

**LAC DU FLAMBEAU BAND OF LAKE SUPERIOR CHIPPEWA INDIANS  
TRIBAL CODE OF LAW**

**CHAPTER 18-SOVEREIGN IMMUNITY CODE**

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**HISTORY NOTE:**

Adopted March 3, 2026 Resolution No. 73(26).

## **SUBCHAPTER 18.1 – INTRODUCTION**

### **§ 18.101      Title**

This Code shall be known as the Sovereign Immunity Code of the Lac du Flambeau Band of Lake Superior Chippewa Indians.

### **§ 18.102      Authority**

This Code is enacted pursuant to the inherent sovereign authority of the Lac du Flambeau Band of Lake Superior Chippewa Indians, as recognized by the Band's treaties and by Article VI, section 1(a)(u) and section 4 of the Tribe's Constitution and Bylaws, which empowers the Tribal Council to promulgate codes and ordinances that protect the Tribe and protects the general welfare of its members, and reserves the right of the Tribal Council to exercise such rights that have not been abridged.

### **§ 18.103      Declaration of Policy**

It is the policy of the Band to exercise sovereign immunity from suit in all forums, and to grant limited waivers of such immunity only as expressly authorized by the Tribal Council, in order to protect Tribal resources and promote self-government.

### **§ 18.104      Purpose**

The purpose of this Code is to protect and preserve the Band's sovereign immunity, to define the entities and individuals entitled to that protection, and to specify the manner in which that immunity may be waived.

### **§ 18.105      Territorial Applicability**

This Code applies to all activities of the Band, its entities, officials, employees, and agents within the Lac du Flambeau Reservation and on all lands and waters under the Band's jurisdiction.

### **§ 18.106      Effective Date**

This Code is effective upon adoption by the Tribal Council, except as otherwise provided herein.

### **§ 18.107      Interpretation**

This Code shall be liberally construed in favor of the Band, and as a minimum requirement for the protection and preservation of sovereign immunity. Nothing herein shall be deemed a limitation or repeal of any other Tribal power or authority.

**§ 18.108      Severability and Non-Liability**

If any provision of this Code is held invalid, the remainder shall remain in effect. The Band, its agencies, employees, and agents are immune from liability for actions taken in reliance on this Code.

**§ 18.109      Repeal of Inconsistent Tribal Ordinances**

All prior codes and resolutions inconsistent with this Code are repealed. Where this Code imposes greater restrictions, its provisions govern.

**SUBCHAPTER 18.2 – DEFINITIONS**

**§ 18.201      General Definitions**

Unless otherwise indicated, terms used in this Code have the following meanings:

1. Agent: A person authorized to act on behalf of the Band for a specific transaction or transactions, including elected or appointed board, committee, or commission members.
2. Employee: Any individual employed by the Band or a Tribal Entity, subject to the Band's direction and control.
3. Elected Official(s): An enrolled Tribal member duly elected to represent the Band under the Constitution.
4. Legal Action: Any lawsuit, contract claim, tort, or other litigation proceeding in any court or forum, including mediation or arbitration.
5. Officer: A person elected or appointed to serve on a board, committee, or commission of the Band.
6. Reservation or Reservation Lands: Lands within the exterior boundaries of the Lac du Flambeau Reservation and off-reservation lands under the Band's jurisdiction.
7. Tribal Entity: A corporation or organization wholly owned by the Band and operated for governmental or commercial purposes, including those chartered under Tribal law or by Council resolution.
8. Tribe or Band: The Lac du Flambeau Band of Lake Superior Chippewa Indians, including all departments, divisions, and subdivisions.
9. Tribal Court: The Tribal Court established under Article X of the Constitution.
10. Tribal Council: The governing body of the Band under Article III of the Constitution.
11. Tribally Chartered Corporation: A corporation wholly owned by the Band, chartered under Tribal law or federal law (e.g., Section 17 of the Indian Reorganization Act, 25 U.S.C. § 5124).

**SUBCHAPTER 18.3 – SOVEREIGN IMMUNITY AND WAIVER**

**§ 18.301      Sovereign Immunity of the Band**

The Band’s sovereign immunity from suit in any court or forum is hereby reaffirmed. No suit or proceeding may be instituted or maintained against the Band, its officers, employees, or agents for actions within the scope of their authority, unless the Band has specifically waived immunity for that purpose by express Tribal Council resolution.

**§ 18.302      Sovereign Immunity of Tribal Entities**

Tribal Entities, including Tribally Chartered Corporations, possess sovereign immunity from suit to the same extent as the Band, unless immunity is expressly waived in accordance with this Code.

**§ 18.303      Waiver of Sovereign Immunity**

1. All waivers of sovereign immunity must comply with this Code and be made by express resolution of the Tribal Council, adopted at a regular session and recorded in the minutes.
2. A waiver is ineffective unless accompanied by a Tribal Council resolution specifying the limits, duration, grantee, and purpose of the waiver.
3. Limited waivers may be authorized by:
  - a. Express Council resolution;
  - b. Authorization in a Tribal Entity’s charter or bylaws, if expressly permitted by Council;
  - c. Council motion adopting an employment agreement with a limited waiver for enforcement in Tribal Court;
  - d. Council resolution authorizing a Tribal Entity to sue and be sued in its corporate name, limited to its own debts or obligations.
4. No waiver shall be deemed consent to levy any judgment, lien, or attachment upon Reservation Lands.

**§ 18.304      Ineffective Waiver of Sovereign Immunity**

A waiver is ineffective if:

1. There is no accompanying Council resolution;
2. There is no record of a regular Council meeting where the resolution was presented;
3. The resolution fails to identify the party for whom the waiver was granted;
4. The waiver is otherwise inconsistent with this Code.

**§ 18.305      Limited Waivers of Sovereign Immunity**

[Reserved – The Council may by ordinance specify standard waiver language, dollar limits, insurance requirements, and jurisdictional limits for business or employment

waivers.]

**§ 18.306 Waiver of Sovereign Immunity for Corporate Entities**

[Reserved – The Council may by ordinance specify detailed procedures for waivers involving Tribally Chartered Corporations, including conditions under which a corporation may be authorized to sue and be sued, limits on liability, and required resolutions.]

**SUBCHAPTER 18.4 – PROCEDURES AND LIMITATIONS**

**§ 18.401 Procedure to Determine Effective Waivers**

When a court or tribunal is tasked with determining whether sovereign immunity applies, it shall consider:

1. Whether the defendant is the Band, a Tribal Entity, or an instrumentality entitled to immunity;
2. The nature of the claim (governmental or proprietary/commercial);
3. The legal framework, including this Code, the Constitution, and applicable federal law;
4. Whether any recognized exceptions or waivers apply;
5. Whether the waiver complies with this Code;
6. Jurisdictional issues;
7. Public policy considerations.

**§ 18.402 Waiver of Sovereign Immunity – Tribal Officials**

Only by express Council resolution may the Band provide a limited waiver to allow Tribal officials to be named as defendants or permit claims against them for acts within the scope of their official duties. Any such waiver must specify the scope, duration, grantee, and limitations, and comply with documentation requirements.

**§ 18.403 Waiver of Sovereign Immunity – Tribal Employees**

Only by express Council resolution may the Band provide a limited waiver to allow claims against Tribal employees for acts within the scope of their employment. Any such waiver must specify the scope, duration, grantee, and limitations, and comply with documentation requirements.

**§ 18.404 Testimony and Document Production**

A limited waiver to permit testimony or production of documents in response to a subpoena may be granted only by express Council resolution, and only for the limited purposes stated therein. Such waiver does not extend to testimony or documents not directly relevant to the limited purposes expressed.

**§ 18.405      Enforcement Against Tribal Assets**

No waiver of sovereign immunity shall be deemed consent to execution, levy, or attachment against Reservation Lands. The Council may specify by ordinance the extent to which non-Reservation assets may be subject to execution, consistent with federal law.

**§ 18.406      Consistency with Federal Law**

Nothing in this Code shall be construed to waive immunity in any manner inconsistent with federal law, including but not limited to the Indian Reorganization Act (25 U.S.C. § 5124), the Indian Civil Rights Act (25 U.S.C. § 1301 et seq.), or any federal statute or regulation that abrogates or limits Tribal sovereign immunity.

**SUBCHAPTER 18.5 – RESERVED AND MODEL WAIVER LANGUAGE**

**§ 18.501      Model Council Resolution Template**

[Reserved – The Council may adopt a model resolution template for all waivers, specifying required fields: resolution number, meeting date, minutes citation, grantee, scope and duration, assets or liabilities subject to waiver, court(s) with jurisdiction, applicable law, insurance/indemnity requirements, and signatures.]

**§ 18.502      Model Limited Waiver Language**

[Reserved – The Council may adopt standard limited waiver language for contracts, employment agreements, and other transactions.]

**Legislative History and Cross-References**

1. This Code is enacted under the authority of Article VI, Section 1(s) of the Constitution and Bylaws.
2. The Tribal Court’s jurisdiction is defined in Article X of the Constitution.
3. Nothing in this Code shall be construed as a general waiver of sovereign immunity.

**RESOLUTION NO. 73(26)**

**WHEREAS,** the Lac du Flambeau Band of Lake Superior Chippewa Indians ("Tribe"), is a federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934, 25 U.S.C. §5123 et. seq.; and

**WHEREAS,** pursuant to Article III, Section 1 of the Lac du Flambeau Constitution ("Constitution"), the governing body of the Tribe is the Tribal Council; and

**WHEREAS,** a Tribal Referendum was held on March 3, 2026; and

**WHEREAS,** the following questions were put forth and voted on by the voting membership of the Tribe:

1. "Do you approve the proposed Chapter 17: Code of Ethical Conduct?"  
Yes \_\_\_\_\_ No \_\_\_\_\_
2. "Do you approve the proposed Chapter 18: Sovereign Immunity Code?"  
Yes \_\_\_\_\_ No \_\_\_\_\_
3. "Do you approve the proposed Chapter 19: Boards, Commissions & Committee Code?"  
Yes \_\_\_\_\_ No \_\_\_\_\_
4. "Do you approve the proposed Chapter 85: Appellate Court Code?"  
Yes \_\_\_\_\_ No \_\_\_\_\_

and;

**WHEREAS,** Question 1 with seventy (70) total voters and zero spoiled, the outcome was as follows:  
Question 1. Yes: 53 No: 17  
Question 2 with seventy (70) total voters and zero spoiled, the outcome was as follows:  
Question 2. Yes: 57 No: 13  
Question 3 with seventy (70) total voters and zero spoiled, the outcome was as follows:  
Question 3. Yes: 52 No: 18  
Question 4 with seventy (70) total voters and zero spoiled, the outcome was as follows:  
Question 4. Yes: 52 No: 18

and;

**WHEREAS,** the Tribal Council wishes to accept the Certification of Tribal Referendum Election Results for March 3, 2026; now, therefore be it


**RESOLVED,** by this Council in Regular Session assembled, hereby accepts the March 3, 2026 Tribal Referendum Election Results regarding Chapters 17, 18, 19 & 85, and, be it finally

**RESOLVED,** ballots shall be destroyed after May 3, 2026.

**CERTIFICATION**

I, the undersigned, as Secretary of the Lac du Flambeau Band of Lake Superior Chippewa Indians, a tribal government operating under a Constitution adopted pursuant to Section 16 of the Indian Reorganization Act, 25 U.S.C. §5123, do hereby certify that the Tribal Council of the Band is composed of twelve members, of whom ten constituting a quorum, were present at a Regular Meeting, duly called,

noticed, convened, and held on the 12th Day of March, 2026, and that the foregoing resolution was duly adopted at said meeting by an affirmative vote of eight members, (g. Cobb, s. Mitchell, z. Allen, k. mares, w. Mitchell, sr., s. Armstrong; b. Wayman, s. Thompson) ,none against, one abstaining,(np) and that the said resolution has not been rescinded or amended in anyway.

  
Betty Wayman, Secretary Pro-Tem  
Lac du Flambeau Band of Lake  
Superior Chippewa Indians