



Quinault Indian Nation

POST OFFICE BOX 189 • TAHOLAH, WASHINGTON 98587 • TELEPHONE (360) 276-8211

QUINAULT BUSINESS COMMITTEE RESOLUTION NO. 17-399-96

A RESOLUTION APPROVING REVISIONS TO QUINAULT TRIBAL CODE TITLE 97, TRIBAL EMPLOYMENT RIGHTS

WHEREAS, the Quinault Business Committee is the recognized governing body of the Quinault Indian Nation under the authority of the Quinault Indian Nation's Constitution adopted by the Quinault General Council on March 22nd, 1975; and

WHEREAS, Article V, Section 3(b) of the Constitution of the Quinault Indian Nation specifically grants the Business Committee the power to provide for the execution and enforcement of the laws of the Quinault Nation; and

WHEREAS, Article V, Section 3(o) of the Constitution of the Quinault Indian Nation specifically grants the Business Committee the power to exact all laws which shall be necessary and proper for carrying into execution and power delegated to the Business Committee or any person or committee under the supervision of the Business Committee; and

WHEREAS, Title 97 of the Quinault Tribal Code governs and enforces Indian preference in employment, contracting, subcontracting and business opportunities within the Quinault Indian Nation's jurisdiction; and

WHEREAS, the Quinault Office of the Attorney General and the TERO Commission have proposed amendments to Title 97; and

WHEREAS, public hearings were held at Taholah on October 17, 2016, and at Queets on October 19, 2016 in accordance with the Constitution; and

WHEREAS, the Business Committee finds that it is in the best interest of the Quinault Indian Nation to approve the amendments to Title 97.

NOW THEREFORE, BE IT RESOLVED, that the Quinault Business Committee **approves** the attached amendments to Title 97 of the Quinault Tribal Code.

BE IT FURTHER RESOLVED that the amended Title 97 shall go into effect on December 1, 2017.



Fawn R. Sharp, President
Quinault Indian Nation

CERTIFICATION

As Secretary of the Quinault Business Committee, I hereby certify that the foregoing resolution was duly enacted by the Quinault Business Committee in Taholah, Washington, at a regular meeting held on November 27, 2017 by a vote of 7 For, 0 Oppose, and 1 Abstaining.



Latosha Underwood, Secretary
Quinault Business Committee

TITLE 97
Chapters 01 – 05
TRIBAL EMPLOYMENT RIGHTS

TABLE OF CONTENTS

97.01	GENERAL PROVISIONS	
97.01.010	Declaration of Policy	1
97.01.020	Purpose.....	2
97.01.030	Notification	2
97.01.040	Authority	2
97.01.050	Applicability	2
97.01.060	Definitions.....	3
97.01.070	Severability; Sovereign Immunity Preserved	5
97.02	COMMISSION AND DEPARTMENT	
97.02.010	Commission	5
97.02.020	Powers of Commission	5
97.02.030	Recusal of Commission Members	7
97.02.040	Authority and Responsibilities of the TERO Manager	8
97.03	PREFERENCE REQUIREMENTS	
97.03.010	Employment Rights Program.....	9
97.03.020	Advertisement and Publication	11
97.03.030	Compliance Plan	11
97.03.040	Employment Rights Fee.....	12
97.03.050	Workforce	13
97.03.060	Training.....	14
97.03.070	Tribal Minimum or Prevailing Wage.....	15
97.03.080	Compliance by Unions.....	16
97.04	CERTIFICATION OF NATIVE AMERICAN OWNED BUSINESSES (NAOB)	
97.04.010	Certification of Native American Owned Businesses (NAOB)	17
97.05	ENFORCEMENT	
97.05.010	Prohibited Activities	17
97.05.020	Complaints	18
97.05.030	Investigations	21
97.05.040	Hearings	22
97.05.050	Penalties	23
97.05.060	Appeals	24
97.05.070	Retaliation or Reprisal	25
97.05.080	Compliance Monitoring.....	25

TITLE 97
Chapters 01 – 05
TRIBAL EMPLOYMENT RIGHTS

97.01 GENERAL PROVISIONS

97.01.010 Declaration of Policy

(a) As a guide to the interpretation and application of this Title, the public policy of the Quinault Indian Nation is declared to be as follows:

(1) Like land, water, and minerals, jobs, subcontracts and contracts in the private sector On or Near the Quinault Reservation are an important resource for Indian people; and Indians must use their rights to obtain their rightful share of such opportunities as they become available. Indians have unique and special employment rights based on their status as Indians; and the Quinault Indian Nation has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of Indians. Indian preference laws have been adopted by the Federal government to combat employment discrimination against Indians based on their status as Indians; and tribal governments can and should play a role in the enforcement of those laws.

(2) The Quinault Indian Nation believes it is important to establish an employment rights program and office in order to use the aforementioned laws and powers to increase employment of Indian workers and businesses, assist in and require the fair employment of Indians On or Near the Quinault Reservation, and to prevent discrimination against Indians in the employment practices of Reservation Employers.

(3) This Title is enacted to require Employers doing business On or Near the Reservation or on lands owned by the Nation to give preference to enrolled members of the Quinault Indian Nation and other Indians in employment, hiring, training, contracting, subcontracting and promotion.

(4) It shall be a violation of this Title for an Employer subject to this Title to take any adverse personnel or hiring action or to retaliate in any way against any person who attempts to enforce the requirements under this Title. Employers found by the Commission pursuant to an adjudicatory hearing, to have engaged in retaliation shall be subject to appropriate sanctions to be imposed by the TERO Commission or any other Entity of the Quinault Indian Nation with jurisdiction over the Employer.

97.01.020 Purpose

- (a) To promulgate Tribal laws and rules for governing preference in employment, contracting, subcontracting and business opportunities within Tribal jurisdiction.
- (b) To assist with compliance under this Title and enforce the laws governing Indian employment preference and contracting preference.
- (c) To disseminate information regarding unlawful employment discrimination by state, county, city and private Employers subject to Title VII of the Civil Rights Act of 1964 who are operating On or Near the Quinault Reservation.
- (d) The Nation desires to attract qualified employees, particularly Tribal Members, to the tribal work force. It is the desire of the Nation to effectively compete with other Employers for personnel who have the abilities and skills necessary to effectively sustain and enhance the Nation's self-government and to further tribal economic development goals and render quality services to Tribal Members. It is of crucial importance to create employment and training opportunities for Tribal Members and for other Indians, and to eliminate employment discrimination against Indian people. An integral part of attaining this goal is constituted by the structuring of employment and training opportunities so as to provide for the hiring of Indians who are qualified and for the training of Indians in those areas in which there is not a sufficient number of qualified Indians to meet the employment opportunities.

97.01.030 Notification

The TERO Department shall make good faith efforts to educate all Employees, Employers, contractors and the public on TERO and employment, hiring and preference laws. All contracting agencies and entities are required to notify subcontractors of their obligations under this Title. Failure to receive notification or ignorance of the law is not a defense in any enforcement action under this Title.

97.01.040 Authority

The Quinault Indian Nation Business Committee enacts this Title in accordance with the authority granted to it by the Quinault Indian Nation Constitution and its inherent sovereign power.

97.01.050 Applicability

- (a) Unless clearly and expressly prohibited by federal law or tribal law, this Title applies to Employers as defined under this Title that are Engaged in Work On or Near the Reservation or on all lands owned by the Nation, whether in fee or in trust.

(b) All persons, entities, agencies, contractors and businesses under the jurisdiction of this Title shall comply with all applicable tribal law and policies, except as provided in this Title.

97.01.060 Definitions

(a) “Business Committee” shall mean the Quinault Business Committee.

(b) “Commission” shall mean the Quinault Tribal Employment Rights Commission, which shall be duly appointed by the Quinault Business Committee.

(c) “Construction” shall mean the construction, rehabilitation, alteration, conversion, extension, demolition or repair, remodel or improving of buildings, structures, roads, or other changes or improvements to real property, including facilities providing utility services. It includes dredging, shoring, drilling, blasting, excavating, and clearing required for construction. It includes the supervision, inspection, and other onsite functions incidental to the actual construction. It includes manufacturing or furnishing of materials, articles, supplies, or equipment on the construction site. It includes transportation of materials and supplies to the construction site. Construction does not include preliminary planning, engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other similar actions necessary for the construction. Construction does not include manufacturing, or furnishing of materials other than on the site, or servicing and maintenance work.

(d) “Construction Employer” shall mean any contractor or subcontractor that is a party to a Construction Contract.

(e) “Contract” and “Subcontract” are intended to be interpreted broadly and shall apply to all contracts, whether written or oral, including but not limited to contracts for Construction, supplies, materials, services and equipment unless otherwise exempted under this Title.

(f) “Employee” means a person who works for another for payment or other compensation. For the purposes of this Title, an Employee is not an independent contractor. An Employee may also be referred to as a “worker” in this code.

(g) “Employer” means any person, company, contractor, subcontractor, partnership, corporation or other Entity, including tribal entities, that employs three or more Employees who are Engaged in Work On or Near the Reservation.

(h) “Engaged in Work On or Near the Reservation” means if during any portion of a business enterprise, specific project, Contract or subcontract, an Employer or any Employer’s Employee spends fifty percent or more time performing work within the exterior boundaries of the Reservation or near the Reservation (as defined in this Title) during a 30-day period.

- (i) “Entity” means any person, partnership, corporation joint venture, governmental enterprise, or any other natural or artificial person or organization. The term “Entity” is intended to be as broad and encompassing as possible to ensure coverage over all employment and Contract activities within the Nation’s jurisdiction and the term shall be so interpreted by the Commission and the courts.
- (j) “Facility” means any permanent or temporary structure located on the Reservation which is owned, leased, operated or used by an Employer or any of the Employer’s Employees. Facility also means any Construction job site located on the Reservation.
- (k) “Indian” shall mean any member of a federally recognized tribe.
- (l) “Local Indian” shall mean any member of a federally recognized tribe who resides either within the exterior boundaries of the Quinault Indian Reservation or within 60 miles of the Reservation.
- (m) “Manager” means the manager of the Tribal Employment Rights Office.
- (n) “Minimum Threshold” means a minimum level that any job applicant shall be required to meet prior to Indian Preference being applied to that job applicant. Criteria to establish a Minimum Threshold may be established by but are not limited to the following: Job Descriptions; Interview Committees; Skills Tests; RFP’s and License Requirements; or Other Job Requirements.
- (o) “Nation” shall mean the Quinault Indian Nation.
- (p) “Native American Owned Business” or “NAOB” shall mean a business Entity which is at least 51 percent owned, operated and managed by Indians and has been certified by TERO.
- (q) “On or Near” shall mean within the boundaries of the Reservation or the distance within that area surrounding the Reservation or land owned by the Nation that a person seeking employment could reasonably be expected to commute to and from in the course of a workday.
- (r) “QNEB” shall mean the Quinault Nation Enterprise Board.
- (s) “Reservation” shall mean all land within the exterior boundaries of the Quinault Reservation and fee or trust land under the jurisdiction of the Quinault Indian Nation wherever it is located.
- (t) “Tribal Member” shall mean any person who is an enrolled member of the Quinault Indian Nation.

97.01.070 Severability; Sovereign Immunity Preserved

- (a) If any provision of this Title or its application to any person or circumstance is held invalid, the remainder of the Title or the application of the provision to other persons or circumstances is not affected.
- (b) Nothing in this Title is to be construed as a waiver of the Nation's sovereign immunity from unconsented lawsuit nor as consent by the Nation to bring an action against the Nation, its officers or any of its departments or entities.

97.02 COMMISSION AND DEPARTMENT

97.02.010 Commission

- (a) The Commission shall administer the Employment Rights Program of the Nation in accordance with this Title.
- (b) The Commission shall be composed of five commissioners appointed by the Business Committee. The Commission shall serve at the pleasure of the Business Committee until replaced. In the absence of a duly constituted Commission, the Commission shall be the Business Committee.
- (c) The term of office shall be three years. To ensure continuity, the Commission's terms shall be staggered and upon any Amendment to this Title, the Business Committee shall appoint two members to three-year terms and the remaining three members to two-year terms.
- (d) The Commission shall designate one commissioner as Chairperson and one commissioner as Vice-Chairperson.
- (e) A majority of three Commission members shall constitute a quorum to transact business. The Business Committee liaison(s) may constitute the quorum if necessary. When a vacancy occurs in the Commission, the remaining members may exercise all the powers of the Commission until the vacancy is filled.
- (f) Members of the Commission shall be compensated by a meeting stipend established by the Business Committee, and for any other necessary expenses incurred as a result of acting in an official capacity under this Title. Any additional compensation shall be established by the Business Committee.
- (g) The Business Committee shall establish By-Laws for the Commission.

97.02.020 Powers of Commission

- (a) The Commission has the full power, jurisdiction and authority to:

- (1) Establish, adopt, amend and rescind rules, regulations and guidelines necessary to carry out the provisions of this Title, subject to ratification by the Business Committee. Ratification shall be by resolution of the Business Committee. The Commission shall provide the public with a reasonable time for comment before promulgating any final regulations.
- (2) Research and provide recommendations on prevailing wages to the Business Committee for approval.
- (3) Establish and impose numerical hiring goals and timetables that specify the minimum number of Indians an Employer, contractor, subcontractor or Entity must hire, by craft or skill level.
- (4) Require Employers to establish or participate in such applicable and reasonable training programs as the Commission determines necessary in order to increase the pool of Indians eligible and qualified for employment on the Reservation.
- (5) Establish and administer the Tribal Hiring Hall and require Employers to use the Hiring Hall.
- (6) Require that no Employer covered by this Title hire a non-Indian until the Tribal Hiring Hall has certified that no qualified Indian is available to fill the vacancy.
- (7) Prohibit Employers from using qualification criteria or other personnel requirements that serve as barriers to Indian employment unless the Employer can demonstrate that such criteria or requirements are required by business necessity.
- (8) Enter into agreements with unions to insure union compliance with this Title.
- (9) Require Employers to give preference to Tribal and other Native American Owned Businesses in the awarding of contracts and subcontracts.
- (10) Develop administrative rules to implement the certification of Native American Owned Businesses which shall include provisions and procedures for revocation of such certifications.
- (11) Establish counseling programs to assist Indians in obtaining and retaining employment.
- (12) Hold hearings and subpoena witnesses and documents in accordance with this Title. The TERO Commission shall have no authority or jurisdiction to hear or adjudicate complaints brought by Quinault Tribal Employees that are not specifically authorized under this Title. The TERO Commission shall promulgate

simple and fair rules to govern its adjudications and is authorized to issue compliance orders and impose civil penalties in the form of fines.

(13) Require Employers to submit reports.

(14) Require Employers to submit acceptable compliance plans indicating how it will comply with this Title before commencing work On or Near the Reservation.

(15) Take any action consistent with this Title for the fair and vigorous implementation of the Title.

(b) The Commission may delegate to the Manager authority under this Section as is necessary or convenient to the efficient administration of this Title, except the Commission shall not delegate its power or duty to:

(1) Adopt, amend and rescind rules, regulations or guidelines.

(2) Conduct hearings or impose sanctions pursuant to this Title.

97.02.030 Recusal of Commission Members

(a) No member of the Commission shall have contact with a complainant, witness or other interested party regarding the specifics of an appeal prior to a Commission hearing. If a Commissioner is approached by a party, witness or any other interested person outside the formal hearing process, it shall be the duty of the Commissioner to explain they are prohibited from discussing any aspects of the complaint or appeal. If information pertaining to the appeal or matters at issue in a hearing is shared with a Commissioner, the Commissioner shall disclose the existence of such communications on the record prior to the hearing. If the communication involved sharing of evidence or argument regarding the appeal outside the hearing process, the Commissioner shall be recused from participating in the hearing.

(b) A Commissioner shall not participate in any action, hearing, or decision where that Commissioner or the Commissioner's immediate family member has a financial or business interest (contractual or otherwise) in the transaction or Entity involved in the hearing or is an Employee of such Entity. For purposes of this section, "immediate family" means, including by adoption, brother, sister, son, daughter, mother, father, husband, wife, step-brother, step-sister, half-brother, and half-sister.

(c) In situations where recusal is not required, a Commissioner should nonetheless recuse themselves if the Commissioner believes that:

(1) He or she cannot act fairly or without bias; or

(2) There is an appearance that he or she cannot act fairly or without bias.

(d) A Commissioner, the Commission, or other interested party may request recusal of a Commissioner if they believe that a Commissioner is unable to act in a fair and impartial manner due to a relationship of any kind. In this circumstance, the other Commissioners may hear arguments and review evidence, including testimony, and make a determination on recusal by majority vote. The decision of the Commission shall be final and not subject to appeal.

97.02.040 Authority and Responsibilities of the TERO Manager

(a) The Nation shall hire a Tribal Employment Rights Manager. The Manager and TERO staff are employees subject to the Nation's personnel policies. The Manager and TERO staff shall report administratively in accordance with the organizational chart, as approved by the Business Committee. Only the Manager shall have the authority to interact with the Commission.

(b) The TERO Manager shall carry out the day-to-day administrative operations to enforce this Title. The authority and duties shall include, but are not limited to, the following:

- (1) Implement and enforce the provisions of this Title.
- (2) Administer the TERO Department and budget, which includes expending funds appropriated for the Tribal Employment Rights Department by the Business Committee and seeking funding from federal, state, or other sources to supplement the appropriations, subject to Business Committee approval.
- (3) Hire staff pursuant to the Nation's personnel policies.
- (4) Recommend to the Commission regulations, amendments and agreements.
- (5) Develop, implement and enforce TERO policies and procedures, subject to approval by the Commission and ratification by the Business Committee.
- (6) Coordinate and provide reports for Commission meetings.
- (7) Investigate and process complaints alleging violations of this Title to provide due process.
- (8) Negotiate with Employers regarding workforce requirements and TERO fee payment schedule.
- (9) Educate Construction Employers regarding Minimum Wage and Prevailing Wage requirements.
- (10) Provide education and training options, to eliminate barriers to employment and enhance employment opportunities for Native Americans.

(11) Submit a work plan for approval by the Commission on an annual basis.

(12) Certify that a business Entity meets the definition of a Native American Owned Business as set forth in Section 97.04.010 for purposes of Indian preference and for documentation of minority small business contract eligibility or claimed exemptions from state taxation and wage performance bond requirements; provided however, that certification as provided herein shall not oblige the Commission or the Manager to advocate the claims of private individuals and entities before any agency of another government.

(c) The Manager shall represent the TERO at TERO Commission hearings and Quinault Business Committee meetings.

97.03 PREFERENCE REQUIREMENTS

97.03.010 Employment Rights Program

(a) All Employers Engaged in Work On or Near the Reservation or who maintain a Facility shall give preference to Indians in all hiring, promotion, training, layoffs, contracting or subcontracting and all other aspects of employment, whether part-time or fulltime. Such Employers shall comply with this Title and the rules, regulations, guidelines and orders of the Commission or its Manager. These requirements shall not apply to any direct employment by the Quinault Indian Nation or by federal, state or other governments or their subdivisions. It shall apply to all contractors or grantees of such governments and to all commercial enterprises operated by such governments.

(b) An Indian shall be qualified for employment in a position if he or she meets the Minimum Threshold requirements for such position and such Indian shall be accorded the preferences to which he or she is entitled under this Title.

(c) Section 97.03.010(a) shall apply to all contractors and subcontractors of Employers, regardless of tier, and shall be deemed a part of all Contract or subcontract specifications. The Employer shall be subject to the penalties herein for violation of this Title if the contractor or subcontractor fails to comply with any of the provisions of this Title.

(d) Employers shall give preference in the awarding of contracts or subcontracts to Native American Owned Businesses; provided that NAOBs owned by Quinault Tribal Members shall be given preference over other NAOBs. The Tribal Employment Rights Office shall maintain a list of NAOBs and shall supply the list to Employers.

(e) Employment, Contract and subcontract preference shall be in the following order:

(1) For contracts and employment not using federal funds:

(A) Members of the Quinault Indian Nation.

(B) Spouses, parent of a Tribal member child, biological child born to an enrolled Quinault Tribal member, current legal guardian of a Tribal member dependent child (with a proper letter of temporary or permanent legal guardianship from a court), or a person in a domestic partner relationship with a Tribal member, provided that the couple lives in the same house and have children together.

(C) Other Natives/Indians, including Alaska Natives, Hawai'ian Natives and members of Canadian First Nations.

(2) For contracts using federal funds:

(A) Local Indians.

(B) Indians who are not Local Indians.

(f) In all layoffs or reductions in workforce, Employers shall maintain required ratios of Indian Employees.

(g) Employers shall give Indians preferential consideration in all promotion opportunities and shall encourage Indian Employees to seek such opportunities.

(h) Employers shall give Indian students preferential consideration for summer or after-school student employment.

(i) Exceptions.

(1) The following exceptions apply to the QNEB, enterprises and businesses of the Quinault Indian Nation:

(A) The Commission shall negotiate numerical hiring goals and timetables with the QNEB and incorporate such goals and timetables into the QNEB compliance plan.

(B) The QNEB and the Nation's enterprises are not required to advertise positions as provided in Section 97.03.020 before advertising publicly, but may do so concurrently so long as the minimum time periods set forth in this Title are met. The QNEB and the Nation's enterprises shall not be required to hire a TERO worker who has been convicted of violent or financial crimes or who has a history of sexual or other harassment, as provided by the requirements of QNEB's or the enterprise's personnel policies.

(C) Quinault enterprises that require immediate temporary employees to handle perishable product shall contact the Hiring Hall to request workers. If no TERO workers are immediately available, then the enterprise may hire from other sources.

(D) The process for resolving complaints concerning the QNEB and the Nation's enterprises shall be described in the compliance plan(s) for those enterprises and shall include an alternative dispute process.

(E) The QNEB and the Nation's enterprises are exempt from paying an employment rights fee.

(2) Companies that contract with the Bureau of Indian Affairs, the Quinault Indian Nation, and/or the Quinault Land and Timber Enterprise for the purpose of extracting resources from trust or tribally-owned restricted fee land (*e.g.*, timber) are exempt from paying an employment rights fee.

(3) Construction projects that will be completed in five business days or less are exempt from the requirements of this Title, regardless of the number of Employees or the cost of the Contract.

97.03.020 Advertisement and Publication

(a) All employment opportunities subject to this Title, including newly created jobs, will be advertised with the TERO Department prior to advertising in other publications or to the general public. The advertisement will include base pay and will be posted for a minimum of five business days for hourly positions, and ten business days for salaried positions.

(b) The Commission shall notify all Employers of this Title and their obligations to comply. All bid announcements, requests for proposals and requests for qualifications issued by any Tribal, Federal, State or other Entity shall contain a statement that the successful bidder must comply with this Title; and the Commission or Manager shall send a copy of this Title to every Employer.

(c) All Employers required to obtain a business license pursuant to Title 40 shall be informed by the agency issuing said license of their obligations under this Title.

97.03.030 Compliance Plan

(a) No Employer may commence work On or Near the Reservation until the Employer has submitted a compliance plan, approved by the Commission or the Manager, setting forth how the Employer intends to meet the Employer's obligations under this Title. Contractors engaged in work without an approved compliance plan will be required to stop work until an acceptable plan for implementing their obligations has been submitted to TERO and has been approved.

(b) An Employer shall submit a proposed compliance plan to the TERO Office at least 72 hours prior to commencing work on the Reservation or on Tribal projects off the Reservation. The TERO Manager shall approve or renegotiate the compliance plan within two business days after submission. If the Employer believes that the TERO Manager is arbitrarily withholding approval of the compliance plan, then the Employer may appeal to the Nation's Chief Operations Officer.

(c) An Employer that commences work without an approved compliance plan shall be subject to a stop work order issued by TERO. The stop work order will be lifted upon submission and approval of a compliance plan; however, failure to submit a compliance plan within 72 hours of the issuance of the stop work order may also subject the Employer to penalties as provided in this Title.

(d) If an Employer has failed to comply with the requirements of this section, neither TERO nor the Nation shall be liable for any losses incurred when the Employer is not permitted to commence work.

(d) The approved compliance plan shall constitute a binding agreement, the terms of which shall be fully enforced by the TERO. Failure to obtain or adhere to the terms of an approved compliance plan or supplying false information to TERO shall subject the noncomplying party to monetary penalties up to \$1000.00 per violation per day.

97.03.040 Employment Rights Fee

An employment rights fee is imposed as follows:

(a) Every Employer with a Construction Contract, in the sum of \$10,000.00 or more, or more than one Contract in a 12-month period and the aggregate sum of those contracts is \$10,000.00 or more, shall pay a one-time fee of 1.75 percent of the total amount of each Contract. Such fee shall be paid by the Employer prior to commencing work On or Near the Reservation. However, where good cause is shown, the Manager may authorize a Construction Employer to pay said fee in installments over the course of the Contract.

(b) Every other Employer, other than Construction Employers, with five or more Employees working on the Reservation, or with gross sales or income on the Reservation of \$10,000.00 or more shall pay a quarterly fee of 1.75 percent of the gross quarterly payroll for those Employees Engaged in Work on the Reservation, which shall be paid within 30 calendar days after the end of each quarter. This fee shall not apply to education, health, governmental or nonprofit Employers, nor to utilities franchised by the Quinault Indian Nation.

(c) The fees shall be paid to the Quinault Indian Nation. Any Employer who fails to pay the required fees within 30 calendar days shall be subject to the penalties provided in Section 97.05.050. All funds from fees and other sources will be managed through the Nation's budget process.

- (d) No fees shall be passed on to the contracting entity, including but not limited to as a change order or as part of the bid or Contract amount.
- (e) Fees may be waived at the discretion of the Business Committee and/or the Commission.
- (f) If for any reason, the cost of the project increases or decreases, the contracting agency or general contractor shall notify TERO of this change and any additional TERO fee shall be assessed and paid or refunded.

97.03.050 Workforce

(a) Hiring Requirements.

- (1) In accordance with the compliance plan, each Employer shall negotiate TERO preference hiring goals to maximize preference for positions outlined in the compliance plan.
- (2) Employers shall not create unnecessary or excessive job skill requirements.
- (3) Employers shall give preference at all times when filling vacant positions so long as the worker is qualified. Construction Employers may be required to replace a non-TERO worker who is not a key Employee with a qualified TERO worker if one becomes available.
- (4) TERO reserves the right to negotiate up to 100 percent TERO hiring goals specifying the number of TERO workers the Employer shall hire by craft and skill level.
- (5) Construction Employers must contact TERO for employee dispatch 72 hours prior to commencing work to negotiate the workforce and to find qualified workers. If no TERO workers are available, the Construction Employer may recruit from other resources. After receiving adequate justification, TERO will review and make a determination on a case-by-case basis either to approve or deny any exception from this requirement.
- (6) TERO is authorized to order removal and/or issue sanctions if any non-Native preference Employees are not listed on the Employer's approved compliance plan. In deciding whether the Employee should be removed, the TERO shall consider whether any qualified Natives applied.
- (7) Apprenticeship programs and/or positions may be considered in meeting employment preference goals.

(8) All Construction Employers shall compensate their Employees at a rate not less than the approved Quinault Construction wage scale specified for their trade or the prevailing wage scale per Contract requirements, as provided in Section 97.03.080 of this Title. If the company is signatory to a Construction trade union, the current union pay scale with fringe benefits of that trade will be paid, in cash, unless otherwise specified through any other compliance plan or Contract; provided, that it is not less than the Quinault Construction wage scale.

(b) Permanent and Key Employee. Prior to commencing work On or Near the Quinault Indian Reservation, a prospective Employer shall identify permanent and key Employees.

(1) A permanent Employee is one who is and has been on the Employer's annual payroll for a period of one year continuously, working in a regular position for the Employer, or is an owner of the firm. An Employee who is hired on a project by project basis shall not be considered a permanent Employee.

(2) A key Employee is one who is in a top supervisory position or performs a critical function such that an Employer would risk likely financial damage or loss if that task were assigned to a person unknown to the Employer. An Employee who is hired on a project by project basis may be considered a key Employee so long as they are in a top supervisory position or perform a critical function.

(3) TERO will review permanent and key Employees on a case-by-case basis to ensure no actions were taken to circumvent the requirements of this section.

(4) An Employer may designate up to three non-preferred permanent and/or key Employees.

(c) Counseling and Support Programs. TERO will work with the Employer to provide referrals for TERO preference Employees for counseling and other support services to assist in retaining employment when determined necessary.

(d) Layoffs. TERO preference Employees shall not be laid off where non-TERO preference Employees are still working. If the Employer lays off Employees by crews, classifications or other categories, qualified TERO preference Employees shall be transferred to crews or positions that will be retained. This section does not apply to key or permanent Employees.

97.03.060 Training

Employers may be required by the Commission to participate in training programs to assist Indians to become qualified in the various job classifications used by the Employer. The ratio of Indian trainees to fully qualified workers shall be set by the Commission after consultation with the Employer. Employers with collective bargaining agreements with unions may use apprenticeship programs, so long as they obtain agreement from the unions to use only Indian preference

applicants as apprentices on the project. If no Indian preference apprentices are available, unions shall make available apprenticeship positions for Indian preference applicants.

97.03.070 Tribal Minimum or Prevailing Wage

(a) The Manager may promulgate a Tribal Minimum Wage or Prevailing Wage as provided in this Section. Such Tribal Minimum or Prevailing Wage shall only apply to Construction Employers. A Tribal Minimum or Prevailing Wage established under this subsection may be included in a compliance plan pursuant to section 97.03.030 of this Title. This section does not apply to affordable housing projects developed pursuant to the Native American Housing Assistance and Self Determination Act of 1996, which are covered by Quinault Tribal Code, Title 82.

(b) For purposes of this Section, the terms “Minimum Wage” and “Prevailing Wage” are defined as follows:

(1) Minimum Wage: Shall mean the lowest wage that the Construction Employer can pay any Employee, which Minimum Wage shall not be less than the federal minimum wage;

(2) Prevailing Wage: Shall mean the lowest wage that a Construction Employer can pay any Employee by trade or craft. A Prevailing Wage need not limit or put a cap on all Employees in a particular craft or trade.

(c) If the Manager elects to promulgate a proposed Minimum Wage or Prevailing Wage, the following factors shall be taken into consideration:

(1) The prevailing wage for each job classification in the Oregon or Washington wage classifications;

(2) The prevailing wages established by other Northwest Indian tribes;

(3) The number of Indians living On or Near the Reservation with the particular craft or trade skills;

(4) The Reservation unemployment rate – especially the unemployment rate for the particular craft or trade;

(5) Local labor and market conditions;

(6) The potential impact of the Prevailing Wage to attract businesses or Construction Employers to do business on the Reservation;

(7) The potential impact of the Prevailing Wage in raising the costs of Tribal facilities.

(d) The draft Minimum or Prevailing Wage shall be published in the Nugguam or other tribal newspaper with notice of the comment opportunity and comment deadline date and distributed to all Tribal governmental departments, enterprises and to persons or entities that may be impacted by such a proposal for review and comment. The record shall be kept open for at least 60 calendar days to permit comments to be submitted.

(e) Within 30 calendar days of the closing of the record for comments, the Manager shall either prepare a draft Minimum or Prevailing Wage, submit the proposed Minimum or Prevailing Wage to the Commission for its approval, or withdraw the proposal.

(f) Upon receipt of Commission approval, the draft Minimum or Prevailing Wage shall be submitted to the Business Committee for approval. The Minimum or Prevailing Wage shall become final upon Business Committee approval by resolution.

97.03.090 Compliance by Unions

(a) Any Employer that has a collective bargaining agreement with one or more unions shall obtain written agreement from such union(s) stating that the union shall comply with Indian preference laws contained in this Title, and the rules, regulations and guidelines or order of the Commission. Until such agreement is filed with the Commission, Employers shall not commence work on the Reservation. The agreement shall be subject to the approval of the Commission or the Manager.

(b) The contents of the agreement shall provide the following:

(1) An agreement that the union will give preference to Indians in job referrals regardless of which referral list they are on.

(2) An agreement that the union will cooperate with the Commission and the Manager and assist in the compliance and enforcement of this Title.

(3) An agreement that the union will establish a mechanism to allow Indians to register for job referral lists by telephone, email or mail.

(4) An agreement that the union will establish journeyman and apprenticeship programs for Indians and that all hours worked will be credited to the apprenticeship.

(5) An agreement that the union will grant temporary work permits to Indians who do not wish to join the union and that any union dues will be waived with respect to those Indians.

(c) The Commission will provide a model union agreement for use by all unions that have a collective bargaining agreement with the Employer.

- (d) Nothing herein shall constitute official tribal recognition or endorsement of any union or union activity.

97.04 CERTIFICATION OF NATIVE AMERICAN OWNED BUSINESSES (NAOB)

97.04.010 Certification of Native American Owned Business (NAOB)

- (a) An applicant seeking to be certified as a Native American Owned Business by TERO for preference in contracting shall submit a complete certification application to the Manager pursuant to TERO regulation.
- (b) The Commission reserves the right to exempt certain requirements if deemed not necessary for the type of service provided.
- (c) A NAOB shall report any changes of ownership or control status within 30 calendar days after such change has occurred. If at any time, Indian ownership drops below 51 percent, the Manager reserves the right to decertify the business. The Manager shall review the status of all NAOBs annually.
- (d) Denial of NAOB certification by the Manager may be appealed to the Commission. The written appeal must be received by the Commission within 14 business days of the denial notice. The Commission's decision is final and cannot be further appealed.
- (h) A business that has been denied certification may not reapply for at least 30 days, and then only if the business has remedied the reason(s) why it was denied certification.
- (i) Upon certification, a NAOB can request the TERO Department's assistance in registering as a Minority Business Enterprise with the State of Washington.
- (j) A NAOB is subject to decertification if the business engaged in prohibited activities or has changed its ownership and control so that it no longer meets the requirements for certification. Failure to notify the Manager of changes in ownership, control, or operations shall also be grounds for decertification. The Commission may review and recommend corrective action or training for a NAOB with a multiple nonperformance contract issue or multiple violations of this Title. If the NAOB refuses or does not comply with the Commission directive, they may be decertified.

97.05 ENFORCEMENT

97.05.010 Prohibited Activities

- (a) Employers shall not:
 - (1) Submit false or fraudulent information.

- (2) Knowingly make a false statement, whether by affidavit, verified statement, report or other representation to a Tribal official or employee as it relates to this Title.
 - (3) Operate a front or pass-through company.
 - (4) Prevent or interfere with a contractor's or subcontractor's compliance with this Title.
- (b) The list in 97.05.010(a) is not exhaustive and violations of any other provision in this Title shall be deemed a prohibited activity and Employers who engage in prohibited activities or commit any other violation in this Title shall be subject to its penalties.
- (c) TERO may request any and all relevant documentation deemed necessary by TERO to determine whether or not a violation has occurred.

97.05.020 Complaints

(a) Complaint Initiated by Employees Covered by this Title

(1) Any Employee or group of Employees covered by this Title who has or have cause to believe that an Employer has violated or failed to comply with the preference requirements imposed by this Title and/or by the regulations issued by the Commission, or have cause to believe they have been discriminated against by an Employer because they are Indians (or in the case of those Employees who are given preference for other reasons as described in Section 97.03.010(e), because of their status), may file a complaint with the Commission. A complaint shall be filed within 60 calendar days after the alleged violation(s) or discrimination occurred and shall be in writing and contain the date, place and circumstances of the alleged violation(s) or discrimination. The Employee is encouraged to attempt to resolve the matter with the Employer prior to filing a complaint.

(A) If the alleged discrimination has resulted in termination of the Employee(s), the Employee(s) may file the complaint concurrently with the Employer's grievance process.

(B) If the alleged discrimination has resulted in disciplinary action other than termination, the Employee(s) shall exhaust the Employer's disciplinary appeal process prior to filing a complaint with TERO.

(2) Upon receipt of a complaint, the Manager shall, in consultation with the Office of Attorney General, conduct a preliminary review to determine if TERO has jurisdiction over the complaint.

- (3) If the Manager makes a determination that the complaint does not allege a violation of this Title, the complaint shall be immediately dismissed, and/or referred to the proper department or agency.
- (4) If the Manager makes a determination that the complaint alleges a violation of this Title, the complaint shall be served by the Manager on the alleged violator(s) personally or by certified mail within five business days after the complaint is filed.
- (5) The alleged violator(s) shall provide a response to TERO within five business days of receipt of the complaint. If the violator fails to respond, then the Manager may proceed with an investigation of the complaint as provided in this Section.
- (6) TERO shall attempt to remedy the issue through mediation with both parties within 10 business days of receipt of the alleged violator's response. If the parties are unable to resolve the dispute through mediation, TERO shall complete a formal investigation within 15 business days of the close of mediation.
- (7) Upon a finding that the alleged violation(s) did not occur, the Manager shall so inform the complainant and the alleged violator(s) in writing within three business days of completion of the investigation.
- (8) Upon a finding that the alleged violation(s) did occur, the Manager shall issue a formal notice of non-compliance within five business days of completion of the investigation.
- (9) The formal notice shall set out the nature of the violation(s); and the steps that must be taken to come into compliance, as well as advise the Employer of the right to request a hearing. The Employer shall have five business days from the date of receipt of the formal notice, either to comply or to request a hearing. If the Manager or Commission has reason to believe irreparable harm will occur during that period, then the Manager or Commission may require that compliance occur within fewer than five days. If the Employer or Entity fails or refuses to comply and does not request a hearing, the Commission may proceed pursuant to Section 97.05.050.
- (10) If the Employer requests a hearing and the Manager has good cause to believe that there is a danger that the Employer will remove itself or its property from the jurisdiction of the Nation prior to the hearing, the Manager may, in his or her discretion, require the party to post a bond with the Commission in an amount sufficient to cover possible monetary damages that may be assessed against the Employer at the hearing. If the Employer fails or refuses to post said bond, the Commission may proceed pursuant to Section 97.05.050. The Manager may also petition the Quinault Tribal Court for such interim and injunctive relief as is appropriate to protect the rights of the Commission and other parties during the pendency of the complaint and hearing proceedings.

(b) Complaint Initiated by Manager or Commission

(1) The Manager or Commission shall have the authority to initiate a TERO complaint when there is reason to believe that an Employer has committed the following:

(A) Failure to comply with the preference requirements of this Title.

(B) Discrimination against Employees based upon their status as an Indian or as a person given preference for other reasons, as defined by this Title.

(C) Violation of the terms of an approved compliance plan.

(D) Failure to use the Hiring Hall.

The Commission or Manager shall notify the Employer of the complaint in writing and provide a written informal settlement offer. If an informal settlement is not achieved within 20 business days from the date the Employer was notified of the violation(s), a formal notice of non-compliance shall be issued.

(2) The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance, as well as advise the Employer of the right to request a hearing. The Employer shall have five business days from the date of receipt of the formal notice, either to comply or to request a hearing. If the Manager or Commission has reason to believe irreparable harm will occur during that period, the Manager or the Commission may require that compliance occur within fewer than five days. If the Employer fails or refuses to comply and does not request a hearing, the Commission may proceed pursuant to Section 97.05.050.

(3) If the Employer requests a hearing and the Manager has good cause to believe that there is a danger that the Employer will remove itself or its property from the jurisdiction of the Nation prior to the hearing, the Manager may, in his or her discretion, require the Employer to post a bond with the Commission in an amount sufficient to cover possible monetary damages that may be assessed against the Employer at the hearing. If the Employer fails or refuses to post said bond, the Commission may proceed pursuant to Section 97.05.050. The Manager may also petition the Quinault Tribal Court for such interim and injunctive relief as is appropriate to protect the rights of the Commission and other parties during the pendency of the complaint and hearing proceedings.

(c) Any Employer or union that believes any requirements imposed by this Title or rules, regulations or orders issued pursuant to it are illegal or erroneous, may file a complaint with the Commission. The complaint shall be filed within 60 calendar days after

the alleged error or illegality occurred and shall be in writing and contain the date, place and circumstances of the alleged error or illegality. The Commission or the Manager will attempt to achieve an informal settlement of the complaint. The terms of the settlement shall be in writing. If a settlement cannot be achieved within 20 business days after the complaint is filed, the complainant may request a hearing on the complaint.

97.05.030 Investigations

(a) The TERO staff shall have full investigative authority as deemed necessary to determine whether a violation as described in Section 97.05.020 has occurred or to aid in prescribing rules, regulations, and guidelines hereunder.

(1) TERO staff may enter, during business hours, the place of business or job site of any Construction Employer for the purpose of such investigations.

(2) For all other Employers, TERO staff shall provide at least 24 hours' notice of its intent to enter the place of business, what allegation(s) it intends to investigate and what documents it wishes to review.

(b) All reported incidents shall be investigated under the following guidelines:

(1) All information shall be kept confidential to the fullest extent possible, unless disclosure is required for further investigation, or during a hearing or appeal. However, TERO shall not allow the goal of confidentiality to be a deterrent to an effective investigation.

(2) TERO will not allow retaliation against any parties that may be included in the investigation or complaint process.

(3) An Employer may not be held liable for such acts of its Employees, if the Employer is able to establish that they took immediate and appropriate corrective action.

(c) If an Employer refuses to permit TERO staff from entering onto business premises during business hours or from reasonably inspecting or copying documents, the Manager may recommend to the Commission the imposition of a violation with fines.

(d) If the Manager is forced to seek enforcement of a Commission subpoena in Tribal Court, the Court may order, in addition to the penalties authorized by this Title, the assessment of attorney's fees and costs against the party found in violation of the Commission subpoena.

97.05.040 Hearings

A request for a hearing must be in writing and filed with the Commission as provided in Section 97.05.020. A hearing shall be held within 45 calendar days from the date the request for a hearing is filed. Hearings shall be governed by the following rules and procedures:

- (a) The parties shall be notified by certified mail of the date, time and place of the hearing and the reason for the hearing.
- (b) The Chairperson or Vice-Chairperson shall preside at the hearing and shall administer oaths and the Commission shall ascertain the facts in a reasonable and orderly fashion.
- (c) The Commission may request the advice or assistance of counsel provided by the Nation.
- (d) The parties may present testimony of witnesses and other evidence and may be represented by counsel at their own expense.
- (e) If any party retains an attorney, they must give a 14-day notice to TERO of their intent to have legal representation. At that time, TERO will request that the Office of Attorney General represent TERO until completion of the matter.
- (f) The hearing may be continued or adjourned or postponed at the discretion of the presiding officer.
- (g) The technical rules of evidence shall not apply at the hearing.
- (h) All hearings must be audio recorded.
- (i) In any hearing, the burden of proof shall be on the party requesting the hearing. Such burden of proof shall be by a preponderance of the evidence that TERO was incorrect in finding a violation of this code or the regulations adopted under it, or that any proposed penalty, sanction, award, or required action ordered by TERO is incorrect or unwarranted.
- (j) At the close of the hearing, the Commission may take immediate action or take the matter under advisement.
- (k) Within 30 calendar days after the close of the hearing, the Commission shall notify the parties of its decision and shall enter written findings of fact and conclusions of law.
- (l) The Commission shall adopt any other rules of practice or procedure to govern the conduct of a hearing and such rules shall not require a public hearing before adoption.

97.05.050 Penalties

(a) If, after a hearing, the Commission determines that the violation(s) alleged in the complaint occurred and that the party charged has no adequate defense in law or fact, or if no hearing is requested, the Commission or Manager determines that any Employer, union, contractor or subcontractor has committed a violation as described in Section 97.05.020, the violator(s) will be subject to penalties for such violation(s), including but not limited to the following:

- (1) Denial of the right to commence or continue business on the Reservation;
- (2) Suspension of operations on the Reservation;
- (3) Termination of operations on the Reservation;
- (4) A prohibition on future operations on the Reservation;
- (5) An order of payment of back pay and/or damages to any injured party;
- (6) An order that Employees hired in violation of this Title, rules, regulations or order of the Commission be summarily removed;
- (7) For Employers operating pursuant to a Contract, the imposition of a monetary penalty per violation and per day, based on the amount of the Contract as follows:

(A) Less than or equal to \$10,000	\$100
(B) More than \$10,000 but less than or equal to \$50,000	\$500
(C) More than \$50,000	\$1000
- (8) For all other Employers, the imposition of a monetary penalty in an amount not to exceed \$1000.00 per day for each violation;
- (9) An order to change procedures or policies to eliminate the violation(s);
- (10) An order to require the employment, promotion and training of Indians and other Employees covered by the Title injured by the violation(s);
- (11) An order to take any such other action as is necessary to ensure compliance with this Title or to remedy any harm caused by a violation of this Title or deemed by the Commission necessary to alleviate, eliminate and compensate for any violation(s).
- (12) Denial of certification.

(b) Each day a violation exists shall constitute a separate violation.

(c) If an Employer refuses to comply with an order or decision issued by the Commission, the Manager may petition the Quinault Tribal Court for an injunction, enforcement order or any other relief. The Tribal Court shall have jurisdiction over proceedings brought by the Manager to enforce TERO orders, and may assess attorney fees and costs, and such other sanctions in addition to those contained in the order, that the Court deems just and reasonable.

(d) Monetary penalties shall be paid within 30 calendar days of the Commission's decision to impose such penalties. Interest will accrue on any past due penalty at a rate of 12% per annum. Employers are responsible for paying their own monetary penalties, and monetary penalties shall not be passed on to the contracting agency through change order and/or invoice. Failure to pay a penalty or an attempt to pass the penalty on to the contracting agency will result in further sanctions at the Commission's discretion.

97.05.060 Appeals

(a) Any party that is dissatisfied or aggrieved by a final decision of the TERO Commission may file an appeal to the Quinault Tribal Court. The appeal shall be taken by filing a written notice of appeal with the Tribal Court and attaching the TERO Commission decision that is being appealed. The appeal must be filed no later than 20 business days after the Commission's decision is issued. The notice of appeal shall:

(1) Set forth the order from which appeal is taken;

(2) Specify the grounds upon which reversal or modification of the order is sought;

(3) Be signed by appellant.

(b) All appeals to Tribal Court shall be decided based on the record of the Commission hearing or decision. Upon filing of an appeal, the Commission shall transfer the Commission hearing or decision record to the Tribal Court. The appellant shall pay the costs of copying the Commission record. The appellant shall have the burden of proof on appeal.

(c) The jurisdiction of the Tribal Court in appeals of Commission decisions shall be limited to (1) affirming the Commission's decision, or (2) reversing the Commission's decision. There shall be no further appeal from a decision of the Quinault Tribal Court.

(d) All appeals are governed by applicable Tribal Court procedures.

97.05.070 Retaliation or Reprisal

Any harassment, action, discrimination or threat against any person or company because that person or company filed a complaint or testified, assisted or participated in any manner in an investigation, proceeding or hearing is in itself an unlawful employment practice and subject to the penalties provided for in 97.05.050. An Employer shall be responsible for the actions of its subcontractors and their Employees regarding the prohibitions in this section.

97.05.080 Compliance Monitoring

(a) Construction Employers shall submit reports and other information, including but not limited to Contract documents and certified payroll records in a form acceptable to TERO, if requested by the Commission or the Manager. Personnel records shall be requested only during the course of an investigation; provided the Manager has obtained an authorization to release such records, signed by the Employee. All information collected by the TERO is confidential, unless disclosure is required during a hearing or appeal as provided in this Title.

(b) The Manager or the Manager's designee shall have the right to make on-site inspections during regular working hours in order to monitor a Construction Employer's compliance with this Title. The Manager or the Manager's designee also has the authority to inspect and copy all relevant records of a contractor, of the contractor's signatory unions or subcontracts, to speak with workers on the contractor's or subcontractor's job site and to engage in similar investigatory inspection activities.

(c) For Employers other than Construction Employers, including the Nation's enterprises, if any report required by this Title indicates that the Employer is out of compliance, the Manager or the Manager's designee has the authority to initiate an on-site inspection. The Manager or the Manager's designee shall provide 24 hours' notice of the inspection to a designated point of contact and insure that the inspection does not disrupt business operations. The Manager or the Manager's designee may inspect and copy all relevant records of the Employer, speak with workers on the premises during normal breaks and engage in similar investigatory inspection activities.

TRIBAL EMPLOYMENT RIGHTS
LEGISLATIVE HISTORY AND EDITORIAL CHANGES

The Business Committee of the Quinault Indian Nation enacted the “Tribal Employment Rights Code,” Title 97, by Resolution No. _____ in a regular meeting of the Business Committee on _____. Vote was __ (for), __ (against), and __ (abstaining).

The Business Committee of the Quinault Indian Nation repealed the original Title 97 and enacted the Amended “Tribal Employment Rights Code,” Title 97, by Resolution No. 92-15-69, in a regular meeting of the Business Committee on March 9, 1992. Vote was 6 (for), 0 (against), and 0 (abstaining).

The Business Committee of the Quinault Indian Nation reaffirmed and posted the Amended “Tribal Employment Rights Code,” Title 97, by Resolution No. 08-109-87, in a regular meeting of the Business Committee on November 24, 2008. Vote was 8 (for), 0 (against), and 1 (abstaining).

The Business Committee of the Quinault Indian Nation approved the Amended “Tribal Employment Rights Code,” Title 97, Chapters 01 - 05, by Resolution No. 17-399-96, in a regular meeting of the Business Committee on November 27, 2017. Vote was 7 (for), 0 (against), and 1 (abstaining).