HO-CHUNK NATION LEGISLATURE

Governing Body of the Ho-Chunk Nation

HO-CHUNK NATION LEGISLATURE
QUICK PASSAGE PROCEDURE TO AMEND
THE *EMPLOYMENT RELATIONS ACT*
REGARDING HO-CHUNK PREFERENCE

RESOLUTION 12-20-11G
(DEFEATED RESOLUTION)

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(f) of the Constitution grants the Legislature the power to set the salaries, terms and conditions of employment for all governmental personnel; and

WHEREAS, Article V, Section 2(g) of the Constitution authorizes the Legislature to set its own procedures, select its officers, and to enact laws governing attendance of its members, including penalties for absences; 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, Section 30 of the *Legislative Organization Act* provides Quick Passage Procedures; and

WHEREAS, under certain limited circumstances, Section 30 provides "[t]he Legislature may vote to immediately pass Legislation:" and

WHEREAS, Section 30 of the *Legislative Organization Act*, in relevant part, provides:

(2) For the Legislation to be considered for Quick Passage the Legislature must conclude:

Executive Offices
W9814 Airport Road P.O. Box 667 Black River Falls, WI 54615
(715) 284-9343 Fax (715) 284-3172 (800) 294-9343

(a) The Legislation must take effect immediately to address a situation that:

1 Adversely affects the health, safety, welfare, or economic well-being of the Nation;

2 Adversely affects a person or multiple people for which Legislative relief is deemed appropriate and necessary by the Legislature;

3 Is internal to the operation of the Government; or

4 Impacts negotiations with a sovereign entity; and

(b) Adherence to the Normal Legislation Process outlined in Section 31 would result in a delay that would adversely impact the Nation, a Member of the Nation, or Members of the Nation; and

WHEREAS, Section 30 of the *Legislative Organization Act* provides "[f]or the Legislation to immediately become the law of the Nation it will require an affirmative vote of more than two-thirds (2/3) of Legislators present at the Legislative Session."; and

WHEREAS, Chapter I of the Ho-Chunk Nation Employment Relation Act ("ERA") contains provisions addressing Ho-Chunk tribal member preference in all aspects of tribal employment, including the following:

"**Section 5. Employment Clause.**

. . .

b. Ho-Chunk Preference in Employment Clause. The Nation exercises Native American Preference in employment and shall exercise Ho-Chunk Preference in employment under limited circumstances, which furthers a legitimate governmental purpose, including the goal of employing tribal members at a rate to meet or exceed a majority (50% plus 1) total employees.

(1) The Nation will exercise Ho-Chunk Preference in Employment, prioritized as follows:

(a) Hocak Wazijaci Tribal member.
(b) Spouse or Parent of Hocak Wazijaci Tribal member.
(c) Native American Tribal member.

When the Ho-Chunk Nation is the Employer providing funding, it shall give preference in Equal Opportunities first to Tribal Members, then to Spouses or Parents of Tribal Members, and then to other Native Americans; provided, that the Tribal Member, Spouse or Parent of a Tribal Member, or Native American, as the case may be, meets the minimum necessary qualifications. Thereafter, the Employment Opportunity shall be open to any other candidate who meets the Minimum Necessary Qualifications of the position. If no candidate for an Employment Opportunity meets the Minimum Necessary Qualifications, then preference shall be given first to Tribal Members, then to Spouses or Parents of Tribal Members, and then to other Native Americans, who are capable of being trained to the Minimum Necessary Qualifications of the position.

(2) Ho-Chunk Preference shall be used to recruit, hire, train, recall, reassign and lay off employees of the Nation. For hiring purposes, Ho-Chunk Preference shall be used for tribally funded positions and Native American Preference shall be used for all federally

funded positions. This employment preference policy shall be construed to mean that an individual Ho-Chunk member who satisfies the minimum employment qualifications for a particular position will be afforded preference over all other individuals and that in situations where two (2) or more Ho-Chunk members are being considered for employment, that there is a distinction between qualification and preference. Thus, this policy's application is the determining factor when two (2) or more individuals have suitable job qualifications – the individual having preference standing shall be afforded the employment opportunity. The Department of Personnel is responsible for monitoring the Preference Policy. Disciplinary action will occur for supervisors who do not adhere to this policy"; and

WHEREAS, the Legislature amended the Ho-Chunk Preference policy provisions of the ERA in June 2011 to enhance the protections for tribal member employees and further the Nation's legitimate governmental interest in tribal member employment; and

WHEREAS, consistent with Article V, Section 2(f) of the Constitution, the Legislature maintains an ongoing interest in Ho-Chunk Preference, as it affects tribal members, their families, and the well-being of the Nation as a whole; and

WHEREAS, since the underlying purpose of Ho-Chunk Preference is to ensure tribal member employment, the Legislature deems it appropriate to enhance the existing Preference policy in order to alleviate the high rates of unemployment by tribal members; and

WHEREAS, in order to ensure consistent application of the Preference policy and promote the legitimate governmental purpose of continued tribal member employment, the Legislature deems it necessary to amend the Ho-Chunk Preference provisions within Chapter I of the ERA; and

NOW, THEREFORE, BE IT RESOLVED, that the Legislature concludes that the *Employment Relations Act* should be amended through the Quick Passage Procedure, since adherence to the Normal Legislation process of the Legislative Organization Act would result in a delay that could adversely impact the Nation, and also that Quick Passage should be carried out in order to address a situation that adversely affects the health, safety, welfare, or economic well-being of the Nation, and is internal to the operation of the Nation's government; and

NOW THEREFORE, BE IT FURHER RESOLVED that the Legislature, pursuant to its Constitutional Authority, using the Quick Passage procedures of the *Legislative Organization Act* (2 HCC § 11), amends the *Employment Relations Act*, at Chapter I, Section 5 b(2) as follows (with amendments underlined and italicized):

Section 5. Employment Clause.

. . .

b. Ho-Chunk Preference in Employment Clause. . . .

(2) Ho-Chunk Preference shall be used to recruit, hire, train, recall, reassign and lay off employees of the Nation. For hiring purposes, Ho-Chunk Preference shall be used for tribally funded positions and Native American Preference shall be used for all federally funded positions. This employment preference policy shall be construed to mean that an individual Ho-Chunk member who satisfies the minimum employment qualifications for a particular position will be afforded preference over all other individuals and that in situations where two (2) or more Ho-Chunk members are being considered for

employment, that there is a distinction between qualification and preference. Thus, this policy's application is the determining factor when two (2) or more individuals have suitable job qualifications – the individual having preference standing shall be afforded the employment opportunity. *For purposes of layoffs and reassignment, this Preference Policy shall be applied so as to maximize tribal member employment and retention.* The Department of Personnel is responsible for monitoring the Preference Policy~~.~~ *, and shall report the results of its monitoring to the President and Legislature.* Disciplinary action will occur for supervisors who do not adhere to this policy;

BE IT FURTHER RESOLVED, that the above amendment to the Employment Relations Act shall take effect when this Quick Passage Resolution is adopted.

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 10 constituting a quorum were present at a meeting duly called and convened and held that on the **20th day of December, 2011,** has not adopted the foregoing resolution at said meeting by an affirmative vote of **4 members, 6 opposed,** and **2 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.

Hope B Smith — December 20, 2011

Hope B. Smith, Tribal Secretary — Date