

An Act

Legislative Act 01-14

ACT AMENDING LA 30-12, "CHEROKEE NATION EMPLOYMENT RIGHTS ACT"

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title 40, § 1001 shall read as follows: Title and Codification

This Act shall be referred to as an Act Repealing and Superseding the Cherokee Nation Employment Rights Ordinance, Cherokee Nation Code Annotated, Title 40, Chapters One through Six, Sections 1 through 65. This Act shall be codified at Title 40, Sections 1001 et seq. and shall be known as the Cherokee Nation Employment Rights Act.

Section 2. Title 40, § 1002 shall read as follows: Legislative History

The Cherokee Nation previously enacted the Cherokee Nation Employment Rights Ordinance, effective January 11, 1986, by Legislative Act 22-87, and as amended by Legislative Act 29-88. This Act repeals said legislation and supersedes said legislation as codified at Cherokee Nation Code Annotated, Title 40, Chapters One through Six, Sections 1 through 65.

The purpose of this Act is to repeal the current Cherokee Nation Employment Rights Ordinance, codified at Cherokee Nation Code Annotated, Title 40, Chapters One through Six, Sections 1 through 65, and to supersede said law to: clarify the responsibilities of those entities involved in employment rights; to conform the Act to federal and tribal policies; and to clarify requirements regarding Indian preference.

Section 3. Title 40, § 1003 shall read as follows: Purpose

The purpose of this Title is to encourage employment of Indians and to assist in and require the fair employment of Indians and to prevent discrimination against Indians in the employment practices of employers who are doing business with the Cherokee Nation on Cherokee Nation Indian Country or in such jurisdiction as is provided in a cooperative agreement between the Cherokee Nation and another government.

Section 4. Title 40, § 1004 shall read as follows: Definitions

- A. "Administration" shall mean the Executive Branch of the Cherokee Nation as provided in the Cherokee Nation Constitution.
- B. "Cherokee Nation Indian Country" shall mean ~~all land held in trust or subject to restrictions by the United States for the Cherokee Nation, or land within the original boundaries of the Cherokee Nation and held in trust or subject to restrictions for an individual, and all land held by the Cherokee Nation or its entities, in fee simple, and any other land within the jurisdiction of the Cherokee Nation which land comes within the definition of "Indian Country" as defined in 18 U.S.C. § 1151.~~ **the territorial boundaries**

of the Cherokee Nation as defined within the Cherokee Nation 1999 Constitution, Article II.

- C. "Cherokee Nation Government" shall mean the officials and employees **of the** ~~at the Cherokee Nation complex located at Tahlequah Oklahoma~~ and its programs or commissions wherever located. "Cherokee Nation" shall mean the government of Cherokee citizens, authorized by the Act of Union of 1839.
- D. "Contractor" shall mean any person, company or other entity engaged in work with the Cherokee Nation, its entities or wholly-owned corporations. The term "contractor" includes Cherokee Nation, its entities and wholly-owned corporations, ~~federal, state and county government agencies~~ and includes contractors, and subcontractors **thereof.** ~~of all other agencies.~~ **This term shall not include federal, state, or county government agencies to the extent prohibited by federal or state law.**
- E. "Core crew" shall mean an owner of the firm, or an employee **of a company** who is in a supervisory or other key position such that the employer would face a serious financial damage or loss if that position were filled by a person who had not previously worked for the **employer,** contractor or subcontractor.
- F. "Council" shall mean the Tribal Council of the Cherokee Nation as established pursuant to the Cherokee Nation Constitution.
- G. "Debarment List" shall be a list of contractors which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws.
- H. "EEOC" shall mean the Equal Employment Opportunity Commission of the United States.
- I. "Emergency" means any condition that places an extreme **physical or** emotional **condition** or financial burden on a Cherokee Citizen. (After all reasonable efforts have been made to contact a TERO Vendor)
- K.J.** "Employer" shall mean **(i) Cherokee Nation, its entities and wholly-owned corporations, (ii) any person, company, contractor, subcontractor or other entity located in or on Cherokee Nation Indian Country or engaged in work on a Project with the Cherokee Nation, its entities or wholly-owned corporations employing two or more persons, or (iii) any person or entity employing two or more persons location-located within Cherokee Nation Indian Country that has applied for or received certification with the TERO Office.** ~~For the Purpose of this Act, the term "employer" includes Cherokee Nation, its entities and wholly-owned corporations, federal, state and county government agencies and includes contractors, and subcontractors of all other agencies.~~ **The term "Employer" shall not include companies that are engaged in government contracting or other activities where the application of this law may violate applicable federal or state laws.**

- K. An employer is "engaged in work" if, during any portion of a business enterprise or specific project, contract or subcontract, the employer performs work under contract with the Cherokee Nation, its entities and wholly-owned corporations and/or the work is performed on Cherokee Nation Indian Country.
- L. ~~"HRC" shall mean the Human Rights Commission of the State of Oklahoma.~~ **Reserved for Future Use**
- M. "Indian" shall mean a person who is a member of a federally recognized Indian tribe ~~and/or any person recognized as an Indian by the United States pursuant to its trust responsibility to American Indians.~~
- N. "Indian organization" shall mean the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77, 25 U.S.C. § 1451).
- O. "Indian-owned economic enterprise" shall mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent (51%) of the enterprise, and the ownership shall encompass active operation and control of the enterprise.
- P. "Indian Tribe" means an Indian Tribe, pueblo, band, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688,43 U.S.C. § 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- Q. "Locally Owned" means a business that has its headquarters and majority of its employees residing within the jurisdictional boundaries of the Cherokee Nation, as described in Article II of the Cherokee Constitution, or counties contiguous to those boundaries
- R. An employer is "located ~~in or on the~~ **within** Cherokee Nation **Indian Country**" if, during **and in connection with** any portion of a business enterprise or specific project, contract or subcontract, the employer maintains a temporary or permanent office or facility on or performs work on Cherokee Nation Indian Country.
- S. "Major Cherokee Employer" shall mean an Indian owned business that employs at least 50 Cherokee Citizens as either part of the core crew or project crew, or has at least 75% of its workforce comprised of Cherokee Citizens as certified by the TERO. A business may be certified as Indian Owned, major Cherokee Employer, or both.
- T. "Nation" shall mean the Cherokee Nation.
- U. "OFCCP" shall mean the Office of Federal Contract Compliance Programs of the United States.

- V. "One Stop Business Center" means a centralized location where Cherokee Owned businesses can obtain information regarding procurements, training, and financing.
- W. "Secretary" shall mean the United States Secretary of the Interior or his or her duly authorized representatives.
- X. "Tribal member **Citizen**" or "member" shall mean any person who is a duly enrolled citizen **member** of the Cherokee n~~N~~ation, unless the context clearly indicates otherwise.
- Y. "TERO" shall mean the Tribal Employment Rights Office.
- Z. "TERO Staff" shall mean employees assigned to the TERO Office by the Executive Branch of the Cherokee Nation.

AA. "Project" shall mean any construction, alteration, or repair of buildings or structures performed for Cherokee Nation or its entities.

Section 5. Title 40, § 1011 shall read as follows:

Tribal Employment Rights Office; Establishment, authority and duties

There is hereby recognized the Tribal Employment Rights Office (hereinafter referred to as the "TERO"). The TERO shall administer the employment rights program of the Cherokee Nation in accordance with this Title.

The TERO shall have the authority:

- A. To operate consistent with the provisions of this Title and to develop rules and regulations governing activities of TERO. The TERO may adopt EEOC guidelines or may adopt other requirements to eliminate employment barriers unique to Indians in Indian Country.
- B. To obtain funding from Federal, state and other sources to supplement Council appropriations as delegated by the Administration.
- C. To negotiate cooperative agreements with federal, state, local, and other authorities on matters dealing with employment rights and TERO activities and to operate pursuant to finalized cooperative agreements and/or memoranda of understanding or agreement.
- D. To use the information, facilities, personnel, and other resources of federal, state, and local agencies, **as allowed by those agencies**, as well as any and all Cherokee Nation departments.
- ~~E. To establish numerical hiring goals and timetables specifying the minimum number of Indians an employer must hire by craft or skill level.~~
- FE.** To require employers to establish or participate in job training programs as the TERO deems necessary to increase the pool of Indians eligible for employment.
- GF.** To establish and administer a tribal job bank and require employers to use it.

- ~~H~~G. To prohibit employers from using job-qualification criteria or personnel requirements that may bar Indians from employment unless such criteria or requirements are required by business necessity.
- ~~H~~H. To engage in the process of certifying businesses as "Indian-owned economic enterprises" and to determine whether businesses may be given Indian preference.
- ~~H~~J. To direct inspections of regulated sites and determine compliance with rules, regulations, and/or contract requirements. **A "regulated site" shall be any site where an Employer is engaged in work as defined by this Act.**
- ~~K~~J. To negotiate agreements with unions to insure union compliance with this Title.
- ~~L~~K. To require employers/contractors to follow the preferences as required in §1021 ~~give preference to Indian-owned economic enterprises in the award of contracts and subcontracts.~~
- ~~M~~KML. To establish counseling programs to assist Indians in obtaining and retaining employment.
- ~~N~~LNLM. To require employers to submit reports and take all actions deemed necessary by the TERO for the fair and vigorous implementation of this Act.
- ~~O~~MON. To enter into cooperative agreements with employment rights agencies such as EEOC, HRC, and OFCCP to eliminate adverse discrimination against Indians.
- ~~P~~NPO. To take such actions as are necessary to achieve the purposes and objectives of the Cherokee Nation employment rights program established in this Title.
- ~~Q~~O.P ———To publish a listing of certified "Indian-owned economic enterprises."
- ~~R~~P.Q To review and propose changes to this Title and related regulations as necessary.
- ~~S~~Q.R To hold hearings **participate and cooperate in appeal hearings** in accordance with this chapter.
- ~~T~~R.S To register and keep file of **records and** complaints concerning certified Indian-owned economic enterprises and with individuals and companies doing business with the Cherokee Nation.
- ~~U~~S.T To assess an employment rights fee of one-half (1/2) of one percent (1%) on all covered contracts, **which shall mean any contract executed by a contractor as defined in Title 40§1004.**
- ~~V~~T.U To issue and assess fees for Work Permits which must be obtained for all non-Indian employees of a covered **an** employer, **who are not considered a core crew member.**

1. Any employer, as defined in this act shall be required to pay a fee of not less than Twenty-five dollars per employee per day for non-Indian employees hired for the **a Pproject or hired after the effective date of Legislative Act 30-12 if the Employer is the Cherokee Nation or its entities.**

2. Each such employer shall be required to submit a core crew list to the TERO.
3. Once the core crew list is submitted the TERO will confirm the ~~essential employees~~ core crew members the vendor has listed and those employees shall be not be exempt from the requirement to obtain a Work Permit and but no fee will be due for the core crew employees.
4. If the TERO has identified Indians that can be used for non-Indian Employees it shall ~~require the employer to place the qualified Indians~~ submit the name to the Employer for consideration of replacement of the non-Indian Employees. Failure to hire the qualified Indians submitted by TERO will result in termination of the Employer's contract with the Cherokee Nation or its entities.
5. The TERO is also authorized to administer other fees and penalties as provided in this act.
6. An Employer is exempt from the assessment of a fee or penalties as provided in this Act if the Employer can prove to the TERO that the Employer followed the preferences under this Act through posting of a job announcement twice, Employer submits job descriptions to TERO for qualified Indians, and through proof that no Indian applicant was qualified or no Indian applied.

Section 6. Title 40, § 1012 shall read as follows:

Adoption of rules, regulations, policies and guidelines

The TERO and its staff shall, with all reasonable speed, adopt detailed rules, regulations, policies and guidelines to fully implement this Title and the purposes and responsibilities of the TERO.

Section 7. Title 40, § 1013 shall read as follows:

Funds

All funds from employer fees and other sources collected by the TERO shall be tribal funds and be allocated to job training programs developed by the TERO staff and approved by the Council.

Section 8. Title 40, § 1021 shall read as follows:

Indian preference requirements generally

- A. All employers are required to give preference to Indians Cherokee Nation Citizens first, then Cherokees from the two other federally recognized Cherokee Tribes, and then members of other federally recognized tribes in hiring, promotion, training, and all other aspects of employment, contracting, or sub-contracting, unless such preference would subject the employer to a violation of a federal or state law applicable to that employer, and must comply with this Title and the rules, regulations and orders of the TERO.

1. The Cherokee Nation government is an “employer” for the purposes of this title and any of its business entities, **subject to the exceptions listed in Title 40 § 1004 (KJ)**, shall be an “employer” for the purpose of this title.
2. If potential contractors are otherwise equally qualified to complete the relevant contract work and respective bids are otherwise equal, the Cherokee Nation, its entities and wholly owned corporations shall apply a preference ~~Indian-owned~~ **as set forth in Sections d (i) (ii) (iii) (iv) hereinbelow** for economic enterprises in procurement and contracting. Exceptions to this requirement shall be permitted when no Indian-owned economic enterprise is readily available **as designated by TERO; when applicable federal or state law does not permit such a preference;** when other governmental entity contracts (including, but not limited to, VA or GSA contracts) are available; when more favorable pricing may be obtained; when the order meets the requirements of the Sole Source Request as defined in Acquisition policy and procedure; **when the contract price is below \$5,000.00** or in an emergency situation as determined by the Principal Chief.
 - a. primary preference shall be given to certified “Indian Owned Businesses” where the Majority Owner(s) are Cherokee citizen:
 - b. second preference to other certified “Indian Owned businesses” and,
 - c. A business may be certified as both an “Indian Owned” and “Major Cherokee Employer” business. In this case, such dually certified business would receive preference over other Indian-owned businesses within categories a. and b. above.
 - d. Preference shall be given in the following order:
 - i. First Preference shall be given to Cherokee owned business that are Major Cherokee Employers
 - ii. Second Preference shall go to Cherokee Owned Businesses
 - iii. Third Preference shall go to businesses that are certified as Indian Owned and that are Major Cherokee Employers
 - iv. Final Preference shall go to those businesses that are certified as Indian Owned.
3. Following the preferences in item 2. above, the procurement offices of the Nation shall develop policies to administer to “Locally-Owned businesses” as defined herein. In no instance shall this preference degradate or superseded Indian Preference.
4. Any contract awarded to a general contractor may be subcontracted, provided that the Indian Preference requirements herein apply **unless applicable federal or state law prevents the Indian Preference application**, regardless of the level of subcontracting activity. Failure to apply Indian preference to subcontracts shall be deemed by TERO a violation of this act, **unless applicable federal or state law prevents the application of an Indian Preference. The contractor/employer have the burden of proving to TERO that federal or state law applies to that contractor/employer and prevents the Indian Preference application.**

5. The Cherokee Nation Administration may create procurement and contracting policies and procedures for application of said preference. The Cherokee Nation procurement and/or contracting offices ~~may~~ **shall** maintain a list of entities which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws **and shall also maintain a list of entities which have provided good performance and satisfactory work and have engaged in compliant behavior with contract provisions, rules, regulations or laws.**
 6. Nothing shall require the Cherokee Nation to contract with or hire any Indian-owned economic enterprises which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws. The Cherokee Nation procurement and/or contracting offices may maintain a list of entities which have previously provided poor performance or unsatisfactory work or which have engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws.
- B. In accordance with 8.A.5. of this Act the Procurement offices of the Nation and its entities shall maintain a “Debarment List” which shall be a list of contractors which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws. Procurement offices shall develop policies and procedures to define poor performance of a contractor / Employer. Documentation of poor performance must be available and provided to the contractor upon request. The Procurement offices shall forward the names of any certified Indian Owned Businesses determined to have poor performances to both the TERO and to the One Stop Business Center for Technical assistance and Improvement.
1. Debarment list , Annual Certification; in compiling the debarment list required by Section 8, Title40 § 1021, B. the TERO Office shall require, on an annual basis, Employers who employ twenty-five (25) employees or more to certify that they are in compliance with applicable state federal and tribal labor and employment laws. Nothing herein shall impose any new obligation on any employer to comply with said labor and employment laws.
 2. The period of Debarment by the TERO shall be for a period of no less than two years.
- C. In accordance with Section 24 of this Act, the TERO shall address complaints of violations the Act or TERO Rules, should there be any unresolved violations by Departments of the Nation or its Business entities, the TERO shall issue reports of non-compliance to the Principal Chief, Tribal Council and applicable Boards of Directors.

Section 9. Title 40, § 1022 shall read **be amended** as follows:

Indian preference in contracting and subcontracting

In the award of contracts or subcontracts, employers shall give preference to Indian organizations and to Indian-owned economic enterprises as defined in this Title, **unless such preference would be a violation of applicable federal law.** The TERO staff shall maintain and

publish a list of Indian organizations and Indian-owned economic enterprises which shall be supplied to the employers for their use.

Section 10. Title 40, § 1023 shall read be amended as follows:

Preference in promotions

Every employer shall, in accordance with TERO regulations, give Indians preferential consideration for all promotion opportunities and shall encourage Indians to seek such opportunities. Preference will apply as follows (unless federal or state law applicable to that employer prevents such a preference):

- A. Primary preference to Cherokee Nation Citizens
- B. Second preference to other Indians

Section 11. Title 40, § 1024 shall read as follows:

Preference in employment of students

Employers shall give Indian students preferential consideration for summer student employment. The employer shall make every effort to promote after-school, summer, and vacation employment for Indian students.

Section 12. Title 40, § 1025 shall read as follows:

Reserved for Future Use

~~Establishment and review of numerical goals for Indian employment generally~~

- ~~A.— The TERO may establish the minimum number of Indians each employer must employ on its work force during any year that the employer or any of its employees are located or engaged in work within Cherokee Nation Indian Country. Numerical goals may be set for each craft, skill, job classification, etc., used by the employer and shall include, but not be limited to, administrative, supervisory and professional categories.— The goals shall be expressed in terms of man-hours worked by the employer's work force in the job classification involved.~~
- ~~B.— For both new and existing employers, the goals shall be reviewed by the TERO staff at least annually and shall be revised as necessary to reflect changes in the number of Indians available or changes in employer hiring plans. Each employer shall submit a monthly report to TERO on a form provided by the TERO staff, indicating the number of Indians in the employer's work force, the progress towards the employer's goals, all persons hired or fired during the month, the job positions involved, and other information required by the TERO Office.~~

Section 13. Title 40, § 1026 shall read as follows:

Participation in training programs by employers

Employers may be required by the TERO to participate in training programs to assist Indians to become qualified in the various job classifications used by the employer. The ratio of Indian trainees to fully qualified workers shall be set by the TERO after consultation with the employer.

Section 14. Title 40, § 1027 shall read as follows:

Establishment by TERO staff of counseling and other support programs; Cooperation by employers

The TERO may establish counseling and other support programs to assist Indians in obtaining and retaining employment. Every employer shall be required to cooperate with the TERO regarding such counseling and support programs.

Section 15. Title 40, § 1028 shall read as follows:

Use of job qualification criteria and personnel requirements by employers

Employers are prohibited from using job-qualification criteria or personnel requirements which bar Indians from employment unless such criteria or requirements are required by business necessity.

Section 16. Title 40, § 1029 shall read as follows:

Implementation of layoffs and reductions in force by employers

In all layoffs and reductions in force, employers shall maintain the required ratio of Indian employees.

Section 17. Title 40, § 1030 shall read be amended as follows:

Duties of contractors and subcontractors; Liabilities of employers for violations of by contractors and subcontractors

The Indian preference requirements contained in this Title shall be binding on all contractors and subcontractors doing Projects for ~~of~~ employers (unless applicable federal or state law prevents such a preference), regardless of tier, as referenced in §1021(A)(2) of this Act, and shall be deemed a part of all contract and subcontract specifications. ~~The employer shall be subject to penalties provided herein for violation of this Title if the contractor or subcontractor fails to comply.~~ Any violation of this Act by a contractor or subcontractor of an employer shall subject the contractor or sub contractor to penalties even if the contract does not contain the Indian preference requirement, unless applicable federal or state law prevents such a preference.

Section 18. Title 40, § 1031 shall read as follows:

Establishment and administration of job bank; Recruitment and hiring of personnel by employers

The TERO may establish and administer a Job Bank to assist employers in placing Indians in job positions. An employer may recruit and hire workers from whatever sources are available and by whatever process the employer chooses, as long as the employer complies with this Title and Indian job preference regulations and agreements pertaining to the employer.

Section 19. Title 40, § 1032 shall read as follows:

Prohibition on brokering and fronting services

No Indian entity shall represent that it is exercising management control of a project in order to qualify for Indian Preference in the award of said contract or sub-contract when in fact such management control is exercised by a non-Indian entity such that the Indian entity is acting as front or brokering out services.

Section 20. Title 40, § 1041 shall read as follows:

Duties of unions generally

Every union with a collective bargaining agreement with an employer must file a written agreement stating that the union will comply with this Title and rules, regulations and orders of the TERO. Until such agreement is filed with the TERO, the employer may not commence work within Cherokee Nation Indian Country.

Section 21. Title 40, § 1042 shall read as follows:

Contents of union agreements

Every union agreement with an employer or filed with the TERO must provide:

- A. *Indian preference.* The union will give preference to Indians in job referrals regardless of which union referral list they are on.
- B. *Cooperation with the TERO staff.* The union will cooperate with the TERO Office in all respects and assist in the compliance with and enforcement of this Title and related regulations and agreements.
- C. *Training programs.* The union will establish a journeyman upgrade and advanced apprenticeship program.
- D. *Temporary work permits.* The union will grant temporary work permits to Indians who do not wish to join the union.

Section 22. Title 40, § 1043 shall read as follows:

Model union agreement

The TERO staff will provide a model union agreement for use by all unions who have collective bargaining agreements with any employer.

Section 23. Title 40, § 1044 shall read as follows:

Recognition of unions or endorsement of union activities

- A. Nothing herein, nor any activity by the TERO authorized hereby, shall constitute official Cherokee Nation recognition of any union or endorsement of any union activities within the Cherokee Nation. Nothing herein bars any employer, Cherokee Nation or its entities, from recognizing any union.
- B. Neither the TERO, including any employer or agent thereof, nor any Cherokee Nation entity, shall engage in any activity constituting opposition to or endorsement of any Union activities among employees of any Employer covered by this Act. Nothing herein shall restrain any elected official of the Cherokee Nation from endorsing or opposing such Union activities.
 1. Any prohibition against endorsement of any Union activities in this Section shall not include the provision of any assistance to any Cherokee Nation citizen to utilize any apprentice or job training program operated by any Union or Union affiliated entity.

Section 24. Title 40, § 1052 shall read as follows:

Filing of complaints by TERO and proceedings thereon generally

If the TERO staff has cause to believe that an employer, contractor, subcontractor, or union

has failed to comply with this Title or any rules, regulations or orders of the TERO, it may file a complaint with the TERO Director and notify such party of the alleged violations. The TERO Director will attempt to achieve an informal settlement of the matter, but if an informal settlement cannot be achieved, the TERO may impose penalties as provided in Section 1061 herein. Should any entity fail to comply with orders of the TERO, the TERO may pursue a civil legal action against the entity in the Cherokee Nation District Court.

Section 25. Title 40, § 1053 shall read as follows:

Filing of complaints by Indians and proceedings thereon generally; Penalties for retaliatory actions by employers against employees filing complaints

- A. If any Indian believes that an employer has failed to comply with this Title or rules, regulations or orders of the TERO, or if the Indian believes he or she has been adversely discriminated against by an employer because he or she is Indian, the Indian may file a complaint with the TERO specifying the alleged violation. Upon receipt of the complaint, the TERO shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the individual or TERO may take further action as provided for by law.
- B. If any employer fires, lays off, or penalizes in any manner any Indian employee for utilizing the individual complaint procedure, or any other right provided herein, the employer shall be subject to the penalties provided in Section 1061 of this Title.
- C. Nothing in this Title shall prohibit the aggrieved Indian from pursuing from the employer other remedies available by law.

Section 26. Title 40§ 1051 shall read as follows:

Conduct of Hearings

If any employer or person feels aggrieved by a decision made by the TERO Office they may appeal that decision to the Employee Appeals Board. Employee Appeals Board shall hold a hearing in accordance with this ACT and will either confirm or deny the TERO Office decision. ~~The Chairperson and Co-Chairperson of the Employment committee of the Tribal Council may attend said hearings as advisory members, but shall not have nay vote in the proceedings.~~

- A. Hearings shall be governed by the following rules and procedure:
 1. All parties may present testimony of witnesses and other evidence and may be represented by counsel at their expense.
 2. The Board may have the advice and assistance at the hearing of counsel provided by the nation
 3. The Chairman of the Board or the vice-chairman shall preside and the Board shall proceed to ascertain the facts in a reasonable and orderly fashion.
 4. The Hearing may be adjourned, postponed and continued at the discretion of the Board.
- B. At the final close of the hearings, the board may take immediate action or take the matter under advisement

- C. The Board shall notify all parties 45 days after the last hearing of its decision in the matter.
- D. The Board shall conclude this process within ninety (90) days of the request for a hearing.

Notice of Hearings

- A. The Employees Appeals Board, as established pursuant to Title 51 Section 1001 et seq. of the Cherokee nation Code Annotated shall have the power and duty to hear employer appeals of TERO decisions denying certification of the employer as an Indian owned economic enterprise. The Employee appeals Board shall have the power to either affirm or reverse the TERO Certification decision, but will not have the power to award any other form of remedy in the cases brought to this title.
- B. The Employee Appeals Board shall have the power to create rules as may be necessary to perform the duties and functions delegated to the Employee Appeals Board herein.
 - 1. If a hearing is requested by ~~at~~ **the** Board, an individual, an employer, or union pursuant to this section, a written notice of the hearing shall be given to all concerned parties stating the nature of the hearing and the evidence to be presented.
 - 2. The notice shall advise such parties of their right to be present at the hearing, to present the testimony of witnesses and other evidence and to be represented by counsel at their own expense.

Section 27 Title 40 § 1072 shall read as follows:

Appeals from decisions of Committee

- A. Any party to a hearing shall have the right to appeal any decision of the Board to the District Courts of the Cherokee Nation
- B. Standard Review. The District Court shall review decisions of the Employee Appeal Board without a jury and shall be confined ~~to~~ **to** the record, except that ~~in cases~~ **in cases** of alleged irregularities in procedure before the Employee Appeals Board, not shown in the record, testimony thereon may be taken by the District Court. The District Court, upon request, shall hear oral arguments and receive written briefs.
- C. Appeals of the decision of the district court may be taken in the Supreme Court under the rules and procedures governing civil appeals before that Court.

Section 28. Title 40, § 1061 shall read ~~be amended~~ as follows:

Penalties for violations of chapter and rules, regulations or orders of the TERO or Employee Appeals Board

- A. Any employer, contractor, subcontractor or union who violates this Title-or rules, regulations or orders of the TERO shall be subject to penalties for the violation, including, but not limited to:
 1. Denial of the right to commence or continue business within the jurisdiction of the Cherokee Nation.
 2. Suspension of operations within the jurisdiction of the Cherokee Nation.
 3. Payment of back pay and damages to compensate any injured party.
 4. ~~An order to summarily remove employees hired in violation of this Title or rules, regulations or orders of the TERO.~~ **Reserved for Future Use.**
 5. Imposition of monetary civil penalties.
 6. Prohibition from engaging in future operations within the Cherokee Nation boundaries.
 7. An order requiring employment, promotion, and training of Indians injured in the violation.
 8. An order requiring changes in procedures and policies necessary to eliminate the violation.
 9. An order making any other provision deemed necessary to alleviate, eliminate, or compensate for any violation.
- B. The maximum monetary penalty which may be imposed is Five-Thousand-Dollars (\$5,000.00) for each violation. The penalties will be graduated as follows
 1. The first violation will incur a fine of \$200.00
 2. The second violation will incur a fine of \$1,000.00
 3. The third violation will incur a fine of \$5,000.00
- C. Each day during which a violation exists shall constitute a separate violation.
- D. Monetary penalties assessed by TERO may be tripled if it is shown that the violation occurred egregiously or with reckless or wanton behavior.
- E. Attorney Fees and Cost of pursuing or defending an action of the TERO may be awarded to the prevailing party.

Section 29. Title 40, § 1072 shall read as follows:

Time computations

In computing any period of time prescribed or allowed by this Title, the day of the act, default, or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by the Cherokee Nation or any other day when the receiving office does not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Cherokee Nation, or any other day, when the receiving office does not remain open for public business until 4:00 p.m. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays as defined by the Cherokee Nation or any other day when the receiving office does not remain open for public business until 4:00 p.m., shall be excluded in the computation.

Section 30. Title 40, § 1073 shall read as follows:

Notification of prospective and current employers of obligations imposed by Title and rules, regulations and orders of the TERO

- A. The TERO shall notify all employers of this Title and of the employer's obligation to comply herewith. All bid announcements issued by any tribal, federal, state, or other private or public entity shall contain a statement that the successful bidder will be obligated to comply with this Title and all rules, regulations and orders of the TERO.
- B. All Cherokee Nation agencies responsible for issuing business permits for activities within the Cherokee Nation or otherwise engaged in activities involving contact with prospective employers within the Cherokee Nation shall be responsible for advising such prospective employers of their obligations under this Title and rules, regulations and orders of the TERO.
- C. The TERO shall send a copy of this Title to every employer doing business with the Cherokee Nation.

Section 31. Title 40, § 1074 shall read as follows:

Filing of reports and other information by employers; Conduct of on-site inspections and investigations by TERO; Inspection and copying of records by TERO

- A. Employers shall submit reports, and other information requested by the TERO.
- B. The TERO and its representatives shall have the right to make on-site inspections during regular working hours in order to monitor any employer's compliance with this Title and the rules, regulations, and orders of the TERO.
- C. The TERO shall have the right to inspect and copy all relevant records of any employer, or any signatory union or subcontractor, and shall have a right to speak to workers and conduct investigations on job sites.

Section 32. Title 40, § 1081 to read as follows:

Provisions as cumulative

The provisions of this Title shall be cumulative to existing law except where stated otherwise in this Title.

Section 33. Title 40, § 1082 shall read as follows:

Severability

The provisions of this Title 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 34. Title 40, § 1083 shall read as follows:

Administrative Appeals Board

The Employee Appeals Board, as established pursuant to Title 51, Section 1001, et seq., of the Cherokee Nation Code Annotated, shall hereinafter be known as the "Administrative Appeals Board".

Section 35. Title 40, § 1084 shall read as follows:

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.

Section 36. Title 40 § 1085 shall read as follows:

Applicability

The provisions of this Act shall not apply nor shall compliance be required to the extent such application or compliance may violate applicable federal or state laws. The provisions of this Act shall not apply if such compliance would create a default of a contract by the Cherokee Nation or its entities.

~~Provisions as cumulative~~

~~————The provisions of this act shall be cumulative to existing law.~~

Section 37 Title 40 § 1086 shall read as follows:

Reserved for Future Use

Severability

~~————The provisions of this act are severable and if any part of 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 38 Title 40 § 1087 shall read as follows

Effective Date

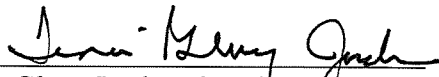
The provisions of this act shall become effective thirty (30) days from and after the date of its passage and approval.

Section 39 Title 40 § 1088 shall read as follows

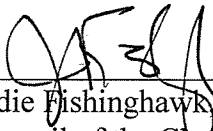
Self-Help Contributions

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.

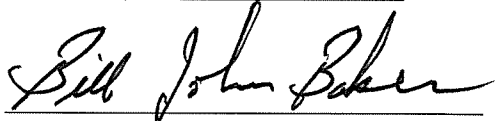
Enacted by the Council of the Cherokee Nation on the 10th day of February, 2014.


Tina Glory Jordan, Speaker
Council of the Cherokee Nation


ATTEST:


Jodie Fishinhawk, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 19 day of Feb., 2014.


Bill John Baker, Principal Chief
Cherokee Nation

ATTEST:


Chuck Hoskin, Jr., Secretary of State
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Tina Glory Jordan	<u>Yea</u>	Janees Taylor	<u>Yea</u>
David Walkingstick	<u>Yea</u>	Dick Lay	<u>Yea</u>
Joe Byrd	<u>Yea</u>	Cara Cowan Watts	<u>Yea</u>
Jodie Fishinhawk	<u>Yea</u>	Harley Buzzard	<u>Absent</u>
Janelle Lattimore Fullbright	<u>Yea</u>	Frankie Hargis	<u>Yea</u>
David W. Thornton, Sr.	<u>Yea</u>	Victoria Vazquez	<u>Yea</u>
Don Garvin	<u>Yea</u>	Julia Coates	<u>Yea</u>
Lee Keener	<u>Yea</u>	Jack D. Baker	<u>Yea</u>
Curtis G. Snell	<u>Yea</u>		