



Council of the Cherokee Nation

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

Legislation Text

File #: 22-059, Version: 1

A RESOLUTION AUTHORIZING THE CHEROKEE NATION TO INCUR INDEBTEDNESS AND AUTHORIZING THE APPROVAL OF CERTAIN LOAN DOCUMENTS AND LIMITED WAIVER OF SOVEREIGN IMMUNITY TO THE UNITED STATES FARM SERVICE AGENCY, U.S. DEPARTMENT OF AGRICULTURE, AND THE BANK OF OKLAHOMA IN CONNECTION WITH THE HEIRS' PROPERTY RELENDING PROGRAM (7 CFR Part 769, Subpart B)

WHEREAS, the Cherokee Nation since time immemorial has exercised the sovereign rights of self-government on behalf of the Cherokee people;

WHEREAS, the Cherokee Nation is a federally recognized Indian Nation with an historic and continual government-to-government relationship with the United States of America;

WHEREAS, the Cherokee Nation enjoys sovereign immunity from suit under federal, state, and tribal law;

WHEREAS, the Cherokee Nation has inherent sovereign authority under the Constitution and tribal law to incur indebtedness, to issue obligations evidencing indebtedness, to secure such indebtedness by a pledge of the full faith and credit of the Cherokee Nation, and to enter into contractual agreements for such purposes;

WHEREAS, pledges of credit for any loans require approval by the Council in accordance with Article X Section 7 of the Constitution and Title 62, Sections 61 and 62 of the Cherokee Nation Code (62 CNCA §§ 61-62);

WHEREAS, the Cherokee Nation has a responsibility to promote the well-being of its tribal citizens and employees, including through responsible and appropriate financial education and affordable financing;

WHEREAS, the United States Congress enacted the Agricultural Improvement Act of 2018 (the 2018 Farm Bill) which, among other things, authorized implementation of the Heirs' Property Relending Program (HPRP) by the United States Farm Service Agency (FSA), U.S. Department of Agriculture (USDA), for the purpose of assisting heirs with undivided ownership interests to resolve ownership and succession issues on farms held by multiple owners by providing loan funds to eligible intermediaries to re-lend to individuals and entities for the

purpose of developing and implementing a succession plan and to resolve title issues;

WHEREAS, the Cherokee Nation Economic Development Trust Authority (CNEDTA) has administered consumer and business lending programs for many years and has extensive experience in providing such services, and has been designated by the FSA as an eligible intermediary for purposes of the HPRP;

WHEREAS, in order for CNEDTA to secure loan funds from the FSA in a sum not exceeding two million dollars (\$2,000,000.00), with interest thereon at the rate of one percent (1%) per annum, repayable in annual installments over a term of thirty (30) years, that CNEDTA might then re-lend such funds to qualified Cherokee Nation citizens, CNEDTA must execute certain program-related agreements and loan documents, including without limitation: (1) FSA-2639 HPRP Loan Agreement, (2) FSA-2641 HPRP Promissory Note, (3) FSA-2642 HPRP Security Agreement, (4) FSA-2643 HPRP Control Agreement, and (5) RD 1940-1 Request for Obligation of Funds (collectively, the “HPRP Loan Documents”);

WHEREAS, said HPRP Loan Documents include a limited waiver of sovereign immunity pertaining to the lendable funds loaned by the FSA to CNEDTA and any account or investment portfolio derived from the proceeds of said loan or loans, including but not limited to all funds now or hereafter placed in the CNEDTA’s HPRP revolving loan fund, all instruments (including deeds of trust/real estate mortgages), general intangibles, contract rights, accounts, gross receipts, gifts, income and revenue, now or hereafter in existence attributable to or derived from the HPRP project financed by the loan funds, along with any and all proceeds thereof, including but not limited to the following: CNEDTA’s Revolving Loan Account created and maintained for purposes of the operation of the HPRP revolving loan fund and all receivables created as intermediary by making loans to ultimate recipients of the HPRP loan funds.

WHEREAS, said HPRP Loan Documents further include, in the event of CNEDTA’s default, a limited waiver of sovereign immunity pertaining to the expenses of retaking, holding, preparing for sale, processing, selling or negotiating said collateral and for payment of reasonable attorneys’ fees and legal expenses incurred by the FSA;

WHEREAS, additionally, the FSA-2643 HPRP Control Agreement requires that CNEDTA agree to indemnify Bank of Oklahoma and hold it harmless from and against any and all claims, other than those ultimately determined to be founded upon gross negligence or willful misconduct of the Bank of Oklahoma, and from and against any damages, penalties, judgements, liabilities, losses, or expenses (including reasonable attorney fees and disbursements) incurred as a result of the assertion of any claim, by any person or entity, arising out of, or otherwise related to, any transaction conducted or service provided by Bank of Oklahoma through the use of any account at Bank of Oklahoma pursuant to the procedures provided for or contemplated by said Control Agreement; and

WHEREAS, the HPRP Loan Documents grant the FSA the authority to require additional security that it may

determine necessary to fully secure the loan or loans and to require that CNEDTA execute additional instruments, deliver any documents, and take any action necessary or convenient to perfect FSA's security interest, which additional documents are not at this time available for review but which would likely include a limited waiver of sovereign immunity similar to that outlined above;

BE IT RESOLVED BY THE CHEROKEE NATION:

Section 1. The Cherokee Nation hereby finds and determines that in the exercise of prudent fiscal management it is in the best financial interest of the Cherokee Nation to authorize the Principal Chief to execute the HPRP Loan Documents required by the FSA in connection with the HPRP loan(s) to be secured by CNEDTA, including without limitation: (1) FSA-2639 HPRP Loan Agreement, (2) FSA-2641 HPRP Promissory Note, (3) FSA-2642 HPRP Security Agreement, (4) FSA-2643 HPRP Control Agreement, and (5) RD 1940-1 Request for Obligation of Funds, for the purpose of securing loan funds from the FSA that CNEDTA might then re-lend such funds to qualified Cherokee Nation citizens pursuant to the HPRP.

Section 2. The incurring of indebtedness by the Cherokee Nation in an aggregate principal amount not to exceed two million dollars (\$2,000,000.00), with interest thereon at the rate of one percent (1%) per annum, repayable in annual installments over a term of thirty (30) years, is hereby approved.

Section 3. The debt incurred by reason of the HPRP loan(s) shall be secured by the re-lendable funds loaned by the FSA to CNEDTA and any account or investment portfolio derived from the proceeds of said loan or loans, including but not limited to all funds now or hereafter placed in the CNEDTA's HPRP revolving loan fund, all instruments (including deeds of trust/real estate mortgages), general intangibles, contract rights, accounts, gross receipts, gifts, income and revenue, now or hereafter in existence attributable to or derived from the HPRP project financed by the loan funds, along with any and all proceeds thereof, including but not limited to the following: CNEDTA's Revolving Loan Account created and maintained for purposes of the operation of the HPRP revolving loan fund and all receivables created as intermediary by making loans to ultimate recipients of the HPRP loan funds.

BE IT FURTHER RESOLVED that the Council recognizes that in order to obtain the HPRP loans from the FSA it is necessary to grant a limited waiver of sovereign immunity with respect to the Cherokee Nation for the purpose of allowing the FSA to foreclose its secured position against the Cherokee Nation in the event of default under the terms of the HPRP Loan Documents.

BE IT FURTHER RESOLVED that the Council recognizes the remedy available as a result of a waiver of sovereign immunity must be carefully and strictly defined, and therefore desires to establish herein the provisions that must be expressly set forth in the HPRP Loan Documents.

BE IT FURTHER RESOLVED that, for the sole purpose of allowing for enforcement of the HPRP Loan Documents, and only for the time period set forth therein, the Cherokee Nation agrees to grant a limited waiver of sovereign immunity provided all of the following conditions are met:

- (1) That the entity seeking redress from the Nation is:
 - a. the FSA, or the U.S. Department of Agriculture on its behalf; or
 - b. The Bank of Oklahoma, pursuant to the indemnification requirement set forth in the FSA-2643 HPRP Control Agreement; and
- (2) That the claim through which redress is sought is:
 - a. If brought by the FSA, or the U.S. Department of Agriculture on its behalf, for foreclosure of its secured interest, and seeks only actual or liquidated damages, including attorney fees, resulting from the Nation's noncompliance with the HPRP Loan Documents; or
 - b. If brought by the Bank of Oklahoma, for indemnification as specifically required and limited by the FSA-2643 HPRP Control Agreement;
- (3) That in the event of an award of actual monetary damages, the award may be paid out of unrestricted assets of the Cherokee Nation, excluding real property and improvements by way of fixtures and excluding funds held in trust by the United States on behalf of the Cherokee Nation, and shall not be a lien or encumbrance upon tribal property not secured by the HPRP Loan Documents or allow recovery from any elected officials, officers, or employees of the Cherokee Nation for monetary damages, punitive or exemplary damages, court costs, or attorney fees;

BE IT FURTHER RESOLVED that nothing herein shall be construed as a waiver of immunity from suit seeking punitive damages or any other form of damages from any party whatsoever, or as a waiver extended for the benefit of any entity, person, partnership, or firm whatsoever, other than the FSA, or the U.S. Department of Agriculture on its behalf, or the Bank of Oklahoma, and only for enforcement of the HPRP Loan Documents;

BE IT FURTHER RESOLVED that this waiver shall not be construed to authorize any action or claim against the Nation sounding in tort or any other type of claim or recovery not expressly authorized herein, for which purposes the Cherokee Nation's sovereign immunity is and shall be reserved;

BE IT FURTHER RESOLVED that this waiver shall not be construed to authorize or allow recovery from any elected officials, officers, or employees of the Cherokee Nation for monetary damages, punitive or exemplary damages, court costs, or attorney fees, or any other damages whatsoever;

BE IT FURTHER RESOLVED that the Cherokee Nation elects to expressly waive the sovereign immunity of the Cherokee Nation as it applies to the HPRP Loan Documents and hereby authorizes the Principal Chief to execute such loan documents as a limited waiver of sovereign immunity, together with such other documents as may be required by the FSA in connection with the HPRP;

BE IT FURTHER RESOLVED that, pursuant to this Resolution, the Principal Chief is authorized to execute and deliver the HPRP Loan Documents, together with such other documents as may be required by the FSA in connection with the HPRP, on behalf of the Nation; and

BE IT FINALLY RESOLVED that this Resolution shall in no manner or in any respect operate or be construed to operate to waive or otherwise diminish the sovereign immunity of the Cherokee Nation, except as explicitly provided herein.