

CB- 61-11

TO APPROVE THE CHOCTAW NATION BANKING, SAVINGS, AND INVESTMENT ACT

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IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION

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JAMES FRAZIER INTRODUCED THE FOLLOWING BILL

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A COUNCIL BILL

TO APPROVE The Choctaw Nation Banking, Savings, and Investment Act.


WHEREAS, the Tribal Council has considered the significant growth in recent years of Tribal revenues and monetary assets (tribal funds), and desires to assure that effective stewardship and appropriate fiduciary processes be employed in the management and administration of monetary assets whether held in bank deposits or for investments, and

WHEREAS, it is the intent of the Tribal Council to appropriate a portion of revenues each year for contribution to a permanent fund which represents effective stewardship and yet another building block toward Tribal self-sufficiency, to ensure quality services and opportunities for future generations.

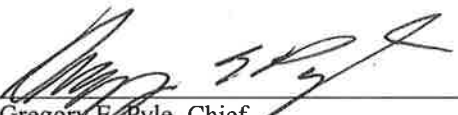
THEREFORE BE IT ENACTED by the Tribal Council of the Choctaw Nation of Oklahoma that this Act be cited as approval for Titles 1 through 4 of the Act as set forth in the attachment, under the conditions described herein.

CERTIFICATION

I, the undersigned, as Speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that ten (10) members answered roll call and that a quorum was present at the Special Session of the Tribal Council at Tuskahoma, Oklahoma on April 1, 2011. I further certify that the foregoing Council Bill CB- 61-11 was adopted at such meeting by the affirmative vote of ten (10), members and, zero (0) negative votes, and zero (0) abstaining.

  
Delton Cox, Speaker  
Choctaw Nation Tribal Council

  
James Frazier, Secretary  
Choctaw Nation Tribal Council

  
Gregory E. Pyle, Chief  
Choctaw Nation of Oklahoma

DATE: 4/4/2011

## ATTACHMENT TO THE CHOCTAW NATION BANKING, SAVINGS, AND INVESTMENT ACT

As stewards of the Choctaw Nation, the Tribal Council has considered the significant growth in recent years of Tribal revenues and Tribal funds. The Nation is currently taking action to improve and expand its gaming operations to maximize revenue and also applying portions of the revenue to other ventures to diversify its revenue base. In addition, the Tribal Council considers it unwise to commit all Tribal revenues to spending, given that their source is uncertain and will change over time. Therefore, setting aside a portion of Tribal revenues in permanent funds represents effective stewardship and yet another building block toward Tribal self-sufficiency, to ensure quality services and opportunities for future generations. It is the intent of the Tribal Council to appropriate a portion of revenues each year for contribution to a permanent fund with such contributions considered irrevocable, subject to emergency provisions set forth herein.

### **Title 1. Adoption of Fiduciary Standards**

The Chief shall, taking into account all appropriate industry and fiduciary standards, adopt in writing necessary policies and processes to assure effective management, protection and investment of the monetary assets of the Nation.

### **Title 2. Limited Waivers of Sovereign Immunity**

- (a) The Chief or his/her authorized designee is hereby authorized to approve limited waivers of the Nation's sovereign immunity within service agreements with banking institutions, institutional brokerages, trust companies or other professional service providers utilized in the custody and management of the Nation's deposits and investments for the purpose of agreeing in advance to utilization of mediation and or arbitration as the agreed upon method of resolving disputes arising out of such agreements. Provided that,
- (b) No arbitration award related to a dispute under such agreements shall be enforceable except from proceeds of the Nation's general liability policy or beyond policy limits.
- (c) Nothing in this Title shall authorize the Chief to waive the sovereign immunity of the Nation with respect to issuance of debt, except as authorized pursuant to Title 3.

### **Title 3. Authorization of Permanent Fund**

- (a) Fund Authorization: There is hereby authorized the Choctaw Nation of Oklahoma Permanent Fund (Fund). The Fund shall be utilized to account for all resources contributed to it, including revenues earned on fund assets. The Fund is established for the purpose of ensuring the availability of resources to finance essential Tribal government services and programs. The Fund shall be accounted for and reported as a permanent fund.
- (b) Contributions to the Fund: Primary contributions to the fund shall be by appropriation from available revenues of the Nation by the Tribal Council together with all earnings thereon from the time of such contribution. In addition, the Fund is authorized to accept such donations or grants to the fund as are made by individuals, foundations and other entities, provided that the use of such donations or grants are restricted only by policies of the Tribal Council.
- (c) Management of Fund Assets: The Chief shall establish policies for the management of assets placed in the Fund, including appropriate custody and investment directives. Assets of the Fund may be held and invested in common with other Nation funds having similar investment objectives and constraints, provided that net assets and earnings are properly allocated and reported for the Fund.
- (d) Authorized uses of the Fund: The single authorized use of the Fund, subject to emergency provisions, shall be to provide investment earnings to finance governmental activities and services of the Nation.

- (e) Authorization of use of Fund revenues: The authorization of use of Fund revenues (investment earnings) shall be by appropriation pursuant to Tribal budget. Amounts appropriated for use pursuant to the annual budget shall be transferred to the General Fund, to finance authorized budget expenditures. Expenditures may be matched to Fund revenues, but shall not be required, nor shall any determination of actual spending be required.
- (f) Amount available for appropriation: The amount of Fund revenue appropriated for use in any fiscal year shall not exceed an amount that is equal to the most recently reported Fund balance times sum of the average annual projected investment earnings of the Fund as stated within the appropriate investment policy statement minus the rate of inflation for the preceding year. Inflation shall be measured based on the change in the Consumer Price Index, U.S. City Average for All Urban Consumers, published by the United States Department of Labor or other inflation measure selected by the Chief.
- (g) Margin borrowing and leveraging of fund assets:
  - a. Margin Borrowing: provided the fund is custodied in an institutional brokerage account governed by Regulation T limits on margin borrowing, the Chief may authorize margin borrowing in the Fund for the following purposes:
    - i. If funds are needed for immediate liquidity and current investments are not sufficiently liquid to clear a required wire or check redemption.
    - ii. In order to invest in short term secure instruments that have a yield two percent or greater above the margin borrowing rate.
    - iii. In order to provide short term (less than one year) bridge loans to Tribal projects awaiting other assured funding.
  - b. Leverage of Fund Assets: The Tribal Council may assign or pledge fund assets to Tribal creditors in order to secure bridge loans for Tribal projects at competitive rates or to provide debt reserves to assure issuance of a required loan while awaiting other assured funding
- (h) Emergency use of the Fund:

In the event that the Tribal Council determines that a financial emergency exists, the severity of which threatens life, property, or the financial stability of the Nation, the Tribal Council may, by (majority vote or Act) adopted by affirmative vote of not less than \_\_\_ members of the Tribal Council, declare an emergency and approve emergency appropriations from the Fund.

In the event that emergency expenditures are made from the Fund, the Tribal Council shall appropriate from available Tribal revenues to reimburse the Fund, as soon as such revenues are available.
- (i) Implementation: The Chief is authorized to take all necessary actions to implement this Act as soon as practical.

#### **Title IV: Rescission of Previous Acts**

Previous Acts of the Tribal Council governing banking and investments, except any provisions of such Acts pertaining to or relied upon by any existing agreements of the Nation, are hereby rescinded and superseded by this Act. Any provisions of former Acts pertaining to or relied upon by agreements in effect as of the date of this Act shall remain in effect only as to and for the duration of such existing agreements.