

Committee: Rules

Date: 2-20-09 Committee Date: 2-26-09

Author: Todd Hembree

Sponsor: Councilors M. Frailey, C. Cowan Watts, B. Anglen, B. Baker, H. Buzzard,  
J. Crittenden, J. Fishinghawk, D. Garvin, T. Glosy-Jordan, D. Thornton

## An Act

**VETO**

03-23-2009

DATE

PRINCIPAL CHIEF

Legislative Act 07-09

### AN ACT AMENDING LEGISLATIVE ACT 38-05 TRIBAL EMPLOYMENT RIGHTS ORDINANCE, PROVIDING FOR PROMPT PAYMENT OF VENDORS

Veto sustaine  
pursuant to vote  
to send back to  
committee 4/15/09

**BE IT ENACTED BY THE CHEROKEE NATION:**

#### Section 1. Title and Codification

This act shall be referred as the "TERO prompt Payment Act of 2009" and codified under Title 40 Section 32 of the Cherokee Nation Code Annotated (CNCA).

#### Section 2. Purpose

The purpose of this Act is to establish time frames by which TERO vendors will be paid for work they perform.

#### Section 3. Legislative History

Legislative act 22-87 TERO Ordinance  
Legislative act 29-88 TERO Amendment  
Legislative act 38-05 TERO Amendment  
Article VI Section 7 of the Cherokee Nation Constitution:

"The Council shall have the power to establish laws which it shall deem necessary and proper for the good of the Nation, which shall not be contrary to the provisions of this Constitution. The style of all bills shall be: "Be It Enacted By The Cherokee Nation". The style of all resolutions shall be "Be It Resolved By The Cherokee Nation".

#### Section 4. Definitions

Cherokee Nation:

Vendor:

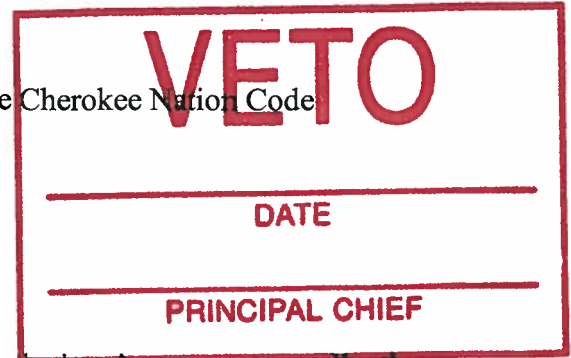
**Section 5. Substantive Provisions**

There shall be a new Section 32 of Title 40 of the Cherokee Nation Code Annotated that shall read as follows:

§32 Payments to Vendors:

Payments

1. General. The Cherokee Nation will not make invoice payments earlier than seven (7) days prior to the due dates specified in the contract, unless:
  - a. To make earlier payment on case-by-case basis; or
  - b. Accelerated payments are necessary.
2. Payment date: Date on which a check for payment is dated, or if EFT, settlement date is date on which EFT payment is credited to contractor's financial institution.
3. Interest Penalties:
  - a. Late Payment. Payment office will pay an interest penalty automatically, without request from contractors, when all conditions, if applicable, are met:
    - 1) Proper invoice submitted,
    - 2) No disagreement over quantity, or quality or contract compliance with any contract requirement.
    - 3) No contract settlement actions between Cherokee Nation and Contractor.
    - 4) Contractor paid after due date.
  - b. Computation of Interest Penalties:
    - 1) Simple daily interest.
4. Determining Payment Due Date:
  - a. General. Policies/Procedures shall ensure that, when specifying due dates, contracting officers give full consideration.
  - b. Payment due dates: The due date for making an invoice payment is:
    - 1) The later of the two events:
      - a. The 30<sup>th</sup> day after receipt of proper invoice from contractor.

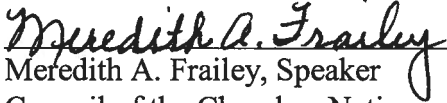


b. The 30<sup>th</sup> day after Cherokee Nation acceptance of supplies delivered or services performed.


5. Failure to pay interest.

- a. The designated payment office will pay a penalty amount, in addition to the interest amount if payment offices does not pay interest penalty within 10 days after invoice is paid.
- b. Contractor makes written demand for additional penalty payment postmarked not later than 40 days after date of invoice amount is paid.
- c. No interest penalties if payment delays are due to disagreements between Cherokee Nation and contracts re:
  - 1) Payment amount
  - 2) Contract Compliance
  - 3) Amounts temporarily withheld in re-contract terms.

Enacted by the Council of the Cherokee Nation on the 16th day of March, 2009.

  
Meredith A. Frailey, Speaker  
Council of the Cherokee Nation

**ATTEST:**

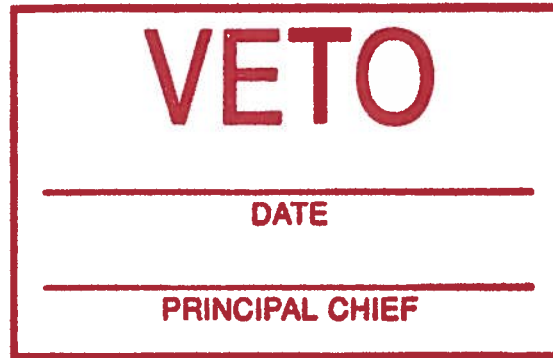
  
Don Garvin, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_.

\_\_\_\_\_  
Chadwick Smith, Principal Chief  
Cherokee Nation

**ATTEST:**

\_\_\_\_\_  
Melanie Knight, Secretary of State  
Cherokee Nation



**YEAS AND NAYS AS RECORDED:**

Tina Glory Jordan	<u>Yea</u>	Meredith A. Frailey	<u>Yea</u>
Bill John Baker	<u>Yea</u>	Chris Soap	<u>Nay</u>
Joe Crittenden	<u>Yea</u>	Cara Cowan Watts	<u>Yea</u>
Jodie Fishinghawk	<u>Yea</u>	Buel Anglen	<u>Nay</u>
Janelle Lattimore Fullbright	<u>Nay</u>	Bradley Cobb	<u>Yea</u>
David W. Thornton, Sr.	<u>Yea</u>	Charles Hoskin, Jr.	<u>Yea</u>
Don Garvin	<u>Nay</u>	Julia Coates	<u>Nay</u>
Harley L. Buzzard	<u>Yea</u>	Jack D. Baker	<u>Nay</u>
Curtis G. Snell	<u>Yea</u>		



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**CHEROKEE NATION®**

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Chad "Cornassel" Smith  
Principal Chief

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Joe Grayson, Jr.  
Deputy Principal Chief

March 23, 2009

03-23-09P04:00 RCVD

Meredith A. Frailey, Speaker  
Cara Cowan Watts, Deputy Speaker  
Council of the Cherokee Nation  
Tahlequah, Oklahoma

Dear Speaker Frailey and Council Members:

I am returning the enactments passed by the Tribal Council at the regular meeting held on March 16, 2009 as required by our Constitution. The Cherokee Constitution (Article V, Section 11) requires that every enactment approved by the majority of the Council be presented to the Principal Chief before it becomes effective. I have carefully considered each enactment and I have approved all of them as follows, with the exception of two (2) legislative acts which I have vetoed.

**APPROVED RESOLUTIONS**

1. Resolution No.17-09, A Resolution to Amend Resolution No. 86-08 for Leasing Trust Land to Bell Dependent School District #33.
2. Resolution No. 18-09, A Resolution Authorizing the Placement of Land in Trust – Tiawah 8.84 Acres.
3. Resolution No. 19-09, A Resolution Authorizing Cherokee Nation Environmental Programs to Submit a Formal Grant Application to the General Assistance Program.
4. Resolution No. 20-09, A Resolution Proposing an Amendment to Article VII Sections 1 and 3 of the Cherokee Nation Constitution, Pursuant to Article XV Section 2, Eliminating Term Limits for the Office of Principal Chief of the Cherokee Nation and Deputy Principal Chief of the Cherokee Nation.
5. Resolution No. 21-09, A Resolution Proposing an Amendment to Article VI Section 3 of the Cherokee Nation Constitution, Pursuant to Article XV Section 2, Eliminating Term Limits for the Office of Cherokee Nation Tribal Council.
6. Resolution No. 22-09, A Resolution Ratifying Litigation in the United States District Court for the Northern District of Oklahoma.
7. Resolution No. 23-09, A Resolution Approving and Authorizing the Submission of the Amended Fiscal Year 2008 Indian Housing Plan to the U.S. Department of Housing and Urban Development.
8. Resolution No. 24-09, A Resolution Authorizing the Submission of a Grant Application to the

Department of Justice, Office of Community Oriented Policing Services, for Funding Under the Tribal Resources Grant Program 2009.

9. Resolution No. 25-09, A Resolution Authorizing Cherokee Nation Businesses, LLC to Submit a Grant Application to the United States Department of Energy, Office of Energy and Energy Efficiency Department for Renewable Energy Deployment in Indian Country.
10. Resolution No. 26-09, A Resolution Authorizing the Placement of Land in Trust – Three Rivers Health Center, Muskogee.

#### APPROVED LEGISLATIVE ACTS

1. Legislative Act No. 06-09, An Act Establishing Authority and Jurisdiction for Cherokee Nation District Courts and the Cherokee Nation Supreme Court to Exercise and Determine Declaratory Judgments.
2. Legislative Act No. 08-09, An Act Amending Legislative Act #19-08 Authorizing the Comprehensive Budget for Fiscal Year 2009 – Mod. 5; and Declaring an Emergency.
3. Legislative Act No. 09-09, An Act Amending Legislative Act #19-08 Authorizing the Comprehensive Budget for Fiscal Year 2009 – Mod. 5b “Economic Stimulus Package”; and Declaring an Emergency

#### VETOED LEGISLATION

1. Legislative Act No. 05-09, An Act Repealing Legislative Act 23-99 Allowing for Reimbursement of travel Expenses of Members of the Cherokee Nation Tribal Council.

I hereby veto this Act for the following reasons. This Act repeals Legislative Act 23-99 which provided the guidelines for reimbursement of Cherokee Nation Tribal Council travel expenses. Legislative Act No. 05-09 provides that the Cherokee Nation Tribal Council shall develop internal policies and procedures for reimbursement of mileage and travel expenses. However, these internal policies and procedures are not included with the Act, nor are there any clear guidelines in the Act for allowable travel expenses. By repealing the previous Act and failing to clearly provide new policies, there is no policy or guideline to follow in processing travel reimbursements. I am without the information to approve this Act, since no policy guidelines are included, but would gladly revisit the issues when provided such information.

2. Legislative Act No. 07-09, An Act Amending Legislative Act 38-95 Tribal Employment Rights Ordinance, Providing for Prompt Payment of Vendors.

I hereby veto this Act for a number of reasons. This Act places “prompt payment” requirements with interest and penalties due, on the Nation only. First and foremost, I have considered whether this Act is public policy that will address an issue significantly affecting the Cherokee people. In our review of this matter, we have learned that no significant complaints or issues exist with payment of vendors *by the Nation itself*. We have, however, identified the possibility that timely payment issues may exist with subcontractors of the Nation, which this Act would not cover. This Act would require a system of policies, procedures and manpower to implement an automatic prompt payment tracking and compliance system to address problems that do not exist. This, in my view, is unnecessary and requires diversion of substantial resources from

other activities in a time that we are tightening our budgetary belt. I believe our efforts should be focused on addressing real issues, rather than enacting a measure that looks good on the surface but is of little practical value to Cherokee citizens.

Even if one were to argue this to be good policy for the Nation, the Act would be difficult, if not impossible, to implement. The Act requires automatic payment of interest for payments exceeding the deadlines set by the Act. Most payments made by the Nation to vendors are made from federal funds. In fact, over 80% of the Nation's revenues are still federally restricted. No interest or penalties may be paid from such funds, as they are deemed "unallowable costs" by the federal government. Further, no tribal funds have been budgeted to pay interest and penalties set forth in this Act. This matter was not debated and discussed, and apparently it has not been considered what such interest and penalties may cost the Nation and where it will be funded. Without a budget, I am unauthorized to expend tribal funds for this purpose.

Other aspects of the Act are similarly not well developed, and not debated, either in committee or full Council. Interest is allowed, but no rates are set. The time periods that interest accrues is not set. "Disputes" or "disagreements" for invoices are not defined, so the implementation related to these terms could be very subjective. For example, the Nation could simply assert a dispute exists in every case where late payments are made, defeating the purpose of the Act. The Act, requiring automatic payment of interest and penalties, rather than a claim to be made by the vendor, would require a specific examination of each vendor payment for timeliness in order to implement. Currently, the Nation processes approximately 154,000 vendor invoices per fiscal year. This will create a burdensome administrative requirement that is unnecessary. A simplified claim process would have greatly reduced this level of effort. Even the term "Nation" is not defined, so it is not known to what entities of the Nation the Council intended it to apply. The "payment due date" does not take into account special contractual agreements, which are common. In other examples of prompt payment acts, such as the federal version, all of these items are clearly defined so that the vendor and the government agency have the same expectations.

I will be sending you administrative changes that will identify issues regarding construction sub-contractors which will include prompt payment contracting language to be incorporated in our construction contracts and sub-contracts. This would allow any aggrieved sub-contractor to pursue prompt payment quicker than provided by current proposed legislation. I also will create within Financial Resources a person designated to address prompt payment claims and will request that Cherokee Nation Businesses (CNB) designate someone to manage small Indian business advocacy.

Sincerely,



**Chadwick Smith**  
Principal Chief

cc: Legal & Legislative Coordinator, Council of the Cherokee Nation  
Councilors (17), Council of the Cherokee Nation  
Melanie Knight, Secretary of State