



Legislation Text

File #: 16-103, Version: 2

A RESOLUTION AUTHORIZING THE CHEROKEE NATION TO EXECUTE A WIND RESOURCE LEASE AGREEMENT WITH CHILOCCO WIND FARM, LLC AND GRANTING A LIMITED WAIVER OF SOVEREIGN IMMUNITY

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;

WHEREAS, the Cherokee Nation encourages economic development and acknowledges renewable energy resources are necessary to prevent land and air pollution as an alternative to the use of fossil fuels and is part of our long-term solution toward energy sustainability;

WHEREAS, the Cherokee Nation Tribal Council has previously authorized Cherokee Nation Businesses, LLC to seek grant funding to support feasibility studies as to the development of wind energy within the jurisdiction of the Cherokee Nation; and

WHEREAS, the Principal Chief and/or his designee has determined that it would be economically advantageous for the Cherokee Nation to develop wind energy resources at the Chilocco trust property located in Kay County, and has negotiated terms of a Wind Resource Lease with Chilocco Wind Farm, LLC, which includes a waiver of the Nation's sovereign immunity.

BE IT RESOLVED BY THE CHEROKEE NATION that the Council recognizes that, Chilocco Wind Farm, LLC will obtain debt financing and equity investments to fund the wind resource infrastructure project and that it is necessary to grant a limited waiver of sovereign immunity for the sole purpose of allowing Chilocco Wind Farm LLC to initiate causes of action against the Cherokee Nation in the event of default under the terms of the Wind Resource Lease Agreement.

BE IT FURTHER RESOLVED that the Council recognizes that 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 Wind Resource Lease Agreement.

BE IT FURTHER RESOLVED that for the sole purpose of allowing for enforcement of the Wind Resource Lease Agreement, and only for the purposes and time period set forth therein, the Cherokee Nation agrees to grant a limited waiver of sovereign immunity, only if all of the following conditions are met:

(1) The entity seeking to bring suit against the Nation is Chilocco Wind Farm, LLC, or its successors or assigns,

(2) The claim is for breach of contract and seeks only actual or liquidated damages, including attorney fees, resulting from the Nation's noncompliance with the Wind Resource Lease Agreement, and

(3) That any action can only be brought in the United States for the Northern District of Oklahoma;

BE IT FURTHER RESOLVED that nothing herein shall be construed as a waiver of immunity from suit seeking punitive damages from any party whatsoever, or as a waiver extended for the benefit of any entity, person, partnership, or firm whatsoever, other than the Chilocco Wind Farm, LLC or its successors and assigns and only for enforcement of Wind Resource Lease Agreement;

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 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 waive the sovereign immunity of the Cherokee Nation as it applies to the Wind Energy Resource Lease and hereby authorizes the Principal Chief to negotiate and execute limited waivers of sovereign immunity, and such other documents as may be required under the Wind Resource Lease 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.