



**ENACTMENT OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION**

(Adopting Ordinance No. 233 to Amend Chapter Nine of the Government Code)

WHEREAS, pursuant to Article IV, Section 1(a) of the Constitution of the White Mountain Apache Tribe, *inter alia*, the Tribal Council has the authority to represent the Tribe and act in all matters that concern the welfare of the Tribe; and

WHEREAS, pursuant to Article XV, Section 2 of the Constitution, and Section 1.6 of the White Mountain Apache Judicial Code, "All proposed ordinances of the Council shall be posted in each district at least ten days before final action by the Council," and the codes of the Tribe may be "amended by the adoption of ordinances by the Tribal Council"; and

WHEREAS, Ordinance No. 175, which enacted Chapter Nine of the Government Code (October 3, 1991), did establish the Permanent Trust Fund; and

WHEREAS, pursuant to Resolution No. 04-2008-104, a proposed amendment to Chapter Nine of the Government Code was posted for ten days from April 29 to May 8, 2008, which has become known as Alternative No. 1; and

WHEREAS, under Alternative No. 1, it was proposed that the Permanent Trust Fund be used "in whole or in part" as collateral, and for such purpose the Sunset Date of October 3, 2011 be rolled back to April 30, 2008; and

WHEREAS, the Office of the Tribal Council Secretary received 314 responses against, and 3 responses in favor of the proposal; and

WHEREAS, significantly, upon advice of counsel, the proposed use of all of the Fund would amount to a repeal sufficient to require a referendum; and

WHEREAS, in light of the comments received, the Investment Committee has reviewed and considered two alternative amendments; and

WHEREAS, Alternative No. 2 proposes a prospective use of earnings after a revised Sunset Date; and

WHEREAS, Alternative No. 3 proposes a retroactive use of earnings via an earlier Sunset Date, which the Investment Committee recommends to be April 30, 1996, in order to make available up to \$8.8 million for use as collateral; and

WHEREAS, even though the interest income may be used as collateral, the Fund will remain invested and continue to earn interest and grow;

WHEREAS, the Investment Committee recommends initially pledging \$3.2 million of the Fund's accrued interest as collateral for the purpose of expanding the Tribe's current credit line in order to meet the Tribe's cash flow, payroll and payable obligations; and

WHEREAS, in light of the continued fiscal crisis faced by the Tribe, the Tribal Council finds that Alternative No. 3 provides a reasonable solution; and

WHEREAS, the proposed amendment of Chapter Nine of the Government Code would provide as follows:

1. Section 9.5(B). Section 9.5(B) would be amended to change the sunset provision proscribing expenditure of the earnings of the Permanent Trust Fund from October 3, 2011 retroactively to April 30, 1996, which would read as follows:

“Neither the principal of said fund nor the net investment income earned, including unrealized gains and losses on the investment securities or any other investments by said fund, shall be expended until April 30, 1996, except for expenses associated with administration of the fund; provided, however, that net investment income earned after such date, but not any net investment income earned prior to such date nor the monies contributed to said fund at any time by the Tribe, may be expended.”

2. Section 9.5(C). Section 9.5 would be amended to add a new provision that shall allow for the pledging of interest income earned after the retroactively rolled back Sunset Date of April 30, 1996, for the purpose of securing debt obligations of the Tribe as may be required from time to time. The new provision would read as follows:

“Section 9.5(C). Debt Obligations. Net investment income earned after the Sunset Date of April 30, 1996, may be pledged, assigned, or otherwise used as security or collateral, in whole or in part, for credit or debt obligations extended to the Tribe as may be required from time to time. Any credit or debt accommodation seeking to utilize such net investment earnings of the Permanent Trust Fund shall require the recommendation of the Tribe's Treasurer and review thereof by the Tribe's Investment Committee and the Budget and Finance Committee, and approval by the Tribal Council.”

WHEREAS, the Tribal Council finds that the proposed amendment to Chapter Nine of the Government Code should be adopted as proposed, in order to meet the Tribe's cash flow, payroll and payable obligations during this period of fiscal crisis.

BE IT ENACTED by the Tribal Council of the White Mountain Apache Tribe that Ordinance Number 233 is hereby adopted as an amendment to the Government Code with the following provisions:


Section 9.5(B). Neither the principal of said fund nor the net investment income earned, including unrealized gains and losses on the investment securities or any other investments by said fund, shall be expended until April 30, 1996, except for expenses associated with administration of the fund; provided, however, that net investment income earned after such date, but not any net investment income earned prior to such date nor the monies contributed to said fund at any time by the Tribe, may be expended.

Section 9.5(C). Debt Obligations. Net investment income earned after the Sunset Date of April 30, 1996, may be pledged, assigned, or otherwise used as security or collateral, in whole or in part, for credit or debt obligations extended to the Tribe as may be required from time to time. Any credit or debt accommodation seeking to utilize such net investment income of the Permanent Trust Fund shall require the recommendation of the Tribe's Treasurer and review thereof by the Tribe's Investment Committee and the Budget and Finance Committee, and approval by the Tribal Council.

The foregoing resolution was on June 3, 2008, duly adopted by a vote of six for and two against and one abstention by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (b), (s), (t), and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).



Chairman of the Tribal Council



Secretary of the Tribal Council

PUBLIC NOTICE

The Investment Committee and the Budget and Finance Committee report that massive recessionary changes in the federal economy have reduced overall revenue to the Tribe, combined with unchecked deficit spending by the Tribe, such that the Tribe cannot adequately meet its cash flow requirements, payable obligations or payroll, thus placing the financial welfare of the Tribe in jeopardy. The Committees further report that the Tribe's expenditures continue unabated, despite cost containment measures, which have not been followed, resulting in payables not being timely released, and deficit spending. In addition, the Tribe's Treasurer further reports that the Fund has lost over \$844,000.00 in the value of its investments due to the federal economy this year alone. The Committees recommend pledging interest income accrued in the Permanent Trust Fund as collateral for the purpose of expanding the Tribe's current credit line in order to meet the Tribe's cash flow and payable obligations. By Resolution 04-2008-104, entitled "Proposed Amendment to Chapter Nine of the Government Code," the Tribal Council concurred with the Committees' recommendations and posted the proposed amendment for ten days from April 29 to May 8, 2008. After receiving public comments, the Tribal Council has enacted an amendment to Chapter Nine of the White Mountain Apache Tribe's Government Code, as follows:

1. Section 9.5(B). Section 9.5(B) was amended to change the sunset provision proscribing expenditure of the Permanent Trust Fund from October 3, 2011 retroactively to April 30, 1996, which provides as follows:

"Neither the principal of said fund nor the net investment income earned, including unrealized gains and losses on the investment securities or any other investments by said fund, shall be expended until April 30, 1996, except for expenses associated with administration of the fund; provided, however, that net investment income earned after such date, but not any net investment income earned prior to such date nor the monies contributed to said fund at any time by the Tribe, may be expended."

2. Section 9.5(C). Section 9.5 was further amended to add a new provision that shall allow for the pledging of the Permanent Trust Fund for the purpose of securing debt obligations of the Tribe as may be required from time to time. The new provision provides as follows:

"Debt Obligations. Net investment income earned after the Sunset Date of April 30, 1996, may be pledged, assigned, or otherwise used as security or collateral, in whole or in part, for credit or debt obligations extended to the Tribe as may be required from time to time. Any credit or debt accommodation seeking to utilize such net investment income of the Permanent Trust Fund shall require the recommendation of the Tribe's Treasurer and review thereof by the Tribe's Investment Committee and the Budget and Finance Committee, and approval by the Tribal Council."

Chapter Nine of the Government Code is attached in its entirety for your review. Any comments about the proposed amendment should be sent to: Cyndy Harvey, Tribal Council Secretary, Post Office Box 700, Whiteriver, Arizona, 85941; or by facsimile to 928.338.1622; or by e-mail to charvey@wmat.us. Please provide include your name, telephone number and address. The deadline for comments is Wednesday, May 8, 2008, at 5 p.m.