

TITLE 1 - GENERAL PROVISIONS

CHAPTER 2 - SOVEREIGN IMMUNITY; LEGISLATIVE IMMUNITY

Legislative History: "Sovereign Immunity; Legislative Immunity" was enacted and codified as 1 T.O.C. Chapter 2 by Resolution No. 10-116 effective April 6, 2010.

TOHONO O’ODHAM CODE

TITLE 1 – GENERAL PROVISIONS

CHAPTER 2 – SOVEREIGN IMMUNITY; LEGISLATIVE IMMUNITY

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TOHONO O'ODHAM CODE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 2 - SOVEREIGN IMMUNITY; LEGISLATIVE IMMUNITY

Section 2101 Sovereign Immunity

- (A) The government of the Tohono O'odham Nation ("Nation") and any person acting within the scope of his or her capacity as an officer, employee, or agent of the Nation are absolutely immune from suit, court process, or liability.
- (B) The Nation's sovereign immunity extends to the Nation's districts, enterprises, entities, and the officials, employees, and agents thereof.
- (C) Sovereign immunity cannot be waived except by a resolution or other official action of the Tohono O'odham Legislative Council expressly waiving, or authorizing a waiver of, sovereign immunity; provided that such a waiver shall be limited in accordance with its terms. A Legislative Council action that authorizes a Nation's district, enterprise, or entity to sue or be sued does not waive sovereign immunity unless a waiver is expressly granted in a separate written contract or other duly approved writing.

Section 2102 Actions Challenging Laws, Rules, Regulations and Final Decisions

- (A) Exception. Unless provided otherwise by law, sovereign immunity does not preclude properly framed lawsuits brought against the Nation exclusively in the Tohono O'odham Judicial Court and solely for injunctive or declaratory relief to determine the validity of a law, rule, or regulation of the Nation.
- (B) Appeals from Administrative Agency Final Decisions. Final decisions of the Nation's administrative agencies shall not be appealed to the Judicial Court except when expressly authorized by an official action of the Tohono O'odham Legislative Council.
- (C) Representation. The Office of the Attorney General shall represent the Nation in an action to determine the validity of a Nation's law, rule, or regulation or an action to challenge the final decision of a Nation's administrative agency unless the Attorney General has a conflict of interest or such representation is delegated to other legal counsel.
- (D) Right to Intervene.
 - (1) The Nation has the right to intervene in, appear as amicus curiae, or make a limited appearance to dismiss, any action to determine the validity of a Nation's law, rule, or regulation if the Nation is not named as a party.
 - (2) The Legislative Council has an independent right to intervene in, appear as an amicus curiae in, or make a limited appearance to dismiss, an action to determine the

validity of a Nation's law or a Legislative Council decision or action when authorized by a majority vote of the Council.

(E) Notice.

(1) The party filing an action to determine the validity of a Nation's law, rule, or regulation shall serve the Office of the Attorney General with the complaint or other pleading initiating the action in accordance with the applicable rules of procedure for serving parties.

(2) The party filing an action to determine the validity of a Nation's law or a Legislative Council decision or action shall serve the Legislative Attorney's Office with the complaint or other pleading initiating the action in accordance with the applicable rules of procedure for serving parties.

Section 2103 Legislative Immunity

(A) The Tohono O'odham Legislative Council, Legislative Council representatives and staff, and other persons engaged in legislative activity possess legislative immunity and are not subject to suit, process, or liability for the performance of legislative functions.

(B) The Legislative Council's intervention or appearance in a case in which the validity of a Nation's law or a Legislative Council decision or action is being challenged does not waive the legislative immunity of individual Legislative Council representatives, staff, and other persons engaged in legislative activity.

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Enacting Tohono O'odham Code Title 1, Chapter 2, "Sovereign Immunity;
Legislative Immunity")

RESOLUTION NO. 10-116

1 **WHEREAS, the Constitution of the Tohono O'odham Nation provides that "[a]ll legislative powers**
2 **of the Tohono O'odham Nation shall be vested in the Tohono O'odham Council," and**
3 **vests the Legislative Council with the power to "enact laws, ordinances and resolutions**
4 **necessary or incidental to the exercise of its legislative powers" (Constitution, Article**
5 **V, Section 1 and Article VI, Section 1(l)); and**

6 **WHEREAS, the Constitution affirms that the Nation and its government are vested with sovereign**
7 **powers, authority and jurisdiction, and the Tohono O'odham Judicial Court has**
8 **repeatedly recognized that the Nation, its officials, employees, districts, and**
9 **enterprises are vested with sovereign immunity as an attribute of the Nation's**
10 **sovereignty (Constitution, Preamble and Article I); and**

11 **WHEREAS, the Legislative Council has recognized the Nation's sovereign immunity and has**
12 **enacted numerous laws authorizing districts, enterprises, and other entities to waive**
13 **sovereign immunity; and**

14 **WHEREAS, the Legislative Council also has enacted specific waivers in order to enter loan**
15 **agreements, the public safety retirement system joinder agreement, the class III**
16 **tribal-state gaming compact, various contracts, and other arrangements; and**

17 **WHEREAS, a draft law reaffirming sovereign immunity and legislative immunity, and addressing**
18 **related matters was presented to the Domestic Affairs and Judiciary Committees,**
19 **reviewed by the Office of the Attorney General, and provided to the Rules Committee;**
20 **and**

21 **WHEREAS, it is in the Nation's best interest to clarify the law of sovereign and legislative immunity**
22 **by enacting Tohono O'odham Code Title 1, Chapter 2, "Sovereign Immunity; Legislative**
23 **Immunity," which is incorporated by this reference.**

24 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby enacts**
25 **Tohono O'odham Code Title 1, Chapter 2, "Sovereign Immunity; Legislative Immunity."**

26 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 06TH Day**
27 **of APRIL, 2010 at a meeting at which a quorum was present with a vote of 2,411.0 FOR; 184.50**
28 **AGAINST; -0- NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by**
29 **Preamble; Article I; Article V, Section 1; and Article VI, Section 1 of the Constitution of the Tohono**
30 **O'odham Nation, adopted by the Tohono O'odham Nation on January 18, 1986; and approved by**
31 **the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to**
32 **Section 16 of the Act of June 18, 1934 (48 Stat. 984).**
33
34

RESOLUTION NO. 10-116

(Enacting Tohono O'odham Code Title 1, Chapter 2, "Sovereign Immunity; Legislative Immunity")

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TOHONO O'ODHAM LEGISLATIVE COUNCIL

Verlon Jose

Verlon M. Jose, Legislative Chairman

6 day of April, 2010

ATTEST:

Evonne Wilson

Evonne Wilson, Legislative Secretary

6 day of April, 2010.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 6 day of April, 2010 at 1:05 o'clock, P..M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Verlon Jose

Verlon M. Jose, Legislative Chairman

APPROVED

on the 6th day of April, 2010

DISAPPROVED

at 3:29 o'clock, P..M.

Ned Norris, Jr.

NED NORRIS, JR., CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 6 day of

April, 2010, at 3:31 o'clock, P..M.

Evonne Wilson

Evonne Wilson, Legislative Secretary