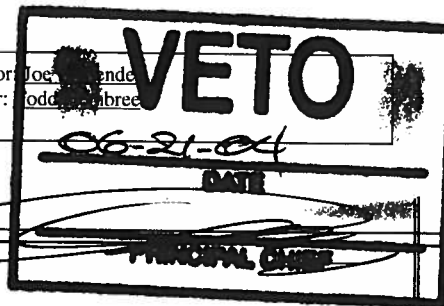


Committee: \_\_\_\_\_  
Date: \_\_\_\_\_ Committee Date: \_\_\_\_\_

Sponsor: Joe \_\_\_\_\_  
Author: Todd \_\_\_\_\_



## An Act

LEGISLATIVE ACT 22-04

### AN ACT PROTECTING THREATENED TRADITIONAL CHEROKEE CEMETERIES PROVIDING SEVERABILITY AND DECLARING EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

#### SECTION 1. TITLE

This Act shall be known as "the Cherokee Nation Cemeteries Preservation Act of 2004.

#### SECTION 2. PURPOSE

The purpose of this Act is to make available funds for traditional Cherokee Cemeteries that are threaten with neglect and non-maintenance.

#### SECTION 3. LEGISLATIVE HISTORY

Article V Section 7 of the Cherokee Nation Constitution.

#### SECTION 4. DEFINITIONS

"Traditional Cherokee Cemetery" – means any cemetery that contains gravesites of over 50% Cherokee tribal members and is located within the traditional boundaries of the Cherokee Nation.

#### SECTION 5. SUBSTANTIVE PROVISIONS

A total of \$40,000.00, to be divided equally between council members, shall be used for preservation and maintenance of traditional Cherokee Cemeteries that are threatened by neglect and non-maintenance. The funds are to be distributed to cemeteries boards or individuals interested in the preservation of the cemetery in question. Requests for funds are to be made through the Councilpersons of the District and approved by the Language and Culture Committee. Persons or organizations receives funds shall give a written accounting with receipts detailing the supplies or services expended on the maintenance of cemeteries in questions. This accounting shall be presented to the Language and Culture Committee within one hundred and twenty (120) days from receipt of any funds. Failure to comply with this requirement may subject individuals receiving said funds to criminal liability. The Motor Fuels Tax Funds shall be the source of funds appropriated in this Act.

#### SECTION 6. CUMULATIVE

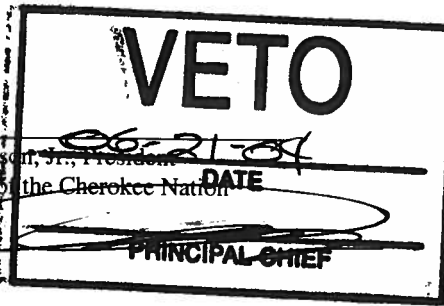
The provisions of this Act shall be cumulative to existing laws.

#### SECTION 7. 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 8. 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 and be in full force after its passage and approval.



Joe Grayson, Sr., President  
Council of the Cherokee Nation

ATTEST:

\_\_\_\_\_  
Bill John Baker, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this \_\_\_\_ day of \_\_\_\_\_, 2004.

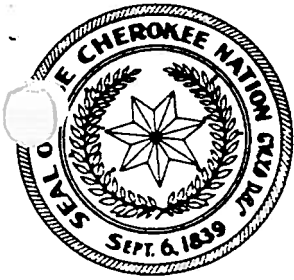
\_\_\_\_\_  
Chadwick Smith, Principal Chief  
Cherokee Nation

ATTEST:

\_\_\_\_\_  
Callie Catcher, Secretary/Treasurer  
Cherokee Nation

YEAS AND NAYS AS RECORDED:

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



# CHEROKEE NATION

P.O. Box 948  
Tahlequah, OK 74465-0948  
918-456-0671

Chad "Comtassel" Smith  
ᏍᏏᏉᏍᏔᏅ  
Principal Chief

Joe Grayson, Jr.  
ᏍᏏᏉᏍᏔᏅ ᏍᏏᏉᏍᏔᏅ  
Deputy Principal Chief

June 21, 2004

Joe Grayson, Jr., Deputy Principal Chief and  
Council Members of the Cherokee Nation  
Tahlequah, Ok.

Dear Mr. President and Council Members:

I am returning the enactments passed by the Tribal Council at the regular meeting held on June 14, 2004 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 the enactments except for the legislative act with my objections noted herein.

## APPROVED RESOLUTIONS

1. Resolution No. 44-04, A Resolution Confirming the Nomination of Leticia Stevenson-Pablo as a Governing Board Member of Cherokee Nation Comprehensive Care Agency.
2. Resolution No. 45-04, A Resolution Approving and Authorizing the Submission of the Revised Fiscal Year 2004 Indian Housing Plan to the U.S. Department of Housing and Urban Development.
3. Resolution No. 46-04, A Resolution Confirming the Nomination of M. A. Lechtenberger as a Board Member of Cherokee Nation Enterprises.
4. Resolution No. 47-04, A Resolution Confirming the Nomination of Tom Herrin as a Governing Board Member of Cherokee Nation Comprehensive Care Agency.
5. Resolution No. 48-04, A Resolution Confirming the Nomination of Sharon Swepston as a Governing Board Member of Cherokee Nation Comprehensive Care Agency.
6. Resolution No. 49-04, A Resolution Confirming the Nomination of Pam Iron as a Governing Board Member of Cherokee Nation Comprehensive Care Agency.
7. Resolution No. 50-04 A Resolution Authorizing the Submission of a Grant Application to the Centers for Disease Control for Steps to a Healthier US: A Community-Focused Initiative to Reduce the Burden of Asthma, Diabetes, and Obesity.
8. Resolution No. 51-04, A Resolution Authorizing the Submission of a Grant Application for Emergency Youth Shelter Services.

## APPROVED ACTS

1. Legislative Act No. 21-04, An Act Amending Legislative Act #30-02 Authorizing the Comprehensive Budget for Fiscal Year 2004 – Mod. 8; and Declaring an Emergency.
2. Legislative Act No. 23-04, Act Relating to Cherokee Nation Sovereign Immunity and Delegation of Authority to Execute Waiver for Business Activities.
3. Legislative Act No. 24-04, An Act Amending LA #25-01, the Cherokee Nation “Freedom of Information and Rights of Privacy Act of 2001” to Make Technical Corrections; Adding New Items; and Declaring an Emergency.
4. Legislative Act No. 25-04, An Act Amending LA #01-01, “The Cherokee Nation Motor Vehicle Licensing and Tax Code”.

### Approved with comment:

5. Legislative Act No. 26-04, An Act Amending Title 44 of the Cherokee Nation Marriage and Family Act, Providing for Severability and Declaring an Emergency.

The Council included two sections within this legislation that are in addition to the amendments in the marriage statute at Title 44. These sections address adultery and bigamy. Although the Act does not reference any preexisting law with regard to these, a bigamy statute is already found at 21 CNCA § 881-883. To the extent that the new law and the existing statute may be inconsistent, the intent of the Council may be unclear with regard to amendment of the existing code.

## VETO OF LEGISLATIVE ACT

**I have vetoed Legislative Act No. 22-04, “An Act Protecting Threatened Traditional Cherokee Cemeteries and Providing Severability and Declaring an Emergency”.** While protecting Cherokee cemeteries may indeed be a worthwhile goal, I must object to this legislation based on its structure and proposed implementation. First and foremost, my objection is due to the clear separation of powers provided in the Cherokee Constitution. The Legislative branch has 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.” (Cherokee Constitution, Article V, Section 7) The laws established by the Legislative are required by the Constitution to be executed by the Executive. The Principal Chief “...shall cause the laws of the Cherokee Nation to be faithfully executed, and shall conduct in person and in such manner as shall be prescribed by law, all communications and business of the Cherokee Nation.” (Cherokee Constitution, Article VI, Section 10) This legislation prescribes that the execution of the Act be conducted by the Legislative, which is in conflict with these Constitutional provisions, and goes beyond the power of the legislature as prescribed by law. It is well within the purview of the Legislative to set forth in legislation the specific requirements for execution, but it is the sole responsibility and duty of the Executive to

implement the legislation. I believe the separation of powers as provided in our Constitution to be the overall foundation for the function of Cherokee government that should be strictly adhered to and protected by each branch respectively.

My second objection is due to duplicative legislative authority. Legislative Act 43-03, the Emergency Assistance and Community Support Projects Act of 2003, Section 4.7., authorizes assistance under Community Support Projects for Cherokee cemeteries. In the same Act, the Council further authorized specific appropriations for such projects, and also prescribed in the Act the requirements for assistance provided therein. The new Cemeteries Act passed June 14, 2004, provides duplicative authority that may cause unnecessary confusion to our citizens, community organizations and staff during implementation, as the two have different requirements and processes. It is clear that the authority for the program to assist cemeteries in a very similar manner already exists, and that this legislation is not necessary for such assistance to be provided.

My office was not consulted in advance of passage of this legislation, where these issues could have been addressed in a more productive manner. I stand ready to discuss this and any other legislative matters in a proactive and constructive manner for the overall benefit of the Nation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chadwick Smith', with a large, stylized flourish extending to the left.

Chadwick Smith  
Principal Chief

cc: Gina Blackfox, Legislative Aide, And Tribal Council  
File