



## **HO-CHUNK NATION LEGISLATURE**

*Governing Body of the Ho-Chunk Nation*

### **HO-CHUNK NATION LEGISLATURE PLACING PROPOSED HO-CHUNK NATION PROBATE CODE FOR NON-TRUST PROPERTY OUT FOR FORTY-FIVE DAY PUBLIC COMMENT RESOLUTION 09-17-13 B**

**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(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive branch to be administered by such Departments, in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power; and

**WHEREAS**, Article V, Section 2(k) of the Constitution grants the Legislature the power to acquire or purchase lands for the benefit of the Nation and its members; and

**WHEREAS**, Article V, Section 2(l) of the Constitution grants the Legislature the power to enact laws to manage, lease, permit, or otherwise deal with the Nation's lands, interests in lands or other assets; and

**WHEREAS**, Article V, Section 2(m) of the Constitution grants the Legislature the power to enact laws to prevent the sale, disposition, or encumbrance of Ho-Chunk lands, or other Ho-Chunk assets; and

**WHEREAS**, Article V, Section 2(n) of the Constitution grants the Legislature the power to purchase under condemnation proceedings any lands within the jurisdiction of the Ho-Chunk Nation; and

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- WHEREAS,** Article V, Section 2(p) of the Constitution grants the Legislature the power to enact laws to create and regulate a system of property including but not limited to use, title, deed, estate, inheritance, transfer, conveyance, and devise; and
- WHEREAS,** Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions; and
- WHEREAS,** Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the 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); and
- WHEREAS,** the *Legislative Organization Act* (2 HCC § 13) controls the process for amendments to laws of the Nation; and
- WHEREAS,** section 31, subparagraph d (1) (a) of the *Legislative Organization Act* provides that the Public Review period will typically be forty-five days; and
- WHEREAS,** the Legislature recognized the need for the Nation to begin the development of a tribal probate code for trust, non-trust and restricted lands, based on the adoption of the federal Indian Land Consolidation Act (ILCA) and the American Indian Probate Reform Act (AIPRA) in 2004; and
- WHEREAS,** the AIPRA created standards for a federal probate code, which also authorizes tribal governments to enact their own tribal probate codes; and
- WHEREAS,** the AIPRA states that an Indian tribe may adopt a tribal probate code to govern descent and distribution of trust or restricted lands that are located within that tribe's reservation, or are otherwise subject to the jurisdiction of the tribe; and
- WHEREAS,** the Legislature authorized working with professor Doug Nash, nationally-recognized in the area of Indian probate law and the AIPRA, and he has assisted the Nation in drafting a trust and non-trust probate code for consideration; and
- WHEREAS,** a draft probate code for non-trust land has been developed, with input from Legislators, staff, the Tribal Aging Unit Board, the Department of Justice and Traditional Court, and is now ready for public comment; and

**WHEREAS,** the Legislature previously placed the Probate Code for Non-Trust Lands out for forty-five day public review and comment in Session on June 4, 2013; and

**WHEREAS,** although the forty-five day public comment period has expired, the Legislature finds it appropriate to provide an additional comment period to tribal membership;

**NOW THEREFORE, BE IT RESOLVED** that the Legislature, pursuant to its Constitutional authority, places the proposed Probate Code for Non-Trust Lands (previously posted) out for another forty-five day public comment period, to begin from the date of posting to the Nation's website.

#### CERTIFICATION

I, the undersigned, as Tribal Secretary, hereby certify that the Legislature of the Ho-Chunk Nation, composed of **13 members**, of whom **8** constituting a quorum were present at a meeting duly called and convened and held on the **17** day of **September 2013**, approved the foregoing resolution, which was adopted at said meeting by an affirmative vote of **8 members, 0 opposed, and 0 abstaining**, pursuant to the authority of 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 said 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