



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
17763 S. Muskogee Ave.
Tahlequah, OK 74464

Legislation Text

File #: 21-051, Version: 2

A LEGISLATIVE ACT AMENDING TITLE 62 OF THE CHEROKEE NATION CODE ANNOTATED - PUBLIC FINANCE; AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This legislative act shall be known as the “**Cherokee Nation Public Funds Deposit and Investment Act of 2021**” (“Act”) and codified under Title 62, Chapter 3 of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to repeal and replace **Chapter 3** of Title 62 of the Cherokee Nation Code Annotated.

Section 3. Legislative History

LA-13-85 (Aug. 10, 1985)

LA-14-15 (Sep. 15, 2015)

Section 4. Substantive Law

Title 62, Chapter 3 of the Cherokee Nation Code Annotated shall be amended as follows:

INVESTING OF FUNDS

§20. Definitions

“**Cherokee Nation**” shall mean the government, including all commissions, boards, and committees.

“**Donations**” shall be any monies, assets, property, contributions, gifts, bequests, endowments and/or other donations made to or given to the Cherokee Nation, upon acceptance by the Treasurer.

“**Financial Institution**” shall be an entity or depository whose primary business and function focuses on dealing with financial services and transactions, such as investments, loans and deposits. A financial institution shall include Federal Deposit Insurance Corporation (FDIC) insured banks, National Credit Union Association (NCUA) insured credit unions and other financial institutions whose activities are controlled or regulated by federal law and/or federal regulations or regulators, including but not limited to the U.S. Securities and Exchange Commission.

“**Financial Instrument**” shall be any negotiable asset or instrument with monetary value. Allowable financial instruments shall include, but not be limited to, demand deposits, certificates of deposit, Certificates of Deposit Account Registry (CDARS), Insured Cash Sweeps (ICS), savings accounts, repurchase/reverse

repurchase agreements, U.S. Treasuries and U.S. government securities and those issued by its agencies and instrumentalities, and Institutional Money Market Funds whereby those Funds are comprised of a majority of allowable Financial Instruments as described above.

“**Funds**” shall include all funds of the Cherokee Nation, including grants, donations, dividends, and any other funds held by the Cherokee Nation for the operation of the government.

“**Invest**” shall mean to place Cherokee Nation funds in a financial instrument held by a Financial Institution on behalf of the Cherokee Nation for the purpose of safekeeping.

§21. Requirements

Any Funds in the custody of the Cherokee Nation shall be invested only in allowable Financial Instruments safely kept in a Financial Institution, except for Funds kept on hand for operation, such as petty cash Funds and change Funds. There shall be as many Financial Institutions as may be necessary for the efficient management of tribal business.

Investments shall be made with judgment and care, under circumstances then prevailing, not for speculation, but for investment, considering the probable safety of the capital as well as the probable fees to be incurred and/or income to be derived.

Donations may be invested in separate accounts as directed or allowed.

§22. Financial Institutions

The Cherokee Nation Treasurer shall notify the Executive and Finance Committee of the Tribal Council and the Principal Chief on at least a quarterly basis of all Financial Institutions utilized by the Cherokee Nation.

§22. Determination of Financial Institutions

Financial Institutions for Funds held by the Cherokee Nation may be determined by competitive bidding and/or other qualifying factors. If by bid, said bidding and selection process of Financial Institutions shall be conducted by the Controller, under the review of the Treasurer. The following criteria may be used in the determination of Financial Institutions:

1. The institution's ability to best protect the Cherokee Nation's Funds;
2. The institution offering the highest interest rate on the Funds, and/or;
3. The institution's ability to reduce the cost to the Cherokee Nation for investing the Funds.
4. The size of the Financial Institution is adequate for the amount of Funds to be invested.
5. The Financial Institution's ability to allow electronic access to all transaction and portfolio reports.

§24. Control of Funds

Any Funds Invested by the Cherokee Nation shall be under the control of the Treasurer who may, at his or her discretion, delegate fiduciary responsibilities to the Controller of the Cherokee Nation. The Council may from time to time establish laws governing said Funds.

§25. Protection of Invested Funds

No Funds under the control of the Cherokee Nation shall be Invested with any Financial Institution unless the Financial Institution is insured by the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Association (NCUA), and/or the Financial Institution's activities are controlled or regulated by federal law and/or federal regulations or regulators, including but not limited to the U.S. Securities and Exchange Commission.

Collateralization. No Funds in excess of current FDIC or NCUA insurance maximums shall be Invested in a single Financial Institution unless said Funds are collateralized either by and/or invested directly into obligations and/or bonds which contain an investment grade rating as rated from a nationally recognized rating firm, such as Standard and Poor's, Moody's or Fitch, or local, state, U.S. Government securities, and those issued by its agencies and instrumentalities, and Cherokee Nation securities. Collateralized Funds shall be secured and pledged to the Cherokee Nation via joint custody receipts for the full amount of said Funds. Nothing herein shall prevent direct investment held in allowable Financial Instruments.

§26. Term of Investments of Funds

Funds invested pursuant to this act, excluding demand deposits, shall be for a period not to exceed five (5) years, provided that Funds may be invested for a longer term upon consent of the longer term by the Executive and Finance Committee of the Council.

§27. Investments of judgment Funds and trust Funds

Any investment of judgment Funds and trust Funds shall be pursuant to 25 U.S.C. §162a. The use or distribution of said Funds shall be in accordance with 25 CFR §87.1 et seq.

§28. Specific rights reserved

The Treasurer of the Cherokee Nation shall be authorized to provide to the Secretary of the Interior the investment direction of the judgment Funds and trust Funds.

DEPOSIT AND INVESTMENT OF PUBLIC FUNDS

§20. Definitions

A. “*Capital or Principal*” means the initial balance of Public Funds that will be Deposited

and/or Invested.

B. “*Cash on Hand*” means, as of any date, all petty cash, vault cash, teller cash, etc. needed for day-to-day operations of the government.

C. “*Cherokee Nation*” means the tribal government of the Cherokee Nation, including all commissions, boards, and committees; however, for purposes of this Chapter, component units of the Cherokee Nation tribal government are not included in the definition of Cherokee Nation.

D. “*Collateralization*” means pledging appropriate securities or other Financial Instruments, such as surety bonds or letters of credit, by depositories (i.e. Financial Institutions) to depositors (i.e. Cherokee Nation) to safeguard deposits of Public Funds that may exceed the federal deposit insurance maximums.

E. “*Deposit or Deposited*” means to place Public Funds, typically cash, in an account held by a Financial Institution on behalf of the Cherokee Nation for the primary purpose of safekeeping.

F. “*Financial Institution*” means a [bank](https://www.oregonlaws.org/glossary/definition/bank), [credit union](https://www.oregonlaws.org/glossary/definition/loan), savings and [loan](https://www.oregonlaws.org/glossary/definition/loan) association, [investment](https://www.oregonlaws.org/glossary/definition/investment) trust or other [organization](https://www.oregonlaws.org/glossary/definition/organization) held out to the public as a place of deposit of funds or medium of savings or collective [investment](https://www.oregonlaws.org/glossary/definition/investment). For purposes of this statute, a Financial Institution may only include Federal Deposit Insurance Corporation (“FDIC”) insured banks, National Credit Union Association (“NCUA”) insured credit unions, or other Financial Institutions whose activities are regulated by federal law, including but not limited to the U.S. Securities and Exchange Commission.

G. “*Financial Instrument*” means any document with monetary value. Examples include cash, cash equivalents, and securities such as bonds and stocks, which have value and may be traded in exchange for money.

H. “*Invest, Invested, or Investment*” means to place Public Funds in an allowable Financial Instrument held by a Financial Institution on behalf of the Cherokee Nation for the primary purpose of generating interest income or appreciation of Capital.

I. “*Investment Manager*” means a person or company responsible for managing Investments on behalf of a financial institution or its clients.

J. “*Public Funds*” means all Financial Instruments held by the Cherokee Nation for the operation of the government, including cash, grants, donations, dividends, and any other funds, whether from tribal or federal sources.

§21. General Requirements

Unless otherwise required by law, all Public Funds held by the Cherokee Nation, except Cash on Hand, shall be Deposited or Invested in allowable Financial Instruments at allowable Financial Institutions, as defined in this statute.

§22. Financial Institutions

It is the responsibility of the Treasurer to select Financial Institutions that best serve the needs of the Cherokee Nation, through which Public Funds will be Deposited and/or Invested. There shall be as many Financial Institutions as may be necessary for the efficient management of tribal business. The Treasurer is authorized to enter into agreements that contain SEC required arbitration provisions. The Treasurer shall report all Financial Institutions utilized by the Cherokee Nation to the Executive and Finance Committee and the Principal Chief on a quarterly basis.

§23. Protection of Public Funds

A. No Public Funds under the control of the Cherokee Nation shall be Deposited and/or Invested with any Financial Institution unless the Financial Institution meets the specified requirements of a Financial Institution under 62 CNCA §20(F).

B. Collateralization. No Public Funds in excess of current FDIC or NCUA insurance maximums shall be Deposited in a single Financial Institution unless said Public Funds are Collateralized. The total value of the collateral must be an amount not less than:

- i. The amount of the deposit of Public Funds,
- ii. Increased by the amount of accrued interest,
- iii. Reduced to the extent that the deposit is federally insured.

C. The Cherokee Nation may also Invest in diversified mutual funds whose portfolios consist of bonds with an Investment grade aggregate and duration of six years or shorter. Long-term assets, if authorized, may also invest in diversified equity (stock) index mutual funds for long-term Capital appreciation.

§24. Term of Investments of Funds

A. Short-Term Investment Pool Accounts.

i. Public Funds needed for expenditures in less than eighteen (18) months shall be considered part of the Short-Term Investment Pool.

ii. The average weighted duration, in aggregate, for the Short-Term Investment Pool for each Short-Term Investment Manager shall be eighteen (18) months or less pursuant to cash flow timing of the portfolios.

iii. The primary Investment objective for the Short-Term Investment Pool Accounts shall be to provide for the preservation of Capital, with a secondary emphasis upon the maximization of Investment income without undue exposure to risk.

iv. Types of Financial Instruments allowed for Short-Term Investments include but are not limited to interest-bearing banking deposits such as certificates of deposits, Certificates of Deposit Account Registry (“CDARS”), Insured Cash Sweeps (“ICS”), short-term cash funds, money market funds, institutional money market funds, “prime” money market funds, commercial paper, banker’s acceptances, repurchase agreements, U.S. Government obligations, U.S. agency obligations and/or

short-term corporate bonds.

- (a) Corporate bonds are permissible subject to a preponderance of portfolio holdings being rated as Investment Grade as the term is defined by the U.S. Securities and Exchange Commission: *Bonds that are believed to have a lower risk of default and receive higher ratings by the credit rating agencies, namely bonds rated Baa (by Moody's) or BBB (by S&P and Fitch) or above.* These bonds tend to be issued at lower yields than less creditworthy bonds.

B. Intermediate-Term Investment Pool Accounts.

- i. Public Funds needed for expenditures within eighteen (18) months to five (5) years shall be considered part of the Intermediate-Term Investment Pool.

- ii. Intermediate-Term may be placed through direct Investments, the use of mutual funds, money managers, or a combination thereof.

- iii. The Intermediate Investment Pool, in aggregate, will maintain an average weighted duration within +/- 1 year relative to the stated/market benchmark.

- iv. The primary Investment objective for the Intermediate-Term Investment Pool accounts shall be to balance the preservation of Capital and the maximization of income without undue exposure to risk.

- v. Types of Financial Instruments allowed for Intermediate-Term Investments include but are not limited to certificates of deposits, CDARS, ICS cash sweeps, U.S. government obligations, U.S. agency obligations, commercial paper, mortgage-backed securities, and Investment Grade corporate bonds (*see 62 CNCA §24(a)(iv)(a) for definition of Investment Grade corporate bonds*). Bond mutual funds will be deemed acceptable if the majority of their portfolios comply with the credit ratings guidelines stated herein and whose average portfolio maturities are less than six (6) years.

C. Long-Term Investment Pool Accounts.

- i. Public Funds not needed for expenditures within five (5) years, such as the Sovereign Wealth Fund, shall be considered part of the Long-Term Investment Pool.

- ii. The primary Investment objective for the Long-Term Investment Pool accounts shall be to provide for the long-term growth of Principal and interest income without undue exposure to risk.

- iii. The Cherokee Nation's general policy toward the Long-Term Investment pool shall be to diversify Investments, including but not limited to, both equity and fixed income securities to provide a balance that will enhance total return, while avoiding undue risk concentrations in any single asset class. Asset allocation guidelines shall be made on a long-term basis, with consideration to current and projected Investment outlooks.

§25. Responsibility and Authority for Investment Activity

A. Investment activity for the Cherokee Nation's Short-Term, Intermediate-Term and Long-Term Investment Pools shall be the responsibility of the Treasurer and is to be implemented in accordance with this statute, with guidance from the Investment Oversight Committee as provided in subsection C below. The Treasurer may delegate to other officers and/or employees of the Cherokee Nation, the authority to act in place of the Treasurer in the Investment and reinvestment of Cherokee Nation Public Funds; provided however, that the Treasurer may not delegate responsibility and/or authority for Cherokee Nation's Investment activities to any outside firm or consultant. This does not, however, prohibit the Treasurer from retaining an outside Investment Advisor with expertise and experience in the field of Investment of Public Funds.

B. In the administration of the powers to make and retain Investments, and to delegate Investment authority, the Treasurer or his/her designee shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In exercising said ordinary business care and prudence, the Treasurer or his/her designee shall consider the Long-Term, Intermediate-Term and Short-Term needs of the Cherokee Nation in carrying out its purposes. Other factors, such as expected total return on its Investments, price-level trends, general economic conditions, and the safety of Principal values and Investment return, shall be considered in the Investment decision process.

C. The Treasurer shall establish an Investment Oversight Committee to be made up of three (3) people, which will include: (1) the Controller (2) the Executive Director of Financial Oversight, (3) the Attorney General or a representative from the Attorney General's Office. The Controller shall be the Chairperson of the Investment Oversight Committee. This is not a public body under the meaning of 67 CNCA §103(B). It will be the responsibility of the Investment Oversight Committee to:

- i. Recommend an Investment Policy Statement that is consistent with this statute, and that may be updated from time to time.
- ii. Establish a reporting schedule to the Tribal Council.

D. The placement of Investments may be accomplished through either direct ownership, participation in pools such as mutual funds, funds managed by external Investment Managers or a combination thereof. The Treasurer or his/her designee shall have the authority to approve the retention of a new Investment Manager, fund or other Investment and/or the replacement of an existing Investment Manager, fund, or other Investment as long as they are allowed under this statute.

E. Although the Cherokee Nation cannot dictate policy to pooled/mutual fund Investment Managers, the Cherokee Nation's intent is to select and retain pooled/mutual funds with policies that are similar to this statute.

§26. Investments of judgment Funds and trust Funds

Any investment of judgment Funds and trust Funds shall be pursuant to 25 U.S.C. §162a. The use or distribution of said Funds shall be in accordance with 25 CFR §87.1 et seq.

§27. Specific rights reserved

The Treasurer of the Cherokee Nation shall be authorized to provide to the Secretary of the Interior the

investment direction of the judgment Funds and trust Funds.

Section 4. Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

Section 9. Severability

The provisions of this Act shall be severable and if any part of any provision hereof shall be held void by a court of competent jurisdiction, such holding shall not affect or impair the validity of any remaining provisions of this Act.

Section 10. Effective Date: Emergency Declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this Act shall take effect immediately upon its approval and signatures.