



Council of the Cherokee Nation

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

Legislation Text

File #: 16-072, Version: 1

A RESOLUTION AUTHORIZING THE CHEROKEE NATION TO ASSUME INDEBTEDNESS; AUTHORIZING THE ASSIGNMENT OF A LOAN AGREEMENT FROM CHEROKEE NATION WASTE MANAGEMENT, LLC., AND GRANTING A LIMITED CONSENT TO BE SUED; AND DECLARING AN EMERGENCY

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

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

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; and

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); and

WHEREAS, Cherokee Nation Waste Management, L.L.C. (“CNWM”) is a for profit limited liability company organized under the laws of the Cherokee Nation, is wholly owned by the Cherokee Nation, and has a primary purpose of operating a sanitary landfill in Adair County, Oklahoma (“Landfill”); and

WHEREAS, CNWM has previously entered into an Equipment Lease Purchase Agreement (“Loan Agreement”) with Welch State Bank in the amount of \$1,515,651.97 to procure heavy equipment for use in Landfill operations; and

WHEREAS, the Cherokee Nation has previously executed a limited waiver of sovereign immunity on behalf of CNWM, as part of the Loan Agreement with Welch State Bank; and

WHEREAS, the Cherokee Nation intends to restructure CNWM to facilitate a long-term operations strategy and regulatory compliance plan under the supervision of the Cherokee Nation tribal government; and

WHEREAS, the Cherokee Nation has determined that it would be most advantageous at this time, and consistent with the long-term strategic operation of the Landfill, for the Cherokee Nation to assume the debt obligation of CNWM, in the amount of and not to exceed, \$1,145,556.29, in accordance with the terms set forth in the existing Loan Agreement; and

WHEREAS, in connection with assuming the debt obligation of CNWM, it is necessary for the Principal Chief to negotiate and execute additional documents to facilitate the assignment of the Loan Agreement to the Cherokee Nation, including the execution of a consent to suit subject to the terms of this

Resolution.

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 negotiate and execute an assignment of the Loan Agreement to the Cherokee Nation as part of the strategic restructuring of CNWM.

Section 2. The incurring of indebtedness by the Cherokee Nation in the amount of and not to exceed \$1,145,556.29, in accordance with the terms set forth in the Loan Agreement. The debt incurred by the assignment of the Loan Agreement to the Cherokee Nation, shall be a general obligation of the Cherokee Nation and payable by the full faith and credit of the Cherokee Nation.

BE IT FURTHER RESOLVED that the Council recognizes that, in order to obtain assignment of the Loan Agreement by Welch State Bank, it is necessary to grant a limited consent to suit with respect to the Cherokee Nation for the sole purpose of allowing Welch State Bank to initiate causes of action against the Cherokee Nation in the event of default under the terms of the Loan Agreement, as assigned hereby.

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

BE IT FURTHER RESOLVED that for the sole purpose of allowing for enforcement of the Loan Agreement, and only for the time period set forth in the Loan Agreement, the Cherokee Nation agrees to be sued, only if all of the following conditions are met:

- (1) The entity seeking to bring suit against the Nation is Welch Bank or its lawful successor or assignee, and
- (2) The claim is limited to obligations or rights arising under the Loan Agreement;
- (3) The consent to suit is limited to the duration of the Loan Agreement;
- (4) The preference for jurisdiction of lawsuits shall be filed, subject to a court asserting jurisdiction, first in Cherokee Nation courts, second in federal courts, third in state courts;
- (5) Cherokee Nation law is prioritized first, with federal law having second priority, and state law third; and
- (6) That in the event of an award of actual monetary damages pursuant to the limited consent to suit, the award may not 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 Welch State Bank;

BE IT FURTHER RESOLVED that this consent to suit 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 consent to suit shall not allow recovery from any elected

officials, officers or employees of the Cherokee Nation for monetary damages, punitive or exemplary damages, court costs, attorney fees or any other damages whatsoever.

BE IT FURTHER RESOLVED that the Cherokee Nation elects to expressly consent to suit as it applies to the Loan Agreement and hereby authorizes the Principal Chief to negotiate and execute a limited consent, and such other documents as may be required to facilitate assignment of the Loan Agreement.

BE IT FURTHER 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 to allow certain actions against the Cherokee Nation as provided herein.