

VETO Statement

To: LTBB Tribal Council
From: Ken Harrington, Tribal Chairman
Date: February 22, 2011

The Executive has vetoed the Treasury Office Statute because it is unconstitutional.

Enumerated Powers Constitution

The people of Little Traverse Bay Bands of Odawa Indians chose to limit government power by enacting an enumerated powers constitution.¹ What that means is that the power to govern rests with the Tribal membership and our Tribal government only has the powers and jobs *specifically* given to each branch by the people in the Constitution.² A branch of government exercising authority not plainly given to it is acting unconstitutionally.

Separation of Powers Constitution

The Constitution makes it clear that one branch of Tribal government is completely barred from exercising a power or duty given to another branch under the Constitution.³ This is what we mean when we talk about separation of powers.

The Constitution authorizes the Tribal Council, "to be the Legislative body and to make laws and appropriate funds."⁴ Every individual Tribal Council power later listed directly extends from either making laws or appropriating funds. This may at first appear to give Tribal Council a limited role in government, but with the correct direction, the power to make laws and appropriate money is the strongest power of all of the branches of government. Without money, the government stands still.

¹ Article I, Section A of the *Waganakising Odawak Constitution*.

² *Id.* "This Article enumerates certain rights as reserved by the Tribal membership. All governing authority rests with the Tribal membership. Through this Constitution, the Tribal membership delegate specific powers and functions to the branches of government, which can only be added to or removed by amendments to the Constitution. All powers and functions not so delegated remain with the Tribal membership."

³ Article VI, Section D. states, "No branch of government shall exercise the powers, duties or functions delegated to another branch."

⁴ *Id.* at Article VI (C).

Treasury Office

The Treasury Office statute is meant to transfer the LTBB Accounting Office out from under the Executive Branch to the Legislative Branch. The Treasury Office will perform administrative accounting office tasks like, payroll, accounts payable, revenue receipts, general ledger maintenance, cash management activities, bank reconciliations, and monitoring of grant activities in grant requirements. These activities go far beyond the Tribal Council power to appropriate of funds.⁵ In fact, these tasks fall right into the Constitutional duty of, "the Executive Branch to administer such funds."⁶ Having the Legislative Branch step into the place of the Executive Branch and administer funds violates the Constitution.

Section V. C. 13 of the Treasury Office violates the separation of powers clause of the Constitution by giving the Legislative Branch the authority to oversee the Tribal Executive Accounting Department. Separation of powers means, "No branch of government shall exercise the powers, duties or functions delegated to another branch."⁷ The Constitution creates the following process:

1. The Executive proposes the creation of a department;
2. Tribal Council approves the creation of departments⁸; and
3. The Executive then oversees all departments.⁹

The power to oversee departments has been delegated to the Executive Branch. Under our Constitution that prohibits any other branch from overseeing the day-to-day operations of a department or program.

Another function given to the Treasury Office that the Constitution expressly gives to the Executive Branch is the authority to conduct audits. Section V. A. gives the Treasury Office the authority to conduct audits on the Tribal government. Under Article VIII., the Constitution gives the Chairperson the duty to oversee all Tribal executive departments, boards, commissions and committees. Performing an audit is an exercise of oversight, a power delegated to the Chairperson under the Constitution.¹⁰

The Treasury Office claims to get its authority from Article VII. D 17. of the Constitution which states that Tribal Council shall have the power to, "Establish and maintain governmental offices for the Little Traverse Bay Bands of Odawa Indians." This power means that Tribal Council can set up offices for the operation of government, like Congress has set up the Capital.

⁵ Webster's online dictionary defines appropriate, "to set apart for or assign to a particular purpose or use."

⁶ Waganakising Odawa Constitution, Article VI, :Delegation of Authority The Tribal membership, through this document, authorizes: the Tribal Council to be the Legislative body and to make laws and appropriate funds in accordance with Article VII; *the Executive Branch to administer such funds*, enforce this Constitution and laws passed thereunder, and implement policies and procedures enacted by the Tribal Council in accordance with Article VIII; and the Judicial Branch to interpret this Tribal Constitution and to apply the laws of the Little Traverse Bay Bands of Odawa Indians in accordance with Article IX." [Emphasis added.]

⁷ Article VI, Section D., *Waganakising Odawak Constitution*.

⁸ *Id.* at Article VII, Section D. 22, "Approve the creation or dissolution of Executive divisions or departments to promote and protect the peace, health, safety, education, and general welfare, including but not limited to cultural and natural resources, of the Little Traverse Bay Bands of Odawa Indians and its members."

⁹ *Id.* at Article VI, Section D., "To oversee all Tribal Executive departments, boards, commissions and committees created by the Tribal Council."

¹⁰ "Audit" is a synonym for "oversee." Webster's online dictionary.

Because we have a separation of powers constitution this Article cannot mean that Tribal Council has the powers to oversee a department because the authority to oversee a department has already been given to the Executive Branch.

At the end of the day, the entire statute in seeking to remedy Executive management issues violates separation of powers. The intent might be well-meant, but the mechanism is flawed. The people voted to have separation of powers to create checks and balances in their government. Ultimately, Tribal Council with the command of the purse is undoubtedly the most powerful branch of government. Focusing legislation on tying reporting and performance to funding is the key to exercising that power.

Kén Harrington, Tribal Chairman

_____ 2 22.11
Date

**Waganakising Odawak Statute
Treasury Office**

SECTION I. PURPOSE

The purpose of is to create the Treasury Office to provide the financial and accounting services for the Tribe.

SECTION II. DEFINITIONS

- A. *“Chief Financial Officer”* or *“CFO”* means the person employed as the Chief Financial Officer under the authority of the Tribal Council.
- B. *“Constitution”* or *“Tribal Constitution”* means the Constitution of the Little Traverse Bay Bands of Odawa Indians as adopted on February 1, 2005, and any amendments thereto.
- C. *“LTBB”* or *“Tribe”* means Little Traverse Bay Bands of Odawa Indians.
- D. *“Tribal Council”* means the Legislative Branch of the Little Traverse Bay Bands of Odawa Indians.

SECTION III. CREATION OF THE OFFICE

- A. Pursuant to Article VII (D) (17) of the Tribal Constitution the Tribal Council shall have the power to: “Establish and maintain governmental office for the Little Traverse Bay Bands of Odawa Indians”.
- B. The Tribal Council hereby creates and establishes the Treasury Office to serve Little Traverse Bay Bands of Odawa Indians financial and accounting needs.

Treasury Office

SECTION IV. AUTHORITY AND REPORTING

The Treasury Office shall be under the exclusive authority and supervision of Tribal Council or its designee. The Chief Financial Officer shall report directly to Tribal Council or as otherwise designated by Tribal Council motion.

SECTION V. AUTHORITY AND DUTIES

Under the direction of the Tribal Council or as otherwise designated by Tribal Council motion:

- A.** The Office will have the authority to conduct internal audits in accordance with Generally Accepted Auditing Standards for internal audits to the extent that such standards are not in conflict with the Constitution or laws of the Tribe.
- B.** The Office shall have the authority to request information and documents from any Tribal Governmental Branch, Prosecutor's Office, Election Board including departments, boards, commissions, committees and businesses of the Tribe as it relates to the finances and accounting of the Tribe.
- C.** The Office shall have the following duties:
 - 1.** Assist the Tribal Council and Tribal Treasurer with fiduciary duties in accordance with the Constitution.
 - 2.** Shall assist each of the governmental branches of government; Legislative, Executive, and Judiciary along with the Prosecutor's office and Election Board with developing budgets in accordance with the budget formulation statute and assist Tribal Council in evaluating such budgets.
 - 3.** Shall assist each of the governmental branches of government; Legislative, Executive, and Judiciary along with the Prosecutor's office and Election Board with any and all accounting, purchasing, budgets, compliance, grant development and any other accounting related matter.

Treasury Office

4. Assist Tribal Council in appropriating funds in accordance with the Constitution.
5. Assist Tribal Council with the raising of revenue in accordance with the Constitution.
6. Assist Tribal Council in the development of policies for receiving grants, donations or any other funding in accordance with the Constitution.
7. Assist Tribal Council with enacting an annual budget for upcoming fiscal years.
8. Assist Tribal Council in identifying all funding sources.
9. Prepare an annual report as mandated by the Constitution for distribution at the annual meeting that includes all appropriations of operating funds and Tribal enterprises by department showing how the funds were spent and profit and loss statements where applicable.
10. Evaluate the programs, expenditures, and audits of the government and businesses of the Tribe and advise the Tribal Council on methods to make the government more efficient, effective, and responsive to the needs of the Tribal Citizens.
11. Prescribe additional auditing standards and financial practices as necessary to be presented for approval by the Tribal Council.
12. Assist the Tribal Council with the development of spending priorities.
13. Perform financial functions for the Tribe such as payroll, accounts payable, revenue receipts, general ledger maintenance, cash management activities, bank reconciliations, and monitoring of grant activities and grants requirements.

14. Perform financial functions for the Tribal non-gaming enterprises and Tribally Chartered Corporations as directed by Tribal Council such as payroll, accounts payable, revenue receipts, general ledger maintenance, cash management activities, bank reconciliations, and monitoring of grant activities and grants requirements.
15. Prescribe additional auditing standards and financial practices for the Tribe as necessary to be presented for approval by the Tribal Council.
16. Assist Tribal Council in approving an Independent Auditor for the Tribe's annual audit of Tribal accounts.
17. Assist Tribal Council in developing policies that meet acceptable auditing standards.
18. Additional duties as directed by Tribal Council or its designee.

SECTION VI. STAFFING

The Office shall begin operations with current staff of the accounting department.

SECTION VII. APPROPRIATIONS AUTHORIZED

Any current appropriations for the accounting department, as appropriate, shall be used to implement this Statute.

SECTION VIII. SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Treasury Office

SECTION IX.

EFFECTIVE DATE

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

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 January 23, 2011 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
Marvin Mulholland	X			
Belinda Bardwell	X			
Melvin L. Kiogima	X			
Gerald V. Chingwa	X			
Rita Shananaquet				X
Aaron Otto		X		
John Bott	X			
Regina Gasco Bentley	X			
Julie Shananaquet	X			

Date: 1-23-11

Julie A. Shananaquet, Legislative Leader

Date: 1-23-11

Regina Gasco Bentley, Secretary

Received by the Executive Office on 1-27-11 by _____

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: 2-22-11

Ken Harrington, Tribal Chairperson

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