to the Tribal Court.

B. Advise the Tribal Council and Tribal Court on child welfare matters and recommend statutes, policies and procedures to protect children and help families.

C. May make recommendations to the Tribal Prosecutor regarding the need to take formal Court action to protect a child.

- D. May make case management recommendation to the Tribal Social worker regarding the care, custody and supervision of Tribal children under court jurisdiction.
- E. May make recommendations for programs and services to the Department.
- F. Engage in further activities as directed by the Tribal Council to protect and improve the welfare of Tribal Children.

SECTION V. NOTICE

- A. **Pending State Court Proceedings.** The Tribal Prosecutor shall insure that the Chairperson of the Commission receives notice of all proceedings pending in State Court where the Tribe has been notified under the Indian Child Welfare Act.
- B. **Children Domiciled on the Reservation.** Tribal Prosecutor shall notify the Commission of all instances where they believe Tribal Court action may be necessary to protect a child domiciled on the Reservation.

SECTION VI. MEETINGS, VOTING, INVESTIGATION, CONFLICTS OF INTEREST, CONFIDENTIAL RECORDS

- A. **Meetings.** The Child Welfare Commission shall meet as necessary to carry out its duties. Due to the confidential nature of the business conducted by the Child Welfare Commission, meetings or portions of meetings where specific cases are being discussed shall be closed to all persons other than those whose participation is necessary and appropriate to the specific case.
- B. **Voting.** Actions of the Child Welfare Commission shall be decided by a majority vote of those present at the meeting. The Chair is entitled to vote on all matters brought before the Commission. A quorum shall consist of three (3) members with one member being the Chair. 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 Commission meeting.

C. Investigation. The Commission shall not be involved in gathering information on Tribal families and children outside of Commission meetings. Field work, such as home studies, shall be conducted by Department staff. When requested by the Commission, Department staff shall provide the Commission with all written reports and studies on Tribal families and children. The Commission may direct the Department to gather additional information where appropriate. All members shall have access to the same information. If Commission members are contacted individually, they shall refer inquiries to the appropriate Tribal official or staff member.

D. Conflicts of Interest. Commission members who are serving as foster parents or guardians may participate in the review of the status of children under their own care only to the extent as any other foster parent or guardian. Commission members shall not participate in the review of the status of children under the care of members of their immediate family (father, step-father, father-in-law, mother, step-mother, mother-in-law, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, child, step-child) and may absent themselves in any situation where their relationship with individuals before the Commission may interfere with their objectivity, or the Commissioner otherwise believes that he/she has or appears to have a conflict of interest.

E. Confidential Records. All records of the Commission involving specific child welfare matters shall be kept strictly confidential. Only the Tribal Court may review or receive copies of written records kept by the Commission.

SECTION VII. SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this ordinance 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, paragraph, subsection or section shall be considered to stand alone and to be deleted from this ordinance, the entirety of the balance of the ordinance to remain in full and binding force and effect.

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 February 22, 2009 at which a quorum was present, by a vote of 7 in favor, 1 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: 2/22/09 Beatrice A. Law
Beatrice Law, Legislative Leader

Date: 2-22-09 Regina Gasco Bentley
Regina Gasco Bentley, Secretary

Received by the Executive Office on 2-23-09 by Roni 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: 3-19-2009 Frank Ettowagehik
Frank Ettowagehik, Tribal Chairperson

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