

**VETO**

11-20-06

DATE

PRINCIPAL CHIEF

## An Act

### LEGISLATIVE ACT 34-06

### AN ACT AMENDING LEGISLATIVE ACT #26-06 AUTHORIZING THE COMPREHENSIVE BUDGET FOR FISCAL YEAR 2007 – Mod. 1; AND DECLARING AN EMERGENCY

*Motion to  
override failed  
10 year  
Tracy*

BE IT ENACTED BY THE CHEROKEE NATION:

#### SECTION 1. TITLE AND CODIFICATION

This legislative act shall be titled and codified as “**An Act Amending Legislative Act #26-06 Authorizing the Comprehensive Budget for Fiscal Year 2007 – Mod. 1**”.

#### SECTION 2. PURPOSE

The purpose of this amendment is to authorize and approve the use of funds, subject to the availability of such funds, in accordance with Section 4, changing the amounts of certain cost centers approved in the “Comprehensive Budget Act for Fiscal Year 2007” or subsequent amendment. The cumulative total of the budget is increased by **\$14,058,100** for a total budget authority of **\$376,908,181**. The following items are identified as estimated General Fund sources in excess of appropriated uses to wit:

	Previous <u>Balance</u>	Estimated <u>Sources</u>	Estimated <u>Uses</u>	Adjusted <u>Balance</u>
A. General Fund	\$6,899,590	\$3,574,895	<\$5,093,099>	\$5,381,386
B. Motor Fuels Tax	\$326,631	\$0	<\$0>	\$326,631

#### SECTION 3. LEGISLATIVE HISTORY

The provisions of compliance, policy of accountability, authorities and severability provided in Legislative Act #26-06 are applicable to this amendment.

#### SECTION 4. FUNDING AUTHORIZATIONS

The changes reflect increases to cost centers set forth in the program budget justifications incorporated herein. This amendment changes the total amount of the comprehensive budget authorization by an increase of **\$14,058,100**, to wit:

- A. An increase in the **General Fund** budget authority of **\$5,093,099** related to several projects carryover funding, a special debt reduction payment related to the SHS Gymnasium, increased funding for the self-help waterline program, a subsidy to the employee appreciation budget and a close-out of the softball field construction project.
- B. An increase in the **Motor Vehicle Tax Fund** budget authority of **\$80,017** related to the SHS apportionment from the previous year.
- C. An increase in the **Tribal Force Account Fund** budget authority of **\$53,654** related to the Environmental Protection Commission.
- D. An increase in the **Enterprise Fund** budget authority of **\$50,000** related to the Landfill.
- E. An increase in the **DOI-General Fund** budget authority of **\$7,820,350** related to special construction funding and indirect cost shortfall funding for Sequoyah High School.
- F. An increase in the **DOI-Self Governance Fund** budget authority of **\$133,959** to transfer funds related to SHS shortfall of indirect cost funding as well as additional realty funding.
- G. An increase in the **I.H.S. Self-Governance T.E.H. Fund** budget authority of **\$77,021** related to a solid waste cleanup project.

VETO

- H. An increase in the **NAHASDA Fund** budget authority of ~~\$1,000,000~~ related to an increase in the Mortgage Assistance Program funding from the FY05 Indian Housing Plan. DATE \_\_\_\_\_
- I. A decrease in the **Capital Projects Fund** budget authority of ~~<\$250,000~~ for a partial change in accounting treatment of the Pow-Wow grounds improvement project. PRINCIPAL CHIEF \_\_\_\_\_

**SECTION 5. PROVISIONS AS CUMULATIVE**

The provisions of this Act shall be cumulative to existing law.

**SECTION 6. SEVERABILITY**

The provisions of this Act are severable and if any part or provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Act.

**SECTION 7. EFFECTIVE DATE: EMERGENCY DECLARED**

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this Act shall take effect immediately upon its approval and signatures.

**SECTION 8. SELF-HELP CONTRIBUTIONS**

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.

Passed by the Cherokee Council on the 13<sup>th</sup> day of November, 2006

\_\_\_\_\_  
Meredith 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 \_\_\_\_\_, 2006

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

ATTEST:

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

**YEAS AND NAYS AS RECORDED:**

Audra Smoke-Conner	<u>YEA</u>	Melvina Shotpouch	<u>YEA</u>
Bill John Baker	<u>YEA</u>	Meredith A. Frailey	<u>YEA</u>
Joe Crittenden	<u>YEA</u>	John F. Keener	<u>YEA</u>
Jackie Bob Martin	<u>NAY</u>	Cara Cowan Watts	<u>NAY</u>
Phyllis Yargee	<u>YEA</u>	Buel Anglen	<u>NAY</u>
David W. Thornton, Sr.	<u>YEA</u>	William G. Johnson	<u>NAY</u>
Don Garvin	<u>NAY</u>	Charles "Chuck" Hoskin	<u>YEA</u>
Linda Hughes-O'Leary	<u>YEA</u>	Taylor Keen	<u>YEA</u>
Jack Baker	<u>NAY</u>		



# CHEROKEE NATION®

**Principal Chief**  
Chad "Comtassel" Smith  
Principal Chief

**Deputy Principal Chief**  
Joe Grayson, Jr.  
Deputy Principal Chief

November 20, 2006

Meredith A. Frailey, Speaker  
Charles "Chuck" Hoskin, 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 November 13, 2006 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) vetoed legislative acts.

## **APPROVED LEGISLATIVE ACTS**

1. Legislative Act No. 28-06, A Legislative Act Amending Title 22, "Criminal Procedure", Chapter 16, of the Cherokee Nation Code Annotated; Relating to Adult Probation and Parole.
2. Legislative Act No. 29-06, A Legislative Act Amending Title 21, "Crimes and Punishments", of the Cherokee Nation Code Annotated; Relating to Domestic Violence.
3. Legislative Act No. 30-06, A Legislative Act Amending Title 10 of the Cherokee Nation Code Annotated – Paternity; Amending Sections 110 and 117.
4. Legislative Act No. 31-06, A Legislative Act Amending Title 22, "Criminal Procedure", of the Cherokee Nation Code Annotated; Relating to Warrantless Arrest Standards.
5. Legislative Act No. 32-06, A Legislative Act Amending Title 43 of the Cherokee Nation Code Annotated – Child Support; Amending Sections 503, 511, and 514.
6. Legislative Act No. 33-06, An Act Establishing a Minimum Wage for Employees of the Cherokee Nation and Its Corporations and Entities.

I am approving this Act; however, since the Council did not determine a total cost of the full impact of the minimum wage increase over time, I request that the Council and/or their staff fully participate in an impact study, conducted jointly with the Treasurer with consultation from our businesses and effected agencies, so that we can understand and report the complete impact of this increase over time and plan together accordingly.

## VETOED LEGISLATION

1. Legislative Act No. 34-06, An Act Amending Legislative Act #26-06 Authorizing the Comprehensive Budget for Fiscal Year 2007 – Mod. 1; and Declaring an Emergency.

There are two expenditures in this Act that I do not believe represent good fiscal stewardship of the Nation's resources. These are: (1) championship rings for one public school's cheerleaders, not all of whom are Cherokee; and (2) \$1.5 million for a *second* special staff bonus for government employees in the same fiscal year.

In August of this year, I proposed the largest bonus pool ever for Cherokee Nation employees. The letter I sent over to the Council clearly defined the money allocated to be used for a one-time bonus which included associated fringe costs. Since the bonus was paid out about a month ago, I have received many thank you's from employees. But no good deed goes unpunished: some Tribal Councilors have turned a simple thank-you bonus to hard-working employees into a political opportunity.

The original Council approval for increases simply stated that the \$2.1 million would be divided equally among all employees. Although one Councilman made statements to the press that each employee would receive a \$1,000 bonus, never did the Council in making the original appropriation, either at Committee or Full Council, state that employees were to be paid a net \$1,000 each – that fact is clearly part of the record. This new \$1.5 million appropriation is an attempt to correct that one Councilman's misstatement. The Cherokee People should not have to pay for the mistakes of that one politician. Cherokee Nation employees are also smart enough to know that when someone tries to give them a second bonus within two months, with an election just around the corner, that their well-earned bonus is being turned into a political football. Many employees don't like being used for political games.

Our employees deserve to go home to their communities and be proud they got a bonus for their hard work. They don't need to go back to their communities and explain why they got two bonuses in two months. Our employees are proud of the accomplishments they have achieved that have allowed for the large bonus payouts. Our employees are proud to serve the Cherokee People. After participating in the largest bonus pool in Cherokee Nation history, many of these employees have told me they would be happy to see the funding for this proposed double bonus be used instead in their own or other departments to provide some of the services they see that our People need every day.

I think the Cherokee Nation can show gratitude to its hardworking employees, as we already have through the largest bonus pool in history, while still remaining focused on building our communities, protecting our culture and creating jobs for our citizens. The Tribal Council had an opportunity to vote separately on the double bonus but made the decision to play an old political game. Some Councilors tried to slip the double bonus into a budget act that was meant only to provide needed services for citizens, in an effort to keep their double-bonus policy from scrutiny. The Council could have voted separately on the proposed funding for water projects

and other needed services included in the budget modification, but instead held those services hostage by lumping them into a controversial double-bonus law. Any delay in services reaching the Cherokee People falls solely on the heads of the Council members who tied the double bonus to the entire budget package instead of voting on it separately.

I have faith that every employee understands and appreciates the vast needs of Cherokee citizens, because it is the employees who must see and address these needs on a daily basis. We are all well aware of the problems associated with drug and alcohol abuse affecting our Cherokee youth. Accordingly, I request that the Council consider utilizing these funds instead to assist in construction of a new substance abuse Treatment Center and associated programs for Youth.

As for the gift of rings to the cheerleaders, the rings are for an accomplishment unrelated to the Nation by a group representing an Oklahoma public school. Some of the group members are non-Cherokee and some have no association whatsoever with the Cherokee Nation. What we are willing to do for one, we must be willing to do for all. If we purchase these rings for these cheerleaders, how would we refuse future requests to buy rings for accomplished athletic, academic or other groups? There are literally hundreds of public schools within the Nation's jurisdiction, and the requests for other non-essential items could be endless. I do not believe the Cherokee People would find it in the Nation's best interests to buy rings or other similar items for every association or group which has a Cherokee participant when there are Cherokee People who struggle everyday to gain life's necessities. Further, the Nation grants the public schools at least an estimated \$2.7 million on an annual basis, *without limitation*, from our tag revenues. The school administration can choose to use this money for rings for their students if they think rings are an educational priority.

For these reasons, I must veto this Legislative Act. We should look toward funding initiatives that will improve the long-term quality of life for the Cherokee People, rather than providing a double bonus to employees eight months before an election. We should ask ourselves, "What would the Cherokee People do if they were faced with this decision?" I believe resoundingly that the People would require us to use our resources in the most efficient way, not only to prepare the Nation for an uncertain future, but to plan for a successful one.

2. Legislative Act No. 35-06, A Legislative Act Related to Title 26 "Election", as Amended by LA#39-05; Amending Representative Districts.

While there were improvements with this new redistricting plan, significant flaws remain. The deficiencies that remain with this Act are due to the time of its passage. The election process for 2007 is now well underway and the Cherokee Nation Election Commission has told us they will not be able to properly implement it and educate our voters on their new districts in such a short period of time. The filing period is in March, with elections occurring in June 2007. I hereby veto this Act for the following reasons:

**A. There is no requirement that districts be changed before the next election.**

What we look to first are the requirements of the Constitution. The requirement to establish representative districts is included in Article VI, Section 3, quoted here in part:

“The Council shall establish representative districts which shall be within the boundaries of the Cherokee Nation. Fifteen of these seats shall be apportioned to afford a reasonably equal division of citizenship among the districts...”

There is no specific deadline required by the Constitution for this action to occur. Many other deadlines exist in the Constitution. Examples of specific deadlines include:

- Selection of At-Large Council members, within 60 days of Constitution effective date. (Article VI., Section 3)
- Establish staggered terms, within one year of the Constitution effective date. (Article VI., Section 3)
- Pass laws necessary for the Judiciary terms, within 6 months of the Constitution effective date. (Article VIII., Section 2)

Examples of Constitutional requirements without deadlines are as follows:

- Establish representative districts. (Article VI., Section 3)
- Establish a continuing system of permanent publication of laws and judicial opinions. (Article VI., Section 11)
- Elect a Speaker and Deputy Speaker (Article VI, Section 2)
- Pass laws necessary for the Court on the Judiciary (Article VIII, Section 5)

Since there are Constitutional mandates with deadlines and those without deadlines, if it had been intended by the Cherokee People that redistricting occur before the first election under the new Constitution, it would have said so. This in no way excuses the Nation from complying with the mandate, but neither does it require the Council to rush through, less than eight months before the next election, a redistricting plan without communicating with the Cherokee People.

**B. The Election Commission will not have sufficient time to properly implement a new districting plan.**

The Election Commission has presented, both to me as well as the Council, concerns about changing the districts this late in the process. The Commission is concerned about several election processes, including: converting the voter database for the new districts; developing new and additional precinct locations, workers and training; providing the voters with the at-large or district choice timely as required by the Constitution. At this date, the Commission will be very challenged to get all of the necessary logistics completed for the next election – they will not have adequate time to do any special voter education on the new districts.

**C. Without proper voter education of these significant changes, Cherokee voters will be disenfranchised in the upcoming election.**

I have a duty to ensure that laws I approve do not unfairly disenfranchise voters. I believe that a substantive redistricting change that involves changing virtually every district will be a

critical barrier for the Cherokee People to participate in our elections, if not timely and adequately communicated. This plan changes from nine districts to fifteen. It will change precinct locations for Cherokees to vote. It will change the process for non-resident voters to opt for either a district, or to vote at-large, as they will not be able to opt for the same district as in the past. Voters will not necessarily know where to vote, or what geographic area they are voting in. Other significant reforms to our election laws have been conducted over several years by the Council, with extensive community meetings and surveys to engage the Cherokee People and seek their input. Conversely, this plan has not involved direct participation by the Cherokee People.

In summary, this change is untimely and will be an obstacle to Cherokee voters, depriving them of the right to be properly educated about the election process and adequately participate in Cherokee government. The Cherokee People's confidence in our elections will be severely compromised as a result.

**D. The period for documentation of residency for elected office has passed.**

The documentation requirements for verification of residency for elected office are found in LA 39-05, § 34, included here in part:

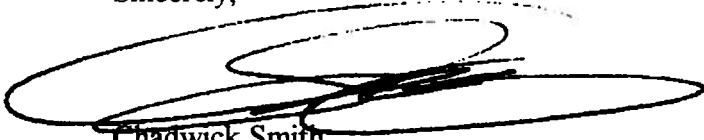
“B. Verification. Verification of residence may be shown by one or more of the following documents, provided always that such documents show one or more addresses within the required geographic area for a continuous period in excess of 270 days.”

The deadline for residency for becoming a candidate in election for the Council seats has passed. The new districting plan is being enacted *after* the residency deadline. Because the 15-district plan is comprised of smaller geographic areas than the current law, this unduly restricts the rights of Cherokee citizens seeking particular Council seats. A prospective Councilor has the right under Cherokee law to relocate up to the day before the residency deadline. This Act has the effect of taking this right away, as the districts were not known to the Cherokee public before the deadline had passed.

Due to the residency requirements being past, and since this plan is more restrictive (smaller geographic areas), it unduly restricts potential candidates' rights to file for Council office. If the representative districts had been larger in geographic area, rather than smaller, there would have been minimal effect on new candidates establishing residency. This Act as passed would have retroactive effect as to the residency requirement for Council. Article VI, Section 8 of the Constitution states, “No laws passed by the Council shall have retroactive effect or operation.”

For these reasons, I hereby veto this Act.

Sincerely,

A handwritten signature in black ink, appearing to be "Chadwick Smith", written over a large, dark, scribbled-out area.

Chadwick Smith  
Principal Chief

cc: Legislative Aide, Council of the Cherokee Nation  
Councilors (17), Council of the Cherokee Nation  
Melanie Knight, Secretary of State  
File