



Legislation Text

File #: 07-093, Version: 1

AN ACT AMENDING LEGISLATIVE ACT #26-06 AUTHORIZING THE COMPREHENSIVE BUDGET FOR FISCAL YEAR 2007 - MOD 8a; AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION: SECTION 1. TITLE AND CODIFICATION

This legislative act shall be titled and codified as "An Act Amending Legislative Act #26-06 Authorizing the Comprehensive Budget for Fiscal Year 2007 - Mod. 8".

SECTION 2. PURPOSE

The purpose of this amendment is to authorize and approve the use of funds, subject to the availability of such funds, in accordance with Section 4, changing the amounts of certain cost centers approved in the "Comprehensive Budget Act for Fiscal Year 2007" or subsequent amendment. The cumulative total of the budget is increased by \$23,906,239 for a total budget authority of \$437,273,145. The following items are identified as estimated General Fund sources in excess of appropriated uses to wit:

Table with 2 columns: Description (A. General Fund B. Motor Fuels Tax) and Financial Data (Previous Estimated Balance, Estimated Balance, Adjusted Balance, Sources, Uses).

SECTION 3. LEGISLATIVE HISTORY

The provisions of compliance, policy of accountability, authorities and severability provided in Legislative Act #26-06 are applicable to this amendment.

SECTION 4. FUNDING AUTHORIZATIONS

The changes reflect increases to cost centers set forth in the program budget justifications incorporated herein. This amendment changes the total amount of the comprehensive budget authorization by an increase of \$23,906,239 to wit:

- A. An increase in the General Fund budget authority of \$11,327,514 primarily due to a significant increase in the Land Acquisition budget as well as several other programs.
B. An increase in the Motor Fuels Tax Fund budget authority of \$160,570 related to an increase in investment income and an increase in the Food Program cash match requirement.
C. An increase in the Tribal Force Account budget authority of \$34,482 related to regulatory activities on the Landfill conducted by the Environmental Protection Commission.
D. An increase in the Enterprise Fund budget authority of \$34,482 to authorize the Landfill transfer of inter-program contract funds to the Environmental Protection Commission.
E. An increase in the Internal Lease Fund budget authority of \$385,303 related to capital expenditures of remaining proceeds of debt issued in 2003.
F. An increase in the DOI Self Governance-Roads Fund budget authority of \$700,000 related to an increase in the investment income projection and related transfer to the General Fund.
G. An increase in the DOI-Self Governance Fund budget authority of \$170,000 related to a wind energy grant as well as a slight increase in investment income for the current year.
H. An increase in the IHS-Discretionary Fund budget authority of \$260,000 related to an increase in the investment income projection and related transfer to the General Fund.
I. An increase in the IHS Self Governance-Health Fund budget authority of \$26,903 related to a new Chronic Care Pilot Project.
J. An increase in the USDA Fund budget authority of \$101,140 related to the Food Distribution Program.

K. An increase in the NAHASDA Fund budget authority of \$4,049,119 related to the FY2006 and FY2007 Indian Housing Plans.

L. An increase in the Private Funding budget authority of \$15,147 related to the Individual Development Account program.

M. An increase in the Other-Funding budget authority of \$6,641,579 primarily related to the Tribal Judgment Funds as it relates to the Arkansas Riverbed Settlement.

SECTION 5. PROVISIONS AS CUMULATIVE

The provisions of this Act shall be cumulative to existing law. SECTION 6. SEVERABILITY

The provisions of this Act are severable and if any part or provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Act.

SECTION 7. 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.

SECTION 8. SELF-HELP CONTRIBUTIONS

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.

Passed by the Cherokee Council on the 11th day of June, 2007

Memo

To: Linda O'Leary, Chair, Executive & Finance Committee & Bill John Baker, Co-Chair, Executive & Finance Committee

From: Doug Evans

CC: Executive & Finance Committee

Date: 05/30/2007

Re: Budget Mod. #8

Per your request, I have reviewed the administration's budget modification request for this month's Executive & Finance Committee Meeting. Below is a summary of my review:

| A. MAY - GRANTS RECEIVED (REPORTING ONLY): | |
|---|------------------|
| Funding Source Program | Amount |
| D.O.I.-General Sequoyah High School - Education (carryover) | \$700,199 |
| D.H.H.S.-General LIHEAP (3 carryover budgets) | \$91,362 |
| E.P.A. 2 Carryover adjustments & 1 new grant | \$40,285 |
| Federal-Other COP Methamphetamine grant (carryover decrease) | <\$106,744> |
| Oklahoma Carryover adjustment on 1 grant | \$7,548 |
| Private Funding New grant award for a community network project | \$67,397 |
| TOTAL MAY GRANTS RECEIVED | \$800,047 |

B. MOD - 8 (52 budgets) Net Increase in spending authority - \$21,858A27:

GENERAL FUND: (Increase - \$9,310,551)

(1): Office of the Principal Chief: Requesting \$35,000 of discretionary funds for legal representation and consultation.

(2): Charitable Contributions: Requesting \$25,000 of discretionary funds to purchase a van for the Tulsa Shriners.

(3): Meth Reduction - Family Initiative Marshals: Requesting \$210,076 of additional tribal funds and item #30 below is also requesting another \$375,000 of NAHASDA funds for the Marshal program. I have prepared a

budget

L_..) analysis for your review, on the next page.

MARSHAL SERVICE

FY2007 BUDGET VS ACTUALS (thru 6 mo's)
(Excluding IDC Pool Funded - Security Department)

Projected
FY2007 BUDGET
FY2007
Unexp. Bal.

| Program | AU# | SOURCE | Before Request | After Request | Expenses | %-Exp'd |
|------------------------------|---------|------------|----------------|---------------|--------------|---------|
| Marshal Service-Meth Unit | 1010145 | Tribal | \$ 210,076 | \$ 420,152 | \$ 170,204 | 41% |
| Narcotics Forfeitures | 1010155 | Tribal | \$ 20,000 | \$ 20,000 | \$ | 0% |
| Marshal Service | 1026000 | Motor Fuel | \$ 767,141 | \$ 767,141 | \$ 291,969 | 38% |
| Marshal Service | 3221100 | Self Gov | \$ 1,085,069 | \$ 1,085,069 | \$ 905,465 | 83% |
| Tribal & SIG funding | | | \$ 2,082,286 | \$ 2,292,362 | \$ 1,367,638 | 60% |
| Marshal Service ('06 IHP) | 3560681 | HUD | \$ 996,018 | \$ 1,371,017 | \$ 190,837 | 14% |
| Protective Order Enforcement | 3752310 | Federal | \$ 138,972 | \$ 138,972 | \$ 9,706 | 7% |
| Federal funding | | | \$ 1,134,990 | \$ 1,509,989 | \$ 200,543 | 13% |
| Total | | | \$ 3,217,276 | \$ 3,802,351 | \$ 1,568,181 | 41% |

\$ 665,989

You will notice this program has requested (including this request) approximately \$2.3 million of tribal funds from General Fund, Motor Fuels Tax or the Self Governance compact. The Marshal's FY06 IHP budget (3560681) has only spent \$190,837 or 13% of its entitlement; although, we are over 50% into the current budget cycle. This Mod-8 request is for an additional \$210,076 of Tribal Discretionary funds. I'm unclear as to the need for the additional funds when the program is not spending the federal funds entitled to it, nor is it including any of the FY07 IHP funding for law enforcement. Again, it appears the federal funds will largely remain unspent and carryover into FY08 while tribal discretionary and self-governance funds are being expended first. Tribal discretionary funds do not automatically carryover into the next fiscal year like the HUD funds.

(4): General Fund Operations: This budget is increasing the current year estimate for dividend income from CNE by an additional \$5 million for a total of \$30 million. This budget also cleans up \$568 of residual transfers and recognizes additional interest income from the Roads Self Governance investments.

(5): Cash Reserve Fund: This budget is increasing the "cash reserve" requirement by an additional \$712,892 pursuant to LA #5-02 (1.75% of total authorized budget). I recommend this request be tabled until LA #5-02 can be revisited. Revisiting this fiscal policy to possibly include some form of moratorium, or phase-out, on the

reserve requirement when we experience years such as this year, which carried over such a significant amount of discretionary cash/fund balances. This reserve requirement also needs to be amended to only apply to expenditures and not include transfers between funds (approx. \$35mm of the total budget).

(6): PACE-Tahlequah Infrastructure: Requesting \$169,151 of the remaining loan funds from the FY03 Capital Project Loan, to fund the water and sewer construction costs. No cost estimates or justification documents were provided to substantiate the amount of this request. This budget is funded by a transfer from the Internal Leases budget. The Internal Lease budget (item #23) is bringing forward the \$303,151 of remaining FY03 Capital Improvement debt proceeds. I can't see by the budget where these capital-type loan proceeds are actually being requested for capital type expenditures. I would recommend the committee request a list of all capital type projects so the committee can prioritize the use of this remaining \$303,151. I would also recommend that if CNB in effect will own, and is financing the construction of this project, any request for tribal discretionary funds should come from CNB and not the Nation's facilities department.

(7): Tribal Election Fund: Requesting an increase of \$207,717 that according to the budget is to fund the Special Election held in March of this year. I would point out that even with the contract with Automated Election Services (AES) already reflected in the system, this budget is currently only 40% expended thru the date of this memo for all other expenditures. This leaves a current balance of \$160k on the \$275k budget for non-contracted items (see attached Lawson report). If we have paid-in-full for the March 3rd election (\$145k contract payments-to-date), and have also encumbered the additional \$150k for the June election as well, then we would need no budget increase at this time. If the March 3rd election cost more than the \$145k already paid, I would request an explanation from the Election Commission why they haven't paid their contractor for services rendered nearly 3 months earlier. Either way, I would recommend the commission provide additional information before funding this \$208k request.

(8): Management Resources Planning: - "Wew Recurring Program' Requesting this new budget to fund a planning manager to work on a capital plan in the amount of \$148,274. This budget will increase significantly next year due to the fact the budgeted full-time position only has 4 months of the \$70,000 salary in this current budget. The budget contains a \$100,000 line item to contract out a design consultant as well. Indirect Cost funds may be allowable, or at least in part, to fund a portion of this type of expenditures related to "analysis of employees" identified on the budget. If the accounting department has already identified the A-87 language prohibiting such activities, I would appreciate the reference. If not, I recommend the alternative IDC funding option be looked into.

(9): Community Investment Project: - Requesting current year SYEP funding in the amount of \$222,961 which is the same as the FY06 funding level.

(10): District Court: - Requesting a \$24,220 increase for the attorney appointed to represent the Freedmen.

(11): Saline Courthouse: - Requesting an increase of \$200,000 for reconstruction of the spring house at the courthouse. (see also note on item #6)

(12): Cort Mall Building: - Requesting funding of \$34,763, largely for utilities and maintenance costs. This newly acquired property has very low rental income and is expecting occupancy increases later in the year.

(13): Heritage Center Annex 1: - Requesting funding in the amount of \$3,790 primarily for utilities and insurance. Rental income of \$1,600 is budgeted to partially offset some of this request.

(14): SHS Ball Fields: - Requesting \$37,196 for utilities (\$4,800), maintenance (\$25,000), insurance (\$2,000) and applicable indirect costs for the ball fields.

(15): Conley Property: - Requesting \$10,934 for operating costs for this property, \$5k of which is a new roof.

C(16): Land Acquisition: - Requesting an increase of \$7,268,009 to bring the total transfers and carryover of the Arkansas Riverbed Settlement net proceeds for this year to \$13,185,009. I have requested the Treasurer's Office keep the Council informed of the status and timing of this drawdown request from the Department of Interior's Office of Trust Fund Management.

MOTOR FUELS TAX: (Increase - \$160,570 "All transfer outs")

(17 & 19): Motor Fuels Tax Cash Match (Food Distribution): Requesting authority to transfer an additional

\$25,285 to the USDA Food Distribution program for the required cash match. This amount is being transferred twice before it reaches the Food Program's budget (MFT-rollup to the MFT- Food Cash Match then to the Food Dist. Program)

(18): Motor Fuels Tax - Interest: Requesting authority to recognize an additional \$110,000 of interest income this year and transfer these funds to the General Fund Operations budget.

TRIBAL FORCE ACCOUNT: (Increase - \$34,482)

(20): Environmental Protection Commission - Projects: Requesting authority to expend the transfer in of \$34,482 from the Landfill for a total of \$84,482 of contracted Regulatory Activities (see item #21 below).

ENTERPRISE FUND: (Increase - \$34,482)

(21): CN Landfill Operations: Requesting authority to transfer \$34,482 to the EPC Projects budget explained above in item #20. The landfill operation has numerous issues related to the recapture of a multi-million dollar tribal investment that still remains uncertain. In addition, this tribal operation is being outsourced to a contracted third party, which if so chooses to terminate the relationship, may or may not have any on-going liabilities related to post- closure environmental issues. I'm also unclear why more than half of the funded payroll positions appear to be vacant (12 out of 23). The vacant positions also include 4 truck drivers. I was unaware the landfill actually owns a

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fleet of trucks. This raises another question, who do these employees work for and who is paying their payroll taxes, insurances and benefits. My understanding from previous discussions is the Nation is paying all these expenses and being reimbursed by the contractor. I would yield to the council's attorney regarding the Cappropriateness of any arrangement perceived by the public that allows a third party contractor to get the benefit of tribal employees group medical rates, workers compensation rates or any other employment related costs, in addition to contracting with customers under the name of the Cherokee Nation. If this is appropriate, do we or would we offer these types of arrangements with other contractors we do business with?

INTERNAL LEASE FUND: (Increase - \$354,454)

(22): Internal Leases: Requesting authority to recognize \$303,151 of remaining loan proceeds related to the capital improvement debt of 2003. A requested transfer out to the PACE building has already been addressed in item #6 above. I would recommend the loan proceeds be removed from this budget and either paid down on the principal portion of the debt; which is what it is, or identify a group of priority capital projects such as the Saline Courthouse, Cort Mall, Heritage Center, Ball Fields and Conley Property. All of these are in this mod package (items 11 thru 15) and could be totally funded by the loan proceeds without requiring any additional tribal discretionary funds.

DOI SELF GOVERNANCE - ROADS FUND: (Net Increase - \$700,000)

(23 & 24): IRR - Roads (Admin. & Construction): Requesting authority to increase the investment income projection for the current year by \$700,000 and change the accounting unit that is recognizing the income. The investment income is increasing from \$500,000 to \$1,200,000 for the current fiscal year.

DOI - SELF GOVERNANCE: (Increase - \$170,000)

(25): 2007 Energy and Mineral Development: Requesting authority to expend the \$160,000 grant related to the wind farm project applied for in December of 2006.

C(26): DOI-S/G Interest Income: Increasing the interest income projection by \$10,000 on the compact funds for a FY2007 total of \$80,000 and transferring these funds to the General Fund Operations budget.

IHS - DISCRETIONARY: (Increase - \$260,000)

(27): IHS-Self Gov. Interest: Increasing the interest income projection by \$260,000 on the compact funds for a FY2007 total of \$800,000 and transferring these funds to the General Fund Operations budget.

IHS SELF GOVERNANCE - HEALTH: (Increase - \$26,903)

(28): Chronic Care Pilot Project: Requesting \$26,903 in spending authority for a newly funded activity under the recent amendment #5 of the FY07 compact for hospitals and clinics.

USDA: (Increase - \$101,140)

(29): Food Warehouse: Requesting an increase in grant spending authority of \$101,140 including the tribal cash matching portion identified in items # 17 & 19 above.

NAHASDA: (Increase - \$4,049,119)

(30): Marshal Service: Requesting an increase of \$374,999 in spending authority of FY06 IHP funds, including \$502k for a community statistics system and 2 new vehicles. See the funding analysis on page 2 related to the Marshal funding.

C(31): Environmental Review & Lead Based Paint Abatement: Requesting an increase of \$118,129 in spending authority of remaining FY06 IHP funds.

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(32 thru 42): FY2007 Indian Housing Plan Activities: Requesting spending authority of \$3,555,991 related to the recently approved '07 IHP (please refer to pivot table for breakdown of housing plan activities).

Iprivate Fund: (Increase - \$15,147)

(43): IDA IHP Program: Requesting spending authority of an additional \$15,147 related to the transfer from the recently approved '07 IHP (item #38 on pivot table).

Other Funds: (Increase - \$6,641,579)

(44 thru 51): Various miscellaneous fund balance transfers: Requesting authority to cleanup residual fund balances on several accounting units totaling \$13,570.

(52): Tribal Judgment Funds: Requesting authority to transfer the \$6,878,009 of additional riverbed settlement funds to the Land Acquisition account (see item #16 above) partially offset by a <\$250,000> reduction in the contract service line item on this budget.

C. COMMUNITY ASSISTANCE & LAW ENFORCEMENT FUNDS:

The attached lists of projects have been approved, or are being requested to be approved in this Executive/Finance Committee. These projects have already been appropriated; therefore, there is no need to appropriate the funds again. This list is for informational purposes and is included within this mod package review for inclusion purposes.

c---Summary:

After reviewing the submission of Mod-8, I find no technical issues surrounding these requests; however, realizing I've made several comments and recommendations, I'll attempt to summarize below only those budgets I've made a suggestion or recommendation:

| Item # | Program | Recommendation |
|----------|---------------------|--|
| #3 & #30 | Marshal Service | Table - Pending an explanation to the current budget analysis by program |
| #5 | Cash Reserve | Remove - Pending review of LA #5-02 reserve policy |
| #6 | Pace Building | Remove - Allow CNB to maintain 100% of construction financing |
| #7 | Election Fund | Table - Pending an explanation to the current budget comparison |
| #22 | Internal Lease Bldg | Redirect proceeds of debt from Pace building to Items #11 thru #15 |
| #21 | CN Landfill | Leave in - Request legal opinion regarding contract arrangement |

This is the largest budget modification package I've had the opportunity to review for the council. It is the largest both in dollars and quantity of budgets and with the exception of the few items noted above, the remaining 45 budgets appear to be technically sound. I apologize for the delay in getting you this report. This package obviously took longer to review than normal and I took the extra time to ensure this \$22 million legislative act received an adequate review. If I can provide any further information, please do not hesitate to contact me.

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Respectfully,