

TABLED/NO ACTION

**HO-CHUNK NATION LEGISLATURE
AMENDMENTS TO THE HO-CHUNK NATION
PER CAPITA DISTRIBUTION ORDINANCE**

RESOLUTION 08-19-14C

WHEREAS, on November 1, 1994, the United States Secretary of the Interior approved a new Constitution for the Ho-Chunk Nation, formerly known as the Wisconsin Winnebago Tribe; and

WHEREAS, the Ho-Chunk Nation (“Nation”) is a federally recognized Indian Tribe, organized pursuant to the Indian Reorganization Act of 1934; and

WHEREAS, Article V, Section 2(a) of the Ho-Chunk Nation Constitution (“Constitution”) grants the Ho-Chunk Nation Legislature (“Legislature”) the power to make laws, including codes, ordinances, resolutions, and statutes; and

WHEREAS, Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation; and

WHEREAS, Article V, Section 2(x) of the Constitution grants the Legislature the power to enact any other laws, ordinances, resolutions, and statutes necessary to exercise its Legislative powers delegated by the General Council pursuant to Article III including but not limited to the foregoing list of powers; and

WHEREAS, the Ho-Chunk Nation Legislature passed the *Legislative Organization Act* (2 HCC § 11), which was last amended on June 9, 2009; and

WHEREAS, the *Legislative Organization Act* provides the procedures for enacting or amending a Ho-Chunk Nation law; and

WHEREAS, under the federal Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. § 2710(b)(3), Indian tribes may use net revenues from gaming activities to make per capita payments to members of the tribe if the tribe has prepared a revenue allocation plan addressing the uses of such revenues, and it is approved by the Secretary of the Interior; and

WHEREAS, the general provisions of the IGRA regarding tribal revenue allocation plans and per capita payments are more specifically addressed by federal regulation in 25 C.F.R. Part 290, and set forth the process for Indian tribes to obtain federal approval of tribal revenue allocation plans and the applicable rules for distribution of per capita payments; and

WHEREAS, the Legislature adopted the Nation's Per Capita Distribution Ordinance in July 2001 and last amended the law on February 22, 2006, which includes the Nation's revenue allocation plan and the procedures for distribution of per capita payments; and

WHEREAS, the Nation's Per Capita Distribution Ordinance, and revenue allocation plan, were approved by the Secretary of the Interior; and

WHEREAS, the declared intent of the Per Capita Distribution Ordinance is to establish a fair and equitable per capita distribution of revenues appropriated by the Nation's Legislature from gaming activities conducted by and on behalf of the Nation, as necessary in promoting the general welfare of the Nation and its members, and to protect the per capita interests of minors and incompetents; and

WHEREAS, on August 31, 2010, the Legislature adopted Resolution 08-31-10C to create a Legislative Task Force, pursuant to the LOA to focus on updating and improving the Nation's Minors Trust and Adult Incompetents Agreement with Old Kent Bank (now Fifth Third Bank); and

WHEREAS, the Task Force created by Resolution 08-31-10C (herein referred to as the "CTF Task Force") continued to meet and assisted in improving the Nation's Trust Agreement, and worked with all Branches of the government, as well as outside consultants on a revised investment policy for the Nation, which was ultimately approved by the Legislature; and

WHEREAS, the Legislature then revised the focus of issues for the CTF Task Force by adopting Resolution 07-19-11B, in order to broaden the points of discussion for the Task Force, including the following: an incompetence code, disability code, tribal member minors' education, enrollment (removals), distributions (staggered vs. lump sum), taxation, probate, early access to funds, early access abuses, social service impact, tribal cultural aspects, AODA issues, high school diploma requirements, scholarships and lost children addresses; and

WHEREAS, in Resolution 01-18-12A, the Legislature revised and clarified Resolution 08-31-10C and Resolution 07-19-11B by authorizing the CTF Task Force to continue meeting and discuss all topics and issues listed in those Resolutions; provided that certain issues be reserved for discussion at legislative session; and

WHEREAS, the CTF Task Force worked with the *Hocak Worak* to keep tribal membership updated on its work, and also helped prepare a public survey in the Summer of 2012 for tribal members to seek input on the Per Capita Distribution Ordinance and the distribution of per capita funds to minors based on various criteria, of which 466 responses were received; and

WHEREAS, the CTF Task Force and Legislators reviewed the survey responses and discussed various alternatives to amending the Per Capita Distribution Ordinance, including various models for distribution, financial literacy requirements, and educational qualifications; and

WHEREAS, the Legislature placed the Per Capita Distribution Ordinance out for a 45-day public comment period in November 2012, and discussed options for amendment at the time, which were not acted upon; and

WHEREAS, the Legislature placed the Per Capita Distribution Ordinance out for a 90-day public comment period in January 2014, and held public forum meetings with tribal membership in Black River Falls, Tomah, Baraboo, and Wittenberg in the month that followed to review the Ordinance and obtain feedback on potential amendments affecting the distribution of per capita funds to minors; and

WHEREAS, the Legislature received many comments from tribal membership and discussed them, as well as proposed amendments to the Per Capita Distribution Ordinance with the CTF Task Force on May 19, 2014, then continued the same discussion with the Legislature in various meetings; and

WHEREAS, the Legislature convened a Special Legislative meeting on July 7, 2014 to specifically discuss the Per Capita Distribution Ordinance, and the amendments proposed in the draft that was put out for 90-day public comment; and

WHEREAS, the draft Ordinance included *general amendments* addressing: references to applicable provisions of federal law on tribal revenue allocation plans; definitions reflecting updated educational standards; requirements to conduct a three-bid process by the Legislature to ensure that the administration of the per capita accounts is done on a competitive basis; clarification of the process for retaining per capita account funds when members are removed or deceased; and penalties for persons who obtain fraudulent access to trust account funds; and

WHEREAS, the draft Ordinance also included proposed *major amendments* addressing: a change in the Tribal Revenue Allocation Plan; requirements for minors to complete a financial literacy orientation course; and new options for a percentage phased-in approach to distribution of CTF account monies; and

WHEREAS, in light of the extensive review and discussion of the Per Capita Distribution Ordinance, and the need for updating and improving the law for the Nation and its members, the Legislature finds it appropriate to amend the Ordinance.

NOW THEREFORE, BE IT RESOLVED that the Legislature, pursuant to its Constitutional authority, adopts the proposed general amendments to the Per Capita Distribution Ordinance, subject to final approval by the U.S. Secretary of the Interior (as required by Section 12 of the existing Ordinance); and

BE IT FURTHER RESOLVED that the adopted general amendments do not change the current law with respect to the Nation’s Tribal Revenue Allocation Plan (“TRAP”), set forth in Section 6 of the Per Capita Distribution Ordinance (“Allocation of Tribal Gaming Revenues”); and

BE IT FURTHER RESOLVED that the adopted general amendments do not include any of the previously proposed options for a gradual, percentage distribution; and

BE IT FURTHER RESOLVED that the general amendments to the Ordinance shall be submitted to the U.S. Department of Interior, Bureau of Indian Affairs, for review and approval pursuant to Section 12 of the existing Ordinance, and as required by 25 C.F.R. § 290.24.

CERTIFICATION

I, the undersigned, as Tribal Secretary of Ho-Chunk Nation, hereby certify that the Legislature of the Ho-Chunk Nation, composed of **13** members of whom ___ constituting a quorum were present at a meeting duly called and convened and held that on the **19th day of August, 2014**, adopted the foregoing resolution at said meeting by an affirmative vote of ___ members, ___ opposed, and ___ abstaining, pursuant to the Article V, Section 2(a) and (x) of the Constitution of the Ho-Chunk Nation approved by the Secretary of the Interior on November 1, 1994, and that the foregoing resolution has not been rescinded or amended in any way. I further certify that this is a verified copy of said resolution.

Kathleen Lone Tree-Whiterabbit, Tribal Secretary

Date