

**A COUNCIL BILL ENACTING THE CHOCTAW NATION TRUST AND RESTRICTED
LAND LEASING ACT**

**IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION
RONALD PERRY INTRODUCED THE FOLLOWING COUNCIL BILL**

A COUNCIL BILL

TO ENACT the Choctaw Nation Trust and Restricted Land Leasing Act to: to implement the voluntary, alternative leasing process available to the Nation pursuant to 25 U.S.C. § 415, as amended by the HEARTH Act, for Business Leases, Residential Leases, Wind and Solar Resource Leases, Wind Energy Evaluation Leases, Public Purpose Leases, and Agricultural Leases on Tribal Land.

WHEREAS, Article IX, Section 4 of the Constitution of the Choctaw Nation of Oklahoma (the “Nation”) provides that the Tribal Council (the “Council”) shall enact legislation, rules, and regulations not inconsistent with the Constitution for the general good of the Choctaw Nation and for the administration and regulation of the affairs of the Choctaw Nation;

WHEREAS, the Nation, as a sovereign nation, possesses the right to establish laws, regulations, and procedures governing leases located within the Reservation;

THEREFORE BE IT ENACTED by the Tribal Council of the Choctaw Nation of Oklahoma:

SECTION 1. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1101 of Title 140 reads as follows:

CHAPTER 11. GENERAL PROVISIONS

Section 1101. Title of Act

This act shall be known as the Choctaw Nation Trust and Restricted Land Leasing Act (the “Act”).

SECTION 2. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1102 of Title 140 reads as follows:

Section 1102. Introduction

The Choctaw Nation of Oklahoma (the “Nation”) is a sovereign federally recognized Indian tribe. Article 9, Section 4 of the Constitution of the Choctaw Nation of Oklahoma states that the Tribal

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Council has the authority to enact legislation, rules, and regulations for the general good of the Nation and for the administration and regulation of the affairs of the Nation. The purpose of this Act is to implement the voluntary, alternative leasing process available to the Nation pursuant to 25 U.S.C. § 415, as amended by the HEARTH Act, for Business Leases, Residential Leases, Wind and Solar Resource Leases, Wind Energy Evaluation Leases, Public Purpose Leases, and Agricultural Leases on Tribal Land.

SECTION 3. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1103 of Title 140 reads as follows:

Section 1103. Authority

This Act is authorized by and subject to the HEARTH Act (25 U.S.C. § 415).

SECTION 4. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1104 of Title 140 reads as follows:

Section 1104. Purpose

The purpose and intent of this Act is to:

- A. Implement the HEARTH Act on Tribal Land;
- B. Promote tribal sovereignty;
- C. Streamline the leasing process for Tribal Land;
- D. Set forth the details of management and enforcement of leases on Tribal Land;
- E. Promote tribal control and self-determination over Tribal Land;
- F. Promote and support self-sufficiency, homeownership, and social, health and welfare programs on Tribal Land; and
- G. Increase business activity and employment on Tribal Land.

SECTION 5. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1105 of Title 140 reads as follows:

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Section 1105. Scope

This Act shall apply to all Leases within Tribal Land and to actions and decisions taken in connection with such Leases that would, in the absence of this Act, require approval by the Secretary pursuant to 25 U.S.C. § 415(a), as amended. This Act does not apply to individually-owned Indian lands (allotments), fee land, non-restricted fee land, or any Leases for the exploration, development or extraction of any mineral resources. This Act does not apply or otherwise impact land use agreements entered into under other statutory authority.

SECTION 6. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1106 of Title 140 reads as follows:

Section 1106. Definitions

For purposes of this Act, the capitalized terms set forth below shall have the following meanings (the meanings of defined terms shall be equally applicable to the singular and plural forms of the defined terms):

- A. "Act" means this Choctaw Nation Trust and Restricted Land Leasing Act.
- B. "Agricultural Land" means Tribal Land suited or used for the production of crops, livestock, or other agricultural products, or land suited or used for a business that supports the surrounding agricultural community.
- C. "Agricultural Lease" means a lease of agricultural land for farming and/or grazing purposes.
- D. "Applicant" means the person, corporation, or other legal entity that is seeking to enter into a Lease authorized by this Act.
- E. "Amendment" means any amendment of any Lease, Sublease, Assignment, Leasehold Mortgage or other administrative transaction permitted pursuant to this Act.
- F. "Assignment" means an agreement between a Lessee and an assignee, whereby the assignee acquires all or some of the Lessee's rights, and assumes all or some of the Lessee's obligations, under a Lease.
- G. "Best Interest of the Nation" means the balancing of interests in attaining the highest economic income, providing incentives to increase economic development, preserving and

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enhancing the value of the Nation's land, increasing employment and jobs, and preserving the sovereignty of the Nation.

- H. "BIA" means the Bureau of Indian Affairs within the United States Department of the Interior.
- I. "Bond" means security for the performance of certain Lease obligations, as furnished by the Lessee, or guarantee of such performance as furnished by a third-party surety.
- J. "Business Lease" means the same as Lease but shall be limited to Leases for business or commercial activity, whether personal, corporate, or otherwise, with the object of profit, gain, benefit, or advantage, either directly or indirectly, wholly or in part.
- K. "Categorically Excluded Activity" means a category of activities that have been determined not to have a Significant Effect on the Environment and therefore no Environmental Review Process is required, including the activities listed in Section 1502(C) herein.
- L. "Chief" means the Chief of the Nation.
- M. "Comment Period" has the meaning set forth in Section 1503(A)(2)(a).
- N. "Constitution" means the Constitution of the Choctaw Nation of Oklahoma, as ratified on July 9, 1983, and as amended on July 13, 2019, and as may be further amended.
- O. "Designated Assignee" means any lender to which a Mortgagee has or may transfer or assign its interest in a Lease or Leasehold Mortgage.
- P. "Determination of Categorical Exclusion" means a determination by the Environmental Reviewer that a proposed Lease transaction constitutes a Categorically Excluded Activity.
- Q. "Determination of Significant Effect" means a determination by the Environmental Reviewer that a proposed Lease will have a Significant Effect on the Environment.
- R. "Development Period" means the time period from commencement of a Business Lease to when improvements are expected to be substantially completed.
- S. "Encumbrancer" means a person with a legal right or interest in Lessee's property.

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- T. "Environmental Assessment" means a concise public document disclosing and analyzing the environmental consequences of a proposed action, so that the Environmental Reviewer has sufficient evidence and analysis for determining whether to prepare or cause to be prepared a finding of no Significant Effect on the Environment, Determination of Categorical Exclusion, or a Determination of Significant Effect.
- U. "Environmental Review Process" means the process for conducting an environmental review to determine the environmental impact of every proposed Lease.
- V. "Environmental Reviewer" means the official from the Nation's Environmental Protection Office or other official designated by the Chief.
- W. "Escrow Account" means one or more accounts established in the name of the Nation for the purposes of holding cash bonds related to Leases.
- X. "Fair Annual Lease Value" means the most probable dollar amount a property should generate in a competitive and open market reflecting all conditions and restrictions of the specified Lease, including without limitation the term, Rent adjustment (if any) and revaluation, permitted uses, use restrictions, and expense obligations of the Lease, with the Lessee and Lessor each acting prudently and knowledgeably, and assuming consummation of a Lease as of a specified date and the passing of the leasehold from Lessor to Lessee under conditions whereby both the Lessee and Lessor are equally motivated to consummate the Lease under the particular market conditions. Fair Annual Lease Value may take into consideration all revenues (including without limitation taxes, fees and other benefits of value) which the Lease is likely to generate for the benefit of the Nation, including without limitation increased business opportunities for related industries.
- Y. "HEARTH Act" means the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012, P.L. 112-151, 126 Stat. 1150 (2012), and codified at 25 U.S.C. § 415(h).
- Z. "Holdover" means circumstances in which a Lessee remains in possession of the Leased Premises after the Lease term expires or has been cancelled or terminated.
- AA. "Housing Unit" means all or any portion of any house, home, building or other structure used as a residence by any person, which is located on Tribal Land and subject to a Lease and/or rental agreement approved under this Act.

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- BB. “Lease” means a written contract between the Nation and a Lessee whereby the Lessee is granted a right to possess Tribal Land for a specified purpose and duration pursuant to and in accordance with this Act. Lessee’s right to possess will limit the Nation’s right to possess the Leased Premises only to the extent provided in the Lease. Lease includes any Rental agreement as defined in Choctaw Nation Code tit. 140, § 101 (2024).
- CC. “Lease Administrator” means the individual(s) or entity selected by the Chief who has been delegated authority to manage the Lease application process, manage all Leases, and implement enforcement actions in accordance with this Act on the Nation’s behalf; provided, however, the Chief may appoint more than one Lease Administrator with each such Lease Administrator responsible for different types of Leases and/or having different responsibilities, as designated by the Chief. The Leasing Administrator may assign all or part of its duties under this Act to a third-party designee.
- DD. “Lease Decision” means the decision of the Lease Administrator following completion of the Environmental Review Process with respect to approval of the issuance, Amendment, Sublease or Assignment of a Lease.
- EE. “Lease Management Plan” means the Nation’s ten (10) year agricultural resource management plan approved by the Chief and as amended from time to time.
- FF. “Leased Premises” means that portion of the Tribal Lands that is subject to a Lease approved pursuant to this Act.
- GG. “Leasehold Estate” means the possessory interest in Tribal Land established between a Lessor and a Lessee.
- HH. “Leasehold Mortgage” means a mortgage, a deed of trust or other instrument that pledges the Leasehold Estate of a Lessee as security for a debt or other obligation owed by the Lessee to a lender or other Mortgagee.
- II. “Lessee” means a person, corporation or other legal entity that has acquired a legal right to possess Tribal Land by executing a Lease under this Act. Lessee may include Tenant(s) as defined in Choctaw Nation Code tit. 140, § 101 (2024).
- JJ. “Lessor” means the Nation.

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- KK. “LTRO” means the BIA Land Titles and Records Office having administrative jurisdiction over the Leased Premises.
- LL. “Mortgagee” means any person, entity or governmental agency which lends under a Leasehold Mortgage, and includes any Designated Assignee, or other assignee thereof.
- MM. “Nation” means the Choctaw Nation of Oklahoma and the agencies, entities, arms and enterprises of the Nation, as appropriate either together or separately.
- NN. “Notice Requirements” means (i) hand delivery; or (ii) delivery by a nationally recognized mail carrier or overnight delivery service (such as United States Postal Service, FedEx or UPS). Any such notice shall be assumed to have been received when delivered in-person or forty-eight (48) hours after being sent in the manner specified above. Notice Requirements for Residential Leases shall be governed by the Nation’s Residential Landlord-Tenant Act and Landlord-Tenant Procedures Act. Choctaw Nation Code tit. 140 § 111(E) (2024).
- OO. “Permanent Improvement” means buildings, other structures, and associated infrastructure attached to the Leased Premises.
- PP. “Project” means any economic development activity on Tribal Land that is subject to a Lease.
- QQ. “Public” means, for the purpose of the Environmental Review Process, any person or entity with the potential to be significantly affected by the Lease.
- RR. “Public Purpose Lease” means a Lease, other than a Residential Lease, for religious, educational, recreational or other purpose primarily for the social or cultural betterment of the Nation, rather than a commercial or profit-making purpose.
- SS. “Rent” means the money or compensation to be paid or consideration to be given by the Lessee to the Lessor under a Lease or as defined in Choctaw Nation Code tit. 140, § 101 (2024) when Rent is used for residential purposes
- TT. “Residential Lease” means the same as Lease but shall be limited to Leases of undeveloped land or developed land, together with the Permanent Improvements thereon, for single-family, multi-family residences, or housing for public purposes. Residential Lease shall have the same meaning as “Rental Agreement” as defined in Choctaw Nation Code tit. 140, § 101 (2024)

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- UU. “Secretary” means the Secretary of the Interior, United States Department of the Interior, or his or her authorized representative or designee.
- VV. “Significant Effect on the Environment” means a substantial adverse change in the environment, including without limitation land, air, water, minerals, flora, fauna, ambient noise, cultural areas, and objects or areas of historic, cultural, or aesthetic significance.
- WW. “Sublease” means a written agreement by which the Lessee grants to an individual or entity a right to possession of all or a portion of the Leased Premises no greater than that held by the Lessee under the Lease.
- XX. “Sublessee” means a person, corporation, or other legal entity to whom Tribal Land is subleased under a Sublease.
- YY. “TEIR” means a tribal environmental impact report.
- ZZ. “Treasury” means the United States Department of the Treasury.
- AAA. “Tribal Council” means the Nation’s elected legislative body.
- BBB. “Tribal Court” means the District Court of the Choctaw Nation as established in CB-60-16.
- CCC. “Tribal Land” means land within and outside of the exterior boundaries of the Choctaw Nation of Oklahoma reservation held in Trust or Restricted Status by the United States for the benefit of the Nation.
- DDD. “Tribal Law” means the body of non-federal law that governs lands and activities under the jurisdiction of the Nation, including without limitation codes, acts, ordinances, rules, regulations, or other enactments by the Nation, and any rulings of the Tribal Court.
- EEE. “Trust or Restricted Status” means (1) that the United States holds title to a tract of land in trust for the benefit of a tribe; or (2) that a tribe holds title to a tract of land, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under federal law or limitations in federal law.
- FFF. “Wind and Solar Resource Lease” or “WSR Lease” means the same as Lease, but shall be limited to Leases for possession of Tribal Land for the purpose of installing,

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operating, and maintaining instrumentation, facilities, and associated infrastructure, such as wind turbines and solar panels, to harness wind and/or solar energy to generate and supply electricity: (i) for resale on a for-profit or non-profit basis; (ii) to a utility grid serving the public generally; or (iii) to users within the local community (e.g., on and adjacent to a reservation).

GGG. “Wind Energy Evaluation Lease” or “WEEL” means the same as Lease but shall be limited to short-term Leases for possession of Tribal Land for the purpose of installing, operating, and maintaining instrumentation, and associated infrastructure, such as meteorological towers, to evaluate wind resources for electricity generation.

SECTION 7. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1201 of Title 140 reads as follows:

CHAPTER 12. LEASE ADMINISTRATION

Section 1201. Management

Except where required otherwise by agreement or applicable law, the Lease Administrator shall manage all Leases pursuant to this Act and any applicable Lease Management Plan.

SECTION 8. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1202 of Title 140 reads as follows:

Section 1202. Administrative Fees

The Nation may charge administrative fees for costs associated with processing a Lease, Sublease, Assignment, Amendment, Leasehold Mortgage or other administrative transaction permitted pursuant to this Act.

SECTION 9. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1203 of Title 140 reads as follows:

Section 1203. Lease Approval

Subject to the terms and conditions of this Act, the Lease Administrator shall approve or disapprove of any proposed Lease, Sublease, Amendment, Assignment, Leasehold Mortgage or other transactions permitted under this Act.

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SECTION 10. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1204 of Title 140 reads as follows:

Section 1204. Lease Execution

All Leases, Subleases, Assignments, Amendments, Leasehold Mortgages or other transactions permitted under this Act and requiring signature shall be executed by the Lease Administrator or its designee.

SECTION 11. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1205 of Title 140 reads as follows:

Section 1205. Records

- A. **Recording**. The Lease Administrator shall cause Leases and any Amendments, Subleases, Assignments, Leasehold Mortgages, renewals cancellations, and terminations to be recorded with the LTRO. Notwithstanding the foregoing, Residential Subleases need not be recorded with the LTRO.
- B. **Payment Documentation**. For any Lease requiring payments to be made directly to the Nation, the Lease Administrator shall provide the BIA with documentation of the Lease payments that is sufficient to enable the Secretary to discharge the trust responsibility of the United States.
- C. **Dissemination**. Leases, Amendments, renewals or cancellations will be sent to the BIA Superintendent, Bureau of Indian Affairs, Eastern Oklahoma Region, PO BOX 8002, Muskogee, OK 74402, or any other address designated by the BIA Superintendent.
- D. **Ownership**. Records of activities taken pursuant to this Act are the property of the Nation. Records compiled, developed or received by the BIA are the property of the United States.
- E. **Retention**. The Lease Administrator will preserve records related to this Act for a reasonable period of time to adequately document essential transactions and furnish information necessary to protect the legal and financial rights of the Lease Administrator and persons directly affected by the Lease Administrator's activities herein.

SECTION 12. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1206 of Title 140 reads as follows:

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Section 1206. Enforcement

- A. **General.** The Lease Administrator shall have all powers necessary and proper to enforce Lease terms as well as applicable laws, codes, acts, ordinances, regulations, rules, policies, covenants and any applicable Lease Management Plan, which includes but is not limited to the power to enter the Leased Premises at any reasonable time, with or without notice, and to assess late payment penalties.
- B. **Defaults.** A default of a Lease includes Lessee's failure to pay Rent or other monetary obligations due under the Lease, a violation of any term or condition of the Lease, or a violation of any of Lessee's or Lessor's obligations under this Act. Unless provided otherwise in the Lease or within other Choctaw Nation law, the Lease Administrator shall send violation notice(s) to the Lessee, and Lessee's sureties if applicable, within a reasonable amount of time after determining that the Lease has been violated. The notice of violation to the Lessee must be provided to the Lessee in accordance with the Notice Requirements. The notice of violation must specify the nature of the violation, including any interest accruals, penalty fees, enforcement fees, and administrative fees, and notify the Lessee of its obligations pursuant to this Section 1206.
1. **Notice of Violation.** Unless provided otherwise in the Lease or within other Choctaw Nation law, within ten (10) business days of the receipt of a notice of violation, the party in default must:
- a. Cure the violation and notify the Lease Administrator, in writing, that the violation has been cured;
 - b. Dispute, in writing, the determination that a violation has occurred and/or explain, in writing, why the Lease should not be cancelled; or
 - c. Request, in writing, additional time to cure the violation.
- C. **Remedies.** The following remedies for default of a Lease are available under this Act, and the Lease Administrator has the right to determine any remedy/remedies that are in the Best Interest of the Nation:
1. Invoke other negotiated remedies available under the Lease, including collecting on any available Bond;
 2. Grant additional time in which to cure the default;

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3. Terminate the Lease pursuant to the terms of the Lease or applicable Nation laws;
4. Request that the BIA enforce the provisions of the Lease or cancel the Lease;
5. Any remedy set forth in the Choctaw Nation Residential Landlord-Tenant Act, Choctaw Nation Landlord-Tenant Procedures Act, or any other applicable Nation laws, rules, or regulations; or
6. Any combination of the remedies listed above.

D. Lease Termination.

1. Residential Leases. If the Lease Administrator decides to terminate a Residential Lease, such termination shall occur pursuant to the Choctaw Nation Residential Landlord-Tenant Act and Choctaw Nation Landlord-Tenant Procedures Act.
2. Public Purpose Leases, Business Leases, Agricultural Leases, WSR Leases, and WEELs. Unless provided otherwise in the Lease or within other Choctaw Nation law, if the Lease Administrator decides to terminate a Public Purpose Lease, Business Lease, Agricultural Lease, WSR Lease or WEEL, a termination notice shall be sent to the Lessee and Lessee's sureties, if applicable, within five (5) business days of that decision. The termination notice must be provided to the Lessee in accordance with the Notice Requirements. The termination notice must:
 - a. Explain the grounds for termination;
 - b. Notify the Lessee of the amount of any unpaid Rent, interest charges, penalty fees, or administrative fees due;
 - c. Notify the Lessee of its right to appeal; and
 - d. Order the Lessee to vacate the property within thirty (30) calendar days of the date of receipt of the termination notice if the Lessee has not filed a timely appeal.

A termination shall be effective thirty-one (31) calendar days after receipt of the termination notice. Unless the Tribal Court orders otherwise, the filing of an appeal shall not change the effective date of the termination. Pending the outcome of an appeal (if any), Lessee shall make all requisite payments under, as well as comply with, the terms of the Lease.

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- E. **Holdover; Trespass.** If the Lessee remains in possession of the Leased Premises after the expiration, termination, or cancellation of a Lease, the Lease Administrator will treat the unauthorized use, including without limitation the failure to remove from the Tribal Land anything which the Lessee was under a duty to remove after the Lessee's legal right to remain on the Tribal Land ceased, as a trespass. The Nation may take action to recover possession of the Leased Premises and pursue any additional remedies available under applicable law, which may include pursuing appropriate judicial action, including but not limited to the filing of a trespass action to regain possession under applicable Tribal Law, or seeking assistance from the BIA for resolution under federal law. Notwithstanding the foregoing, the Lease Administrator shall follow the requirements under the Choctaw Nation Landlord-Tenant Act and the Landlord-Tenant Procedures Act to recover possession under a Residential Lease.
- F. **Harmful or Threatening Activities.** If a Lessee or other party causes or threatens to cause immediate and significant harm to the Lease Premises under the Lease, or undertakes illegal activity or unlawful conduct thereon, the Lease Administrator may take appropriate emergency action, which may include terminating the Lease and/or securing judicial relief.

SECTION 13. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1207 of Title 140 reads as follows:

Section 1207. Appeals

Appeals may be taken from any judgment rendered under this Act, the Choctaw Nation Residential Landlord-Tenant Act, or the Landlord-Tenant Procedures Act to the Choctaw Nation Court of Appeals in the same manner as appeals are taken in other civil actions under the Nation's laws.

SECTION 14. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Chapter 13 of Title 140 reads as follows:

CHAPTER 13. LEASE APPLICATION

An Applicant for a Lease is responsible for completing and submitting all documents required by this Act or the Lease Administrator. The Applicant shall submit a complete application to the Lease Administrator, which may include but is not limited to the following documents:

- A. Any financial information deemed necessary to determine whether the Applicant can financially meet the obligations of the Lease and/or the conditions and requirements of this Act;

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- B. Land description;
- C. Description of proposed use;
- D. Description of proposed Permanent Improvements, if any, including construction plans, schedules, costs and contractor information;
- E. Environmental Review Process documents;
- F. If the Lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a tribal entity, information such as organizational documents, certificates, filing records, and resolutions, that demonstrate that:
 - 1. The representative has authority to execute a Lease;
 - 2. The Lease will be enforceable against the Lessee; and
 - 3. The legal entity is in good standing and authorized to conduct business in the state where the land is located.
- G. Other documents as may be reasonably required.

SECTION 15. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1401 of Title 140 reads as follows:

CHAPTER 14. LEASE TERMS AND CONDITIONS

Section 1401. Mandatory Lease Provisions

- A. **All Leases**. All Leases shall be in writing and contain, at minimum, provisions that address the following:
 - 1. The description of the tract or parcel of the Tribal Land, Housing Unit, building, or structure that is being leased (with reference to a public or private survey plan, if available) in terms sufficient to determine the location of the Leased Premises and meet recording requirements for the LTRO;
 - 2. The parties to the Lease and their contact information;

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3. The term and Effective Date of the Lease, including any options to renew;
4. The purpose of the Lease and the authorized uses of the Leased Premises;
5. If Permanent Improvements may be constructed and, if permitted, identify who is responsible for constructing, owning, operating, maintaining and removing any Permanent Improvements;
6. Any permitted Amendment of the Lease and whether the Lessee may execute an Assignment, Sublease, or Leasehold Mortgage;
7. Any bond requirements under Section 1405 herein;
8. Any insurance requirements under Section 1406 herein;
9. The Lease Administrator, or its designee, has the right, at any reasonable time during the term of the Lease, and upon reasonable notice, to enter the Leased Premises for inspection and to ensure compliance;
10. Payment requirements, including the party to receive the Rent, acceptable forms of payment, due date for payment, and late payment penalties, fees and interest. Unless the Lease provides otherwise, payments may not be made or accepted more than one year in advance of the due date;
11. The Lessee will hold the United States and the Nation harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the Leased Premises;
12. The obligations of the Lessee and the Lessee's sureties, if applicable, will be enforceable by the United States as long as the Leased Premises is held in Trust or Restricted Status;
13. There must not be any illegal conduct or activity on the Leased Premises and the Lessee must comply with all applicable laws, ordinances and other legal requirements;
14. The parties to the Lease agree that the Tribal Court shall have exclusive jurisdiction over any claim or controversy arising from or related to the Lease;
15. A provision that expressly includes the following language: "If historic properties, archeological resources, human remains, or other cultural items not previously reported

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are encountered during the course of any activity associated with the Lease, all activity in the immediate vicinity of the Leased Premises, resources, remains or items will cease and the Lessee will contact the Nation and the BIA;

16. A provision that expressly includes the following language: “If the Leased Premises are within an Indian irrigation project or drainage district, except as provided by 25 C.F.R. § 171, the Lessee must pay all operation and maintenance charges that accrue during the Lease term. The Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district”; and

17. An obligation of the Lessee to comply with all applicable laws, including Tribal Law.

B. **Additional Mandatory Provisions for WSR Leases**. In addition to the requirements under Section 1401(A) above, WSR Leases shall also contain the following:

1. A provision requiring Lessee to commence installation of energy facilities within two (2) years after the effective date of the WSR Lease or consistent with a timeframe in the resource development plan;
2. A provision that if installation does not occur, or is not expected to be completed, within the time period specified in the immediately preceding subsection of this section, that the Lessee provide the Nation with an explanation of good cause as to the nature of any delay, the anticipated date of installation of facilities, and evidence of progress toward commencement of installation;
3. A provision requiring Lessee to maintain all on-site electrical generation equipment and facilities and related infrastructure in accordance with the design standards in the resource development plan;
4. A provision requiring Lessee to repair, place into service, or remove from the site within a time period specified in the WSR Lease any idle, improperly functioning, or abandoned equipment or facilities that have been inoperative for a continuous period specified in the WSR Lease (unless the equipment or facilities were idle as a result of planned suspension of operations, for example, for grid operations or during bird migration season); and
5. A provision identifying who is responsible for:
 - a. Evaluating the Leased Premises for suitability;

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- b. Purchasing, installing, operating, and maintaining wind and solar equipment;
- c. Negotiating power purchase agreements; and
- d. Transmission.

C. **Additional Mandatory Provisions for WEELs.** In addition to the requirements under Section 1401(A) above, WEELs shall also contain the following:

- 1. A provision requiring Lessee to install testing and monitoring facilities within twelve (12) months after the effective date of the WEEL or other period designated in the WEEL and consistent with the plan of development;
- 2. A provision requiring that if installation does not occur, or is not expected to be completed, within the time period specified in the immediately preceding subsection of this section, that the Lessee provide the Nation with an explanation of good cause for any delay, the anticipated date of installation of facilities, and evidence of progress toward installing or completing testing and monitoring facilities; and
- 3. A provision specifying the ownership of any energy resource information the Lessee obtains during the WEEL term (unless otherwise specified in the WEEL, the energy resource information the Lessee obtains through the Leased activity becomes the property of the Nation at the expiration, termination, or cancellation of the WEEL or upon failure by the Lessee to diligently install testing and monitoring facilities on the Leased Premises in accordance with this section);

D. **Additional Mandatory Provision for Agricultural Leases.** In addition to the requirements under Section 1401(A) above, Agricultural Leases shall also contain an obligation that farming and grazing operations be conducted in accordance with recognized principles of sustained yield management, integrated resource management planning, sound conservation practices, and other community goals as required under the Lease Management Plan and/or other applicable in Tribal Law. Appropriate stipulations or conservation plans must be developed and incorporated in all Agricultural Leases. Lessee must also provide environmental and archaeological reports, surveys and site assessments, as needed to document compliance with applicable federal laws and Tribal laws.

SECTION 16. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1402 of Title 140 reads as follows:

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Section 1402. Optional Lease Provisions

- A. **Permanent Improvements**. The following provisions apply to all Leases that provide for the construction of Permanent Improvements:
1. **Construction Plan**. If Permanent Improvements are authorized, the Lease must include a construction plan that describes the following:
 - a. The type and location of any Permanent Improvements;
 - b. A general schedule for construction of Permanent Improvements; and
 - c. A process for changing the schedule by mutual consent of the parties.
 2. **Due Diligence Requirements**. The Lessee must exercise due diligence to complete construction of any Permanent Improvements within the schedule detailed in the Lease. Changes to the construction schedule for Permanent Improvements must be agreed upon in writing in advance of Lessee's failure to complete construction of any Permanent Improvements, if applicable. When requested by the Lease Administrator, or otherwise required in the Lease, Lessee shall provide a written update of progress. Failure of the Lessee to complete construction within the schedule is a violation of the Lease and may lead to cancellation of the Lease as reasonably determined by the Lease Administrator to be in the Best Interest of the Nation.
 3. **Cost of Permanent Improvements**. All Permanent Improvements permitted under a Lease will be constructed at the Lessee's sole expense, unless otherwise provided for in the Lease.
 4. **Ownership and Disposition**. Each Lease must identify who will own, construct, operate, maintain, and manage any Permanent Improvements. Each Lease may specify under what conditions, if any, such Permanent Improvements may be conveyed to the Lessor. Each Lease must indicate how each specific Permanent Improvement the Lessee constructs will be disposed of upon termination of the Lease. Such disposition may occur as follows:
 - a. Remain on the Leased Premises upon expiration, cancellation, or termination of the Lease, in a condition satisfactory to the Lessor, and become the property of the Lessor;

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- b. Be removed from the Leased Premises within a time period specified in the Lease, at the Lessee's expense, with the Leased Premises to be restored as closely as possible to the Leased Premises' condition before construction of the Permanent Improvements; provided, however, the Nation must also be provided an option, exercisable by the Lease Administrator without consent of the Lessee, to take possession of and title to the Permanent Improvements if they are not removed within the time period specified in the Lease; or
 - c. Be disposed of by other specified means.
 5. Taxation. Permanent Improvements may be subject to taxation by the Nation.
 6. Waiver. The Lease Administrator may waive the requirements of this Section 1402(A) for a Public Purpose Lease, or if the Lease Administrator determines that such a waiver is in the Best Interest of the Nation.
- B. Subleases, Assignments, Amendments, and Leasehold Mortgages. The following provisions apply for all Leases that provide for a Sublease, Assignment, Amendment, or Leasehold Mortgage:
 1. Subleases, Assignments, Amendments or Leasehold Mortgages of any Lease shall be by written consent of the Lessor and Lessee, unless otherwise provided herein.
 2. The effective date, term and option to renew, if any, shall be set forth in Subleases, Assignments, Amendments or Leasehold Mortgages related to any Lease.
 3. Subleases and Assignments of any Lease, in whole or in part, may be permitted so long as the following conditions are satisfied:
 - a. There is no default under the current Lease or this Act;
 - b. Any restrictions and use limitations on the use of the Leased Premises shall continue to apply to any Sublessee or assignee;
 - c. If required by the Lease Administrator, the proposed assignee or Sublessee submits a current financial statement to Lessor showing financial capacity to perform Lease obligations; and

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- d. The Lessee shall not be relieved or released from any of its obligations under the Lease.
4. The Lease may authorize a Leasehold Mortgage to a Mortgagee for purposes of financing development and Permanent Improvements to the Leased Premises subject to the approval of the Lessor.
5. If a sale or foreclosure of the Lessee's business or assets occurs and the Encumbrancer is also the purchaser, the Encumbrancer may assign a Lease without approval of the Lessor or Lessee, provided that the assignee agrees in writing to be bound by all of the terms and conditions of the Lease. If the purchaser is a party other than the Encumbrancer, approval by the Lessor is required, and the purchaser must agree in writing to be bound by all of the terms and conditions of the applicable Lease.

SECTION 17. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1403 of Title 140 reads as follows:

Section 1403. Lease Duration

- A. **Business Leases, Agricultural Leases, and WSR Leases.** The duration of a Business Lease, Agricultural Lease, or WSR Lease shall not exceed twenty-five (25) years with an option to renew for up to two (2) additional terms (each of which shall not exceed twenty-five (25) years).
- B. **Residential Leases and Public Purpose Leases.** The duration of a Residential Lease or Public Purpose Lease shall not exceed seventy-five (75) years.
- C. **WEEL.** The duration of a WEEL shall not exceed three (3) years with one (1) option to renew for a period not exceeding three (3) years (for a maximum WEEL term of six (6) years). A WEEL may provide for an option period following the expiration of the WEEL term during which the Lessee and the Nation may enter into a WSR Lease. Approval of a WEEL that contains an option to enter into a WSR Lease does not guarantee or imply approval of any WSR Lease.
- D. **Option to Renew.** A Lease that includes an option to renew must also include the following information:
 1. The time and manner the option must be exercised or is automatically effective;

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2. Any additional consideration that will be due upon exercise of the option to renew; and
3. Any other conditions for renewal.

SECTION 18. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1404 of Title 140 reads as follows:

Section 1404. Rent Compensation Amount

A. Business Leases, Agricultural Leases, WSR Leases, and WEELs.

1. The Fair Annual Lease Value for a proposed Business Lease, Agricultural Lease, WSR Lease, or WEEL may be determined by an appraisal performed by a licensed appraiser utilizing a commonly accepted method of appraisal. Rent may be structured at a flat rate, flat rate plus a percentage of gross receipts, percentage of gross receipts or other market indicator. The requirement for an appraisal may be waived by the Lease Administrator if the Lease Administrator determines that an appraisal is not necessary and that such waiver is in the Best Interest of the Nation.
2. The Fair Annual Lease Value may also be determined using competitive bidding as a valuation method.
3. Less than Fair Annual Lease Value. Tribal Land may be leased at less than the Fair Annual Lease Value if:
 - a. Lessee is a religious organization, or an agency of a federal, state, tribal or local government;
 - b. Lessee is an intertribal organization, consortium or entity serving the Nation's community;
 - c. the purposes of subsidization are for the benefit of the Nation;
 - d. the time period for Rent at less than Fair Annual Leave Value is during any Development Period;
 - e. the Nation is attempting to attract business development through market incentives;
or

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- f. the Lease Administrator determines the Lease is in the Best Interest of the Nation.
- B. Rent Adjustments. The Lease Administrator may negotiate for and include a provision in any Business Lease, Agricultural Lease, WSR Lease or WEEL for periodic review and adjustment of Rent. If applicable, the provision shall specify how Rent adjustments will be made, who will make such adjustments, when such adjustments will go into effect and how disputes shall be resolved.
- C. Residential Leases.
1. For Residential Leases, the Rent to be paid by the Lessee and the form of Rent or methodology of determining Rent shall be determined by the Lease Administrator based upon the Best Interest of the Nation.
 2. For Residential Leases that are not “housing for public purposes,” periodic review and adjustment of the Rent shall be conducted at least every five (5) years. Rent adjustments may be authorized by the Lease Administrator following a periodic review by the Lease Administrator and shall take effect on January 1st of the calendar year following the periodic review. The Lease Administrator may waive this review if the Lease Administrator determines that doing so is in the Best Interest of the Nation. A Residential Lease shall, if applicable, specify how Rent adjustments will be made, who will make such adjustments, when such adjustments will go into effect and how disputes shall be resolved.

SECTION 19. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1405 of Title 140 reads as follows:

Section 1405. Bond Requirements

- A. Business Leases, Agricultural Leases, and WSR Leases. Unless waived by the Lease Administrator, Bonds will be required in an amount that will reasonably assure performance of the contractual obligations under any Business Lease, Agricultural Lease, or WSR Lease. Any such Bond or other security instrument must require the surety to provide notice to the Nation at least sixty (60) days before canceling such Bond.
1. Purpose of Bonds. The purpose of Bonds is as follows:
 - a. To guarantee a minimum of one (1) year’s Rent unless the Lease contract provides that the annual Rent shall be paid in advance;

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- b. To guarantee the estimated construction cost of Permanent Improvements to be placed on the Tribal Land by the Lessee;
 - c. To guarantee all operation and maintenance charges for the Leased Premises within an irrigation project that accrue during the Lease Term;
 - d. To guarantee the restoration and reclamation of the Leased Premises to their condition at the start of the Lease term or some other specified condition; and
 - e. To guarantee compliance with any additional contractual obligation, applicable environmental standards, and the general protection of the health, safety, and welfare of the Nation.
2. Form of Bonds. The obligation for a Bond may be fulfilled by an alternate security in the form of (i) an irrevocable letter of credit from a bank or equivalent financial institution, (ii) a certificate of deposit issued by a federally insured financial institution authorized to do business in the United States, (iii) negotiable Treasury securities, (iv) cash, or (v) any alternative form of security, including cash, that provides adequate protection for the Nation, including but not limited to an escrow agreement with an assigned savings account.
3. Administration of Cash Bonds.
- a. If a cash bond is submitted, the Nation will hold the funds in an Escrow Account.
 - b. The Nation will not pay interest on a cash performance bond.
 - c. If the cash bond is not forfeited under the provisions of this Act, the Nation will refund the cash bond to the Lessee upon the expiration or termination of the Lease.
4. Bond Waiver. The requirement for Bonds may be reduced or waived by the Lease Administrator, provided that the waiver or reduction is determined by the Lease Administrator to be in the Best Interest of the Nation. The waiver may be revoked at any time if the Lease Administrator determines that the waiver or reduction of Bond requirements ceases to be in the Best Interest of the Nation.

- B. Residential Leases and WEELs. Unless the terms of a Lease provide otherwise, the Lessee of a Residential Lease or WEEL will not be required to provide a Bond.

SECTION 20. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1406 of Title 140 reads as follows:

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Section 1406. Insurance Requirements

- A. **Business Leases, Agricultural Leases, WSR Leases, and WEELS.** A Lessee of a Business Lease, Agricultural Lease, WSR Lease or WEEL shall provide proof of insurance necessary to protect the interests of the Lessor in amounts sufficient to protect all insurable Permanent Improvements on the Leased Premises and in other amounts as reasonably determined by the Lease Administrator to be in the Best Interest of the Nation.
1. **Types of Insurance.** The insurance may include, but is not limited to, property, liability or casualty insurance or other insurance as provided in the Lease.
 2. **Additional Insureds.** The United States and the Nation shall be additional insureds under any policy of insurance required by the Lease.
 3. **Insurance Waiver.** The Lease Administrator may waive the insurance requirement(s) if the Lease Administrator determines that a waiver is deemed in the Best Interest of the Nation. The waiver may be revoked at any time if the Lease Administrator determines that the waiver ceases to be in the Best Interest of the Nation.
- B. **Residential Leases.** Unless the terms of a Lease provide otherwise, the Lessee of a Residential Lease will not be required to provide proof of insurance.

SECTION 21. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1501 of Title 140 reads as follows:

CHAPTER 15. ENVIRONMENTAL REVIEW

Section 1501. Environmental Review Process

A Lease shall not be executed until the Environmental Reviewer completes the Environmental Review Process by issuing a Determination of Categorical Exclusion, a finding of no Significant Effect on the Environment, or Determination of Significant Effect. Unless a categorical exclusion applies, the Environmental Reviewer shall be responsible for preparing an Environmental Assessment to identify and evaluate whether a proposed Lease would have a Significant Effect on the Environment.

SECTION 22. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1502 of Title 140 reads as follows:

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Section 1502. Threshold Determinations of Environmental Reviewer

- A. **Categorical Exclusion for Equivalent Environmental Review.** The Environmental Review Process shall not apply if a categorical exclusion applies to the Project and/or the Project is subject to an equivalent or more extensive environmental review than that required under this Act. In such case, the Environmental Reviewer shall issue a Determination of Categorical Exclusion.

- B. **Exemption for No Physical Development or Disturbance.** The Environmental Review Process shall not apply if there is no new physical development or disturbance to the environment or where there is an existing Project and the activities authorized under the original Lease will not materially change. In such case, the Environmental Reviewer shall issue a Determination of Categorical Exclusion.

- C. **Categorically Excluded Activities for Residential Leases.** The Environmental Review Process shall not apply and the Environmental Reviewer shall issue a Determination of Categorical Exclusion if a proposed Residential Lease contains any of the following Categorically Excluded Activities:
 - 1. Approval of a Residential Lease for residential use of an existing Housing Unit, including any associated existing Permanent Improvements, access roads and utilities;
 - 2. Approval of a Residential Lease for five (5) acres or less of contiguous Tribal Land for construction of a Housing Unit of one (1) to four (4) dwelling units, including any associated Permanent Improvements, access roads, and utilities; and
 - 3. Approval of a Sublease of a Residential Lease where the activities authorized under the original Residential Lease will not materially change.

SECTION 23. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1503 of Title 140 reads as follows:

Section 1503. Environmental Assessment

- A. Unless a Determination of Categorical Exclusion is issued, the Environmental Reviewer shall cause the preparation of an Environmental Assessment to identify and evaluate whether a proposed Lease would have a Significant Effect on the Environment. Following

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completion of the Environmental Assessment, the Environmental Reviewer will proceed as follows:

1. **No Significant Effect on the Environment.** If the Environmental Reviewer determines that the uses authorized by the proposed Lease will not have a Significant Effect on the Environment, then it shall cause the following to occur in the order set forth below:
 - a. A finding of no Significant Effect on the Environment shall be issued and posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the offices of the Nation and on a publicly accessible website.
 - b. If there is a substantial interest in holding a public meeting, it shall be held in a manner determined by the Lease Administrator to provide an opportunity for tribal citizens and the general public to comment in writing or verbally on the finding of no Significant Effect on the Environment.
 - c. Comments submitted under subsection (b) above shall be reviewed and analyzed and a report shall be issued by the Environmental Reviewer responding to relevant and substantive comments, if any, regarding the finding of no Significant Effect on the Environment and including the final decision of the Environmental Review to issue a finding of no Significant Effect on the Environment. The report shall be posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the offices of the Nation and on a publicly accessible website.
2. **Determination of Significant Effect on the Environment.** If the Environmental Reviewer determines that the uses authorized by the proposed Lease may have a Significant Effect on the Environment, then the Environmental Reviewer shall cause the following to occur in the order set forth below:
 - a. A draft TEIR that identifies and evaluates any Significant Effect on the Environment of uses authorized by the proposed Lease shall be issued and posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the offices of the Nation and on a publicly accessible website, during which time the Environmental Reviewer shall accept comments on the draft TEIR (the "Comment Period");
 - b. Following the Comment Period, if there is a substantial interest in holding a public meeting as determined by the Environmental Reviewer, such meeting shall be held

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in a manner determined by the Lease Administrator to provide a final opportunity for tribal citizens and the general public to comment in writing or verbally on the draft TEIR. Comments will not be accepted after the conclusion of the meeting, unless the Lease Administrator in writing extends the period of time during which comments will be accepted;

- c. Comments shall be reviewed and analyzed and a report by the Environmental Reviewer shall be issued responding to relevant and substantive comments, if any, on the draft TEIR and shall include the proposed conclusions of the Environmental Reviewer. The report and the proposed final TEIR shall be posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the offices of the Nation and on a publicly accessible website.
- d. A final TEIR providing a determination of the potential for any Significant Effect on the Environment associated with the uses authorized by the proposed Lease and proposed or recommended mitigation measures addressing any such impacts, shall be issued by the Environmental Reviewer, sent to the Lease Administrator for approval, and posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the offices of the Nation and on a publicly accessible website.

SECTION 24. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1601 of Title 140 reads as follows:

CHAPTER 16. MISCELLANEOUS PROVISIONS

Section 1601. Sovereign Immunity

All inherent sovereign rights of the Nation as a federally recognized Indian tribal government with respect to provisions authorized in this Act are hereby expressly reserved, including without limitation sovereign immunity from unconsented suit. Nothing in the Act shall be deemed or construed to be a waiver of the Nation's sovereign immunity from unconsented suit.

SECTION 25. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1602 of Title 140 reads as follows:

Section 1602. Severability

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If any provision or clause of this Act or the application thereof to any person or circumstance is deemed invalid or illegal under applicable Tribal Law or federal law, such provision shall be severed from this Act and the remainder of this Act shall remain in full force and effect.

SECTION 26. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1603 of Title 140 reads as follows:

Section 1603. Governing Law

Leases shall be governed by Tribal Law and federal law.

SECTION 27. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1604 of Title 140 reads as follows:

Section 1604. Amendment.

This Act may be amended by the Tribal Council at a duly called, noticed Tribal Council meeting. All substantive amendments to this Act must be submitted to and approved by the Secretary to be effective. Minor technical and non-substantive amendments to this Act may be made without BIA approval.

SECTION 28. NEW LAW A new section of law to be codified in the Choctaw Nation Statutes as Section 1605 of Title 140 reads as follows:

Section 1605. Effective Date

This Act shall take effect upon approval by the Secretary.

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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 twelve (12) members answered roll call and that a quorum was present at the Regular Session of the Tribal Council in Tuskahoma, Oklahoma on April 13, 2024. I further certify that the foregoing Council Bill CB- 53 -24 was adopted at such meeting by the affirmative vote of twelve (12) members, zero (0) negative votes, and zero (0) abstaining.



Ronald Perry, Secretary
Choctaw Nation Tribal Council



Thomas Williston, Speaker
Choctaw Nation Tribal Council



Gary Battop, Chief
Choctaw Nation of Oklahoma

Date 4-17-24

**A COUNCIL BILL ENACTING THE CHOCTAW NATION TRUST AND RESTRICTED
LAND LEASING ACT**

Purpose/Need of Council Bill: This bill implements the voluntary, alternative leasing process available to the Nation pursuant to 25 U.S.C. § 415, as amended by the HEARTH Act, for Business Leases, Residential Leases, Wind and Solar Resource Leases, Wind Energy Evaluation Leases, Public Purpose Leases, and Agricultural Leases on Tribal Land.

Title of Council Bill: A COUNCIL BILL ENACTING THE CHOCTAW NATION TRUST AND RESTRICTED LAND LEASING ACT

Agency: Commerce

Budget: N/A

Match Required: N/A

Request by Project Director: Janie Dillard, SEO, Commerce