

Chapter 5. Gaming Authority Statute

7.501 REPEALS AND REPLACES

This Statute repeals and replaces WOS 2015-09 Gaming Enterprise Board Statute including previous Statutes: Waganakising Odawak Statute Gaming Delegation and Authority Statute 2010-21; 2009-012, WOS 2004-08, WOS 2001-12, or as amended.

(Source: WOS 2018-016, September 13, 2018, By Veto Override, Section I)

7.502 PURPOSE

A. This Statute is created for the purpose of delegating management authority of the Tribe's Gaming Enterprise(s) in accordance with LTBB of Odawa Indians Constitution, Article VII D (24), *"To provide by statute for the management of any and all economic affairs and Enterprises of the Little Traverse Bay Bands of Odawa Indians that will further the economic development of the Tribe or its members. Such statutes will delegate management responsibilities to Tribally chartered corporations or other subordinate Tribal entities, or where appropriate, to the Executive Branch"* and who shall henceforth be known as the Little Traverse Bay Bands of Odawa Indians "Gaming Authority".

B. In accordance with LTBB of Odawa Indians Constitution, Article VII D Tribal Council is charged with the follow power: *"Raise revenue, including the power to enact laws to levy taxes and govern the collection of taxes and license fees;"*

C. The Gaming Authority reports directly to Tribal Council.

D. Since the Gaming Regulatory Commission is under the Executive Branch it would be in appropriate to have the Gaming Authority report to the Executive.

E. The Gaming Authority is a subordinate Tribal entity whose management authority and responsibilities are set forth in this Statute.

F. The Gaming Authority shall ensure that the Gaming Enterprise(s) comply with all applicable laws, regulations, policies and rules.

G. The Gaming Authority shall act in the best interest of the Tribe.

H. The Gaming Authority is to provide Equitable Distribution of profits to the Little Traverse Bay Bands of Odawa Indians Tribal government.

(Source: WOS 2018-016, September 13, 2018, By Veto Override, Section II)

7.503 DEFINITIONS

A. “*Annual Enterprise Business Plan*” means the twelve-month marketing, financial and operations plan written for the gaming operation and related ancillary businesses including short-term and long-term strategies of the Gaming Enterprise by department.

B. “*Annual Capital Asset Plan*” means the planned capital asset purchases for the fiscal year.

C. “*Annual Strategic Plan*” means the analysis and strategies the Gaming Enterprise intends to implement by department in order to meet its financial and operating goals and objectives.

D. “*Business Plan*” means a plan written for the operations of the Casino for a designated timeframe that includes goals, measurable objectives, strategies, tactics, person assigned to the task and timelines.

E. “*Director of Finance*” means the person employed by the Enterprises, who reports directly to the Gaming Authority, to oversee all financial affairs of the Enterprises.

F. “*Equitable Distribution*” means a balance between what is provided to the Tribe as a distribution and overall health of the casino operations that includes maintenance, employee morale, and quality customer service.

G. “*Free play wager*” means a non-value promotional consideration afforded a player to participate in a game without requiring the player to place anything at risk.

H. “*Gaming Enterprise*” or “*Enterprises*” means the Odawa Casino Resort, Mackinaw Casino and any other tribally owned Enterprises or businesses related to gaming.

I. “*Fiscal Year*” means the twelve-month period from January through December.

J. “*Gaming*” means any game classified as "Class II" or "Class III" under the Indian Gaming Regulatory Act of October 17, 1988 and or future amendments.

K. “*General Manager*” means the person or persons hired to manage and oversee the day-to-day operations of the Enterprises.

L. “*GAAP*” or “*General Acceptable Accounting Principles*” means collection of commonly-followed accounting rules and standards for financial reporting.

M. “*Independent Auditor*” is the person or entity required under the LTBB Gaming Regulatory Statute, as amended.

N. “*LTBB*” or “*Tribe*” means Little Traverse Bay Bands of Odawa Indians.

O. “*LTBB Tribal Citizen*” means a person who is a member of the Little Traverse Bay Bands of Odawa Indians Tribe.

P. “*Odawa Online GSP*” is the Limited Liability Corporation created under WOS 2020-011 Amendment to WOS 2018-106 formed by the Gaming Authority to carry out off reservation online sports betting and gaming as may be authorized by Michigan law.

(Source: WOS 2022-004, May 31, 2022, Section III, Addition to Definitions)

Q. “*Public*” means Little Traverse Bay Bands of Odawa Indians Tribal Citizens and their immediate family members.

R. “*Senior Financial Analyst*” means the individual(s) employed by the Tribal Council in the Office of Finance and Revenue, or its successor office or department.

S. “*Tribal Council*” means the governing body of Legislative Branch of the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2018-016, September 13, 2018, By Veto Override, Section III)

7.504 TRIBAL COUNCIL DELEGATION

A. In accordance with the Tribal Constitution, Article VII D (24), Tribal Council delegates the management of the Gaming Enterprises to the Gaming Authority, a subordinate entity of the Tribe that reports to the Tribal Council.

B. The Gaming Authority shall be established with the current members of the Gaming Enterprise Board, provided that the members have an interest in continuance of service and that they meet qualifications as listed in this Statute.

(Source: WOS 2018-016, September 13, 2018, By Veto Override, Section IV)

7.505 COMPOSITION, REQUIRED QUALIFICATIONS, APPOINTMENT AND TERMS

A. COMPOSITION

1. The Gaming Authority shall consist of three (3) to five (5) members who meet the eligibility requirements set out in subsection (B) of this section.

2. A majority of the members of the Gaming Authority shall be LTBB Tribal Citizens. Members of another tribe or non-tribal may fill the other positions on the Gaming Authority.

3. If an LTBB Tribal Citizen's term expires, they shall remain on the Gaming Authority until a successor is appointed. In all other cases, if the term expires then the appointment will end.

4. The Gaming Authority shall have three (3) officers including a Chairperson, Vice Chairperson and Secretary/Treasurer. The officers are elected and approved by the Gaming Authority. Election of Officers shall be held annually.

B. REQUIRED QUALIFICATIONS

To serve on the Gaming Authority a person must meet the following:

1. Must be licensed under the Tribe's Gaming Regulatory Ordinance.
2. Must possess one of the following educational or experience qualifications:
 - a. Possesses a Degree in Business Administration, Finance, Hospitality or a related discipline; or
 - a. A minimum of three (3) years successful work experience in a management position in the field of business administration, public administration, gaming industry, hotel management, accounting, finance or law; or
 - b. A minimum of six (6) years of gaming work experience preferably with specialized knowledge and expertise relevant to the gaming industry.
3. Possesses leadership qualities, shows good judgment, is approachable and team oriented;
4. No person can serve on the Gaming Authority who is an elected official of LTBB;
5. No person can serve on the Gaming Authority who is employed by any Gaming Enterprises of LTBB or LTBB's direct competitor. A direct competitor is an entity that is competing for the same market as LTBB's Gaming Enterprises.
6. No person shall serve on the Gaming Authority who is within seven (7) years of completion of a sentence or probation upon being convicted of a felony in Tribal, State, or Federal Court, unless such conviction has been vacated or overturned;
7. No person shall serve on the Gaming Authority who is on a Security Ban from the Gaming Enterprise or who has been banned in the last two (2) years, unless the ban is a self-imposed ban;

8. No person shall serve on the Gaming Authority if there is a direct employment relationship with another Gaming Authority member, or Regulatory Commission or staff, in either a direct report or supervisory position.

C. APPOINTMENTS & TERMS

1. Gaming Authority members who meet the qualifications, shall be approved by a majority vote of Tribal Council for a one (1) to four (4) year term. Positions will be approved on a staggered calendar. If a vacancy occurs during a term, every effort will be made to appoint another candidate to serve the remainder of the term.

2. Any Gaming Authority member may resign at any time. Such resignation will be in writing and submitted to the Gaming Authority Chair. The Gaming Authority Chair will immediately give notification to Tribal Council. If the person resigning is the Gaming Authority Chair, the resignation will be submitted directly to Tribal Council. Resignations shall take effect immediately without acceptance.

3. The Gaming Authority may recommend to Tribal Council the removal of a Gaming Authority member for cause. Such recommendation shall be by a majority vote of the Gaming Authority, using the following criteria:

A. Intentional act or failure to act resulting in material harm to the organization.

B. Found liable of discrimination based on protected classes or of sexual harassment.

C. Incompetency.

D. Violation of the Constitutionally Mandated Rules of Conduct or other Ethical violations.

E. Neglect of duties.

F. Violations of Tribal law.

G. Violations of Gaming Authority Policy.

H. Failure to attend Gaming Authority meetings within a consecutive three (3) month period.

4. Gaming Authority members may be removed by a majority vote of Tribal Council for any of the criteria listed in 3 above. Prior to any vote for removal, the Gaming Authority member has the right to request a hearing before Tribal Council.

(Source: WOS 2018-016, September 13, 2018, By Veto Override, Section V)

7.506 COMPLIANCE RESPONSIBILITY

A. The Gaming Authority shall adhere to the Constitutionally Mandated Rules of Conduct for Officials of Tribal Government that are approved by Tribal Council and any other subsequent rules, as it may apply.

B. The Gaming Authority shall adhere to the Tribal Minimal Internal Control Standards (TMICS) and all other applicable Statutes and laws.

C. The Gaming Authority shall ensure that all “*Free play wager*” must be accounted for separately from revenue; and shall never be included as revenue in any revenue report.

D. The Gaming Authority shall adhere to all applicable Policies and Procedures approved by the Tribal Council.

E. No member of the Gaming Authority shall be allowed to participate in any gaming activity operated by LTBB while serving on the Gaming Authority and for at least forty-five (45) days after leaving the Gaming Authority.

F. No member of the Gaming Authority shall be employed by the Enterprise for a period of forty-five (45) days after serving on the Gaming Authority.

G. Upon notice of an investigation of a Gaming Authority member’s license, the Gaming Authority member shall be suspended from participating on the Gaming Authority and all pay

will be suspended.

(Source: WOS 2018-016, September 13, 2018, By Veto Override, Section VI)

7.507 POWERS, DUTIES AND FUNCTION

A. POWERS. The Gaming Authority shall have the following duties and powers in connection with the Gaming Enterprise:

1. Employment. The Gaming Authority shall employ a General Manager through an employment contract. The employment contract shall contain the following terms: length of employment; rate of pay; bonus structure; general terms and conditions of employment; and the requirement to adhere to all tribal laws. The General Manager shall be required to be licensed by the Gaming Regulatory Commission.

2. Evaluation, Suspension, or Termination of the General Manager. The Gaming Authority may evaluate, suspend with or without pay or terminate the General Manager's employment prior to the expiration of his or her contract.

3. Through policy and procedures, address employee and/or customer complaints that involve the General Manager.

4. Vacancy. The Gaming Authority shall have a policy in place in the event that there is a vacancy in the General Manager's position. Such policy shall utilize one or more of the executive management of the operation.

5. To employ staff to carry out the Gaming Authority's functions, provided funding is available.

6. To employ or retain consultants and/or legal counsel to advise the Gaming Authority, provided funding is available. Per the Constitution, employment of legal counsel shall be approved by Tribal Council.

7. Report to Tribal Council, all major events such as closure of the casino, levied fines, resignation of a Gaming Authority member, loss of Gaming Authority member's

license, hiring or termination of the General Manager, and/or any other information having a direct impact on Gaming Enterprise operations.

B. DUTIES AND FUNCTIONS

1. The duties of the Gaming Authority shall include review and approval of Gaming Enterprise policies, procedures, plans and budgets which shall include, but not be limited to:

- a. Human Resources policies. Any Human Resources policy adopted by the Gaming Authority shall include a standard process for all employees that provides for the right to grieve a termination;
- b. Annual Enterprises Business plan;
- c. Annual operating budget and any modifications. Variances of four percent (4%) or more shall be reported to Tribal Council;
- d. Distribution of annual services payments to the Tribal Government.

2. The Gaming Authority shall monitor compliance of the approved policy and procedures through the General Manager but shall not be involved in the day-to-day decision-making process of the Gaming Enterprises and its operations. Any Gaming Authority approved policy shall be reported to Tribal Council and upon request copies shall be made available to Tribal Council.

3. Review and approve the establishment and maintenance of bank accounts as may be necessary for the operations of the Enterprises. The Senior Financial Analyst shall be made aware of any changes to the bank accounts. The Senior Financial Analyst shall have access to all bank accounts, with “read only permission” access.

4. The Gaming Authority shall be responsible for maintaining regular reporting and accountability to both the Tribal Council and the Tribal Citizens through the development of appropriate financial reporting.

5. The Gaming Authority is not authorized to incur any financial obligation or liability, other than what is in the Gaming Authority's approved budget, without prior Tribal Council approval.
6. The Gaming Authority shall present an annual budget to the Tribal Council via the Appropriation and Finance Committee for approval. Such proposed budget shall be submitted in a timely manner so that the fiscal year's budget is in place by the beginning of the fiscal year.
7. The Gaming Authority shall adopt meeting policies and any other policies for Gaming Authority business, provided such policies are in accordance with this Statute.
8. The Gaming Authority is authorized to operate, including entering into contracts to aid in the operation of, off-reservation on-line sports betting and gaming as may be authorized by Michigan law, and to apply for and maintain, or assist the Tribal government to apply for and maintain, any necessary State licenses. The Gaming Authority may, in its discretion form a sub-entity such as an LLC to carry out this duty.

(Source: *For Section VII(B)(8)* WOS 2020-011, May 4, 2020, Section VII)

(Source: WOS 2018-016, September 13, 2018, By Veto Override, Section VII)

7.508 MEETINGS

- A. The Gaming Authority shall meet in person at least once per month, and the agenda shall include a time for public comment. Such meeting will be held within the LTBB reservation and open to Tribal Citizens.
- B. Closed Sessions may be held only for the purposes of personnel, litigation, confidential business or legal matters; or matters that rise to the level of significant privacy or confidentiality. Tribal Councilors or Tribal Council's designee may attend closed sessions, except for personnel matters, as observers only.
- C. Minutes shall be taken and posted.

D. Each meeting shall contain a public comment period that will be open only to the public as defined by the Open Meetings Statute.

E. Notice of meetings or work-sessions shall be posted forty-eight (48) hours in advance.

F. Gaming Authority business that requires immediate attention may be conducted by electronic means. Any action taken via electronic means shall be recorded in the minutes of the next regularly scheduled meeting. The Gaming Authority Secretary/Treasurer or designee shall attempt to notify each of the Gaming Authority members of the electronic communication or conference call by any practical means including telephone, fax, email, text or in person and must certify that an attempt was made to contact each Gaming Authority member.

G. Emergency meetings may only be called when immediate action is necessary for the preservation or promotion of essential interests of the Tribe and Enterprises. The emergency action taken must be ratified at the next regularly scheduled meeting of the Gaming Authority, and the minutes must state the reason that such emergency action was necessary.

H. A quorum for a Gaming Authority meeting shall consist of a majority of the members who are currently serving on the Gaming Authority. A meeting may not be called to order without a quorum present and no official business shall be conducted without a quorum.

I. Gaming Authority records shall be open to Tribal Citizens upon request in accordance with Tribal law, except in matters of confidential business, or potential business dealings as defined by Tribal Statute.

(Source: WOS 2018-016, September 13, 2018, By Veto Override, Section VIII)

7.509 COMPENSATION

A. The Gaming Authority shall be compensated, subject to the availability of funds, as follows:

- 1.** Four hundred dollars (\$400.00) Odawa Casino Resort meeting stipend, and two hundred dollars (\$200.00) for any Gaming Authority sub-entity (such as Odawa Online GSP, LLC) meeting stipend. In order to receive the meeting stipend, the Gaming Authority member must be in attendance at least for $\frac{3}{4}$ of the meeting.

(Source: WOS 2022-004, May 31, 2022, Section IX(A)(1), Amendment)

2. Meeting stipends shall not be paid for other activities such as attendance at events, trainings, or conferences.
3. Expenses for travel for meetings, training and conferences shall include per diem and reimbursement of expenses in accordance with the Tribal Council approved Travel policies.

(Source: WOS 2018-016, September 13, 2018, By Veto Override, Section IX)

7.510 REQUEST FOR INFORMATION

- A. If the Gaming Authority as a whole or individually makes any written or verbal requests to an individual Tribal Councilor, all of Tribal Council will be copied on the request.
- B. If an individual Tribal Councilor makes any written or verbal requests to the Gaming Authority or Gaming Authority member, all of Tribal Council will be copied on the request.
- C. Any verbal communications or requests to or from the Gaming Authority to a Tribal Councilor shall be reported by the Tribal Councilor under the “Tribal Council Member Report” on the next Tribal Council agenda.
- D. Tribal Council also designates the Senior Financial Analyst the authority to request, on behalf of a Councilor or Tribal Council, any financial information. All of Tribal Council will be copied on the written requests, along with the responses. Any verbal requests shall be reported by the Senior Financial Analyst at the next Tribal Council meeting.

(Source: WOS 2018-016, September 13, 2018, By Veto Override, Section X)

7.511 REPORTING REQUIREMENTS

- A. **Monthly Reports.** The Gaming Authority shall provide Tribal Council a monthly report that contains the following and shall be submitted to the Tribal Council within thirty (30) days from the end of the prior month:

1. Property Overview: report on all maintenance and cap ex projects
2. Marketing and promotions
3. Operational Updates
4. Human Resources
5. Financial Review
6. Actual revenues
7. Expenses and earnings before Interest Taxes, Depreciation and Amortization (EBITA) for the preceding month (actuals), current month (projection) and not less than two (2) months in advance (forecast) based on Annual Enterprise Business Plan
8. The number of employees, number of Tribal Citizens, other Natives and non-Natives employed, and turn-over-rate, number of Tribal Citizens in management positions, Native or non-Native employed in management positions
9. Request of new development and/or capital projects
10. All other relevant information.

B. Director of Finance Monthly Financial Report. The Director of Finance shall provide a monthly report of all Gaming Enterprises financial records, in accordance with GAAP, to the General Manager, the Gaming Authority, Tribal Council, and the Sr. Financial Analyst. The Monthly report shall contain confidential Financials for each Gaming Enterprise owned by the Tribe and shall be submitted to the Tribal Council within twenty (20) days from the end of the prior month.

1. Managerial
2. Gaming

3. Hotel
4. Food and Beverage
5. Gift Shop and Events Center
6. Marketing
7. Support Services
8. Annual Service Payments
9. Casino Performance Ratios
10. Sales Comparison chart
11. EBITDA Comparison chart
12. Current Actual vs. Prior Year vs. Budget
13. Statement of cash flows
14. Actual vs. Budget vs. Last Year for each Department
15. Notification of budget modifications or amendments over a 4% change, either increase or decrease of a department budget
16. Promotional play
17. Profit Statements, Loss Statements and Equity Statements submitted under separate cover.

C. Quarterly Report. On a quarterly basis, the Gaming Authority shall provide Tribal Council and the Senior Financial Analyst the projected and forecasted revenues. Additionally, on a quarterly basis or upon request of Tribal Council, the Gaming Authority will meet with the Tribal Council and provide an update on operations of the Gaming Enterprise and shall provide

input for the determination of what amount shall be considered an Equitable Distribution. Based on these discussion, Tribal Council shall determine the amount of Equitable Distribution that the Gaming Authority shall provide as profits to the LTBB Tribal government.

D. Annual Report. By March 31st of each year, the Gaming Authority shall prepare and deliver to Tribal Council an annual report and an audited financial statement, including a statement of cash flows, balance sheet and an income statement, including comparative figures from the preceding fiscal year. Also, a meeting will be scheduled within forty-five (45) business days from the end of the Fiscal Year, for Tribal Council to meet with the full Gaming Authority, the General Manager and the OCR Executive Team to review the preliminary finances of the past year and discuss plans for the upcoming year.

E. Independent Audit. The Tribal Council shall appoint an independent auditor to conduct the annual financial statement audit and minimum internal control testing as required by 25 C.F.R. §§ 522.4 and 571.12 and any other applicable or successor Federal regulations. A Copy of the Audit shall be submitted to the following:

1. The Gaming Authority
2. Tribal Council
3. Sr. Financial Analyst
4. LTBB Chief Financial Officer

F. Delivery Method of Reports. The Reports may be transmitted electronically to the following emails: Tribal Council TribalCouncil@ltbbodawa-nsn.gov, and Senior Financial Analyst email.

(Source: WOS 2018-016, September 13, 2018, By Veto Override, Section XI)

7.512 NEPOTISM

A. For Purposes of this Statute, two (2) or more members of the same immediate family shall not serve on the Gaming Authority at the same time. Further, a person shall not serve on the Gaming Authority if the General Manager, CFO, Internal Auditor, Tribal Chairperson or

Vice-Chairperson, or a Tribal Councilor is an immediate family member. For purposes of this section immediate family means husband, wife, son, daughter, step-son, step-daughter, 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.

B. No Gaming Authority member may participate in making any decision that involves a personal or financial interest of the Gaming Authority or a member of his or her immediate family, unless interest is held in common with the Tribe and its Citizens.

(Source: WOS 2018-016, September 13, 2018, By Veto Override, Section XII)

7.513 SAVING 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 the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part 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.

(Source: WOS 2018-016, September 13, 2018, By Veto Override, Section XIII)

7.514 EFFECTIVE DATE

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

(Source: WOS 2018-016, September 13, 2018, By Veto Override, Section XIV)

7.515 OTHER RELATED STATUTES

See Waganakising Odawak Statute 2011-005 “Gaming Regulatory Statute”, Waganakising Odawak Statute 2013-007 “Contracting Statute”, or as may be amended.

(Source: WOS 2018-016, September 13, 2018, By Veto Override, Section XV)