

TOHONO O'ODHAM CODE

TITLE 26 – FINANCE

CHAPTER 3 – PERMANENT TRUST FUND

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CHAPTER 3 - PERMANENT TRUST FUND

Section 3101 Establishment and Purpose

The Tohono O’odham Nation (the “Nation”) is entrusted with the duty “to promote the rights, education and welfare of the present and future generations of our people” (Preamble to the Constitution of the Tohono O’odham Nation). In the performance of this duty, the Nation recognizes the obligation to annually save and invest a portion of the income received by the Nation with the goal of providing a permanent source of income to serve the needs of future generations of the Nation’s members.

To carry out the Nation’s constitutional obligations to future members of the Nation, the Tohono O’odham Nation Permanent Trust Fund (the "Permanent Fund") is established as a true permanent savings fund and permanent stream of investment income to defray the cost of infrastructure, roads, housing, capital projects and government services provided by the Tohono O’odham Nation to Nation’s members. Permanent Fund principal and income may not be expended for per capita payments.

Section 3102 Definitions

- (A) "Fund principal" shall consist of all contributions made pursuant to Section 3103(A).
- (B) "Fund income" shall consist of all earnings generated by the Permanent Fund principal.
- (C) “General fund projected revenues” of the Nation include revenues identified and determined available by the Nation’s treasurer, and approved by Legislative Council resolution for budgeting of the Nation’s general fund including, but not limited to, revenues received from taxes, mining, land assignments, investment income, dividends, gaming licenses and fees, cattle sales, indirect cost recovery, and rental income.

Section 3103 Deposits

- (A) Effective October 1, 2020, the Nation’s treasurer shall promptly deposit the following amounts in the Permanent Fund:
 - (1) Six percent (6%) of all revenue from Gaming Facilities paid to the Nation by the Gaming Enterprise pursuant to Section 7(e) of the Gaming Enterprise Charter (“Gaming Revenues”) as provided by 26 T.O.C. Chapter 1, Article 3, Section 1301;
 - (2) Six percent (6%) of any and all general fund projected revenue of the Tohono O’odham Nation other than Gaming Revenues; and

- (3) Additional amounts that may be appropriated by Tohono O’odham Legislative Council (“Legislative Council”) resolution at any time.

(B) Any money deposited into the Permanent Fund, plus accrued income, shall be used only as provided in this Chapter. If actual general fund revenue is different than general fund projected revenue, the amount deposited in the Permanent Fund shall be adjusted to equal six percent (6%) of actual general fund revenue. Deposits may be made in one or more installments.

Section 3104 Investment of the Permanent Fund

All amounts deposited in the Fund shall have the majority invested within nine months of funding of the portfolio. The timeframe for investing may vary depending upon market conditions and other circumstances.

(A) The funds shall be invested in accordance with the degree of care exercised by reasonable and prudent managers of large investments intended to produce a high degree of growth of the investments while monitoring the risk level in accordance with the Permanent Fund Investment Policy recommended by the Nation’s Investment Committee and approved by Legislative Council resolution.

(B) Management of the investments may be delegated to an Investment Manager by written contract recommended by the Nation’s Investment Committee and approved by Legislative Council resolution; provided that the Investment Manager’s performance shall be regularly evaluated by an independent financial investment consultant. The Investment Manager may utilize third party providers at their discretion in the form of exchange traded funds (“ETFs”), mutual funds or separately managed accounts that adhere to the Permanent Fund Investment Policy Statement.

Section 3105 Expenditure of Funds

(A) Fund Principal. Permanent Fund principal shall not be expended except pursuant to

- (1) Legislation approved by a referendum submitted to the Nation’s voters at the direction of the Legislative Council pursuant to Article XIV of the Constitution of the Tohono O’odham Nation;

or

- (2) as set forth in Sections 3107 and 3108.

(B) Fund Income. No Permanent Fund income shall be expended, except as set forth in Sections 3107 and 3108, for a period of 20 years from the date of the first Tohono O’odham Nation contribution to the Permanent Fund. Thereafter, ninety-five percent (95%) of the Permanent Fund income may be expended in accordance with a plan for its use covering at least a five-year period and adopted by Legislative Council resolution; provided that the expenditure of income in any fiscal year shall not exceed the income earned during that year. The remaining

five percent (5%) of the Permanent Fund income shall be reinvested in the Permanent Fund and, upon reinvestment, shall be characterized as Permanent Fund principal

Section 3106 Annual Audit and Reporting of the Permanent Fund

The Permanent Fund shall be audited annually by independent outside auditors and may be included with the annual audit of the Nation's government. Within 90 days of the end of each fiscal year, the Nation's treasurer shall distribute and present a financial report to the Legislative Council and the Nation's chairperson. The report must include financial statements to be audited by independent outside auditors, a statement of the amount of funds received by the Permanent Fund from each investment during the period, a statement of investments of the Permanent Fund including an appraisal at market value, a description of Permanent Fund investment activity during the period covered by the report, a statement of the Permanent Fund performance and other information relevant to the management of the Permanent Fund.

Section 3107 Expenses

All expenses directly associated with the administration and management of the Permanent Fund shall be paid from the Permanent Fund as approved by the Investment Committee of the Tohono O'odham Nation and the Legislative Council. Such expenses shall include an investment advisor and management fees, pursuant to a duly approved contract, audit costs, and other related expenses.

Section 3108 Payment of Bond Obligation

In the event of an imminent default of any Nation's bond obligation, the Permanent Fund income and principal in that order may be used as a source of payment pursuant to a resolution approved by the Legislative Council.