



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
17763 S. Muskogee Ave.
Tahlequah, OK 74464

Legislation Text

File #: 09-175, Version: 1

**AN ACT REPEALING AND SUPERSEDING LEGISLATIVE ACT 38-05 A CHEROKEE NATION LAW REGARDING
LABOR AND THE EMPLOYMENT RIGHTS ORDINANCE AND PROVIDING SEVERABILITY AND DECLARING
EMERGENCY
BE IT ENACTED BY THE CHEROKEE NATION:**

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

Title and Codification

This Act supersedes 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 and Legislative Act 38-05. 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 replace 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

One of the most meaningful things that a government can advocate for its citizens and their families is self-reliance. Employment and financial success of Cherokees and Cherokee-owned businesses promotes the Nation's strategy for economic self-reliance. The purpose of this Title is to develop self-reliance by encouraging Cherokee citizens and other Indians to the greatest extent feasible to develop the skills, talents and abilities to be competitive in the employment and business environment. The Cherokee Nation may use its contracting and procurement requirements to assist and encourage Cherokees and Cherokee-owned businesses to develop to a level that will allow them to compete for employment and contracts in the greater economy without dependence upon Cherokee Nation assistance. This Act is also intended 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.

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.
- A. "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.
- A. ~~"Cherokee Nation" or "Nation" shall mean the government of Cherokee citizens, with its capitol located in Tahlequah, Oklahoma, and includes the Legislative, Executive and Judicial branches.~~
- "Cherokee Nation Government" shall mean the officials and employees 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.
- A. "Cherokee Nation Entity" shall mean any business corporation and component unit owned at least 51% by the Cherokee Nation or its wholly owned businesses.
- A. "Citizen" shall mean any person who is a duly enrolled citizen of the Cherokee Nation, unless the context clearly indicates otherwise.
- A. "Contractor/employer" shall mean any person, company, contractor, subcontractor or other entity located in or on Cherokee Nation Indian Country or engaged in work with the Cherokee Nation, its entities or wholly-owned corporations employing two or more persons. The term "contractor/employer", unless provided in this Act, excludes the Nation, its entities and federal, state and county government agencies but includes contractors, and subcontractors of all other agencies.
- A. "Core crew" shall mean a member of a contractor or subcontractor's crew who is a regular, permanent employee that is or has been on the contractor/employer's or sub-contractor's payroll for a period of one year continuously or is an owner of the firm, or 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 contractor or subcontractor.
- A. "Council" shall mean the Tribal Council of the Cherokee Nation as established pursuant to the Cherokee Nation Constitution.
- A. "EEOC" shall mean the Equal Employment Opportunity Commission of the United States.
- A. A contractor/employer is "engaged in work" if, during any portion of a business enterprise or specific project, contract or subcontract, the contractor/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.
- A. "HRC" shall mean the Human Rights Commission of the State of Oklahoma.
- A. "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.
- A. "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).
- A. "Indian-owned business 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.

- A. "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.
- A. "Local Indian-owned business" means an Indian-owned 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.
- A. A contractor/employer is "located in or on the Cherokee Nation" if, during any portion of a business enterprise or specific project, contract or subcontract, the contractor/employer maintains a temporary or permanent office or facility on or performs work on Cherokee Nation Indian Country.
- A. "Major Cherokee Employer" means a business either Indian-owned or not, 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.
- A. "OFCCP" shall mean the Office of Federal Contract Compliance Programs of the United States.
- A. "One-Stop Bid Center" shall mean the office of the Cherokee Nation providing information and technical assistance to businesses.
- A. "Secretary" shall mean the United States Secretary of the Interior or his or her duly authorized representatives.
- A. "Tribal Citizens" or "Citizens" shall mean any person who is duly enrolled citizen of the Cherokee Nation, unless the context clearly indicates otherwise.
- A. "TERO" shall mean the Tribal Employment Rights Office.
- A. "TERO Staff" shall mean employees assigned to the TERO Office by the Executive Branch of the Cherokee Nation.

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

well as any and all Cherokee Nation departments.

- E. To establish numerical hiring goals and timetables specifying the minimum number of Indians a contractor/employer must hire by craft or skill level.
- F. To require contractor/employers to establish or participate in job training programs as the TERO deems necessary to increase the pool of Indians eligible for employment.
- G. To establish and administer a tribal job bank and require contractor/employers to use it.
- H. To prohibit contractor/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.
- I. To engage in the process of certifying businesses as “Indian-owned ~~businesses~~ economic enterprises” and “Major Cherokee Employer” businesses and to determine whether businesses may be given Indian preference, based upon their certification and skill codes.
- J. To direct inspections of regulated sites and determine compliance with rules, regulations, and/or contract requirements.
- K. To negotiate agreements with unions to insure union compliance with this Title.
- L. To require contractor/employers to give preference to Indian-owned ~~businesses~~ economic enterprises in the award of contracts and subcontracts as required by this Title. This requirement shall also include Cherokee Nation, Cherokee Nation Enterprises, Cherokee Nation Industries and any other corporation in which the Cherokee Nation has a majority interest. The first employment preference shall be Cherokee citizens and the second preference shall be members of a Federally recognized Tribe of Indians.
- M. To establish counseling programs to assist Indians in obtaining and retaining employment.
- N. To require contractor/employers, and internal departments of the Nation and its entities to submit reports and take all actions deemed necessary by the TERO for the fair and vigorous implementation of this Act.
- O. To enter into cooperative agreements with employment rights agencies such as EEOC, HRC, and OFCCP to eliminate adverse discrimination against Indians.
- P. 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. To publish separate listings of certified “Indian-owned ~~businesses~~ economic enterprises” and “Major Cherokee Employer” businesses. The list of “Major Cherokee Employer” businesses shall be clearly titled as non-Indian business and maintained separately from the list of Indian-owned businesses.
- R. To review and propose changes to this Title and related regulations as necessary.
- S. To hold hearings in accordance with this chapter.
- T. To register and keep file of complaints concerning certified Indian-owned ~~businesses~~ economic enterprises and with individuals and companies doing business with the Cherokee Nation or its entities.
- U. To assess an employment rights fee of one-half (1/2) of one percent (1%) on all covered contracts.
- V. To issue and assess fees for Work Permits which must be obtained for all non-Indian employees of a contractor/employer.
- W. Provide at least quarterly reports to the Cherokee Nation Tribal Council based on contractor/employers’ reports to the TERO, and shall publish quarterly reports on the Cherokee Nation website

X. To ensure that any contract awarded to a general contractor may be sub-contracted, provided that the Indian preference requirements herein apply, regardless of the level of subcontracting activity.

Y. To be present at any and all openings of bids let by the Cherokee Nation or its entities.

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. Such rules, regulations, policies and guidelines shall be available to the public upon request and through the One Stop Bid Center.

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

Funds

All funds from contractor/employer fees and other sources collected by the TERO shall be tribal funds and be allocated to job training programs, recruitment, compliance monitoring, job bank maintenance, or other functions of the TERO, proposed by the TERO staff and approved by the Administration and the Council.

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

Indian preference requirements generally

- A. The Nation, its entities and contractor/employers are required to:
 - 1. give preference to Indians in hiring, promotion and training of employees as follows:
 - i. ~~primary~~ preference to Cherokee citizens; and
 - ii. second-tier preference to other Indians.
 - 2. give the following preferences in contracting or sub-contracting:
 - i. ~~primary~~ preference to certified “Indian-owned ~~businesses~~ economic enterprises” where the majority owners are Cherokee citizens;
 - ii. second-tier preference to other “Indian-owned businesses”; and
 - iii. third-tier preference to “Major Cherokee employer” businesses. In no instance shall preference to “Major Cherokee employer” businesses degrade or supersede preference to Indian-owned businesses.
 - 3. comply with this Title and the rules, regulations and orders of the TERO and the Administrative Appeals Board.
- B. Exceptions to Indian preference provisions shall may be permitted when governmental sources of supply (including, but not limited to VA or GSA contracts) are available, when no Indian-owned or Major Cherokee employer business is available to provide the good or service, or if imminent jeopardy to health or safety exists.
- C. The Nation, its entities and contractor/employers may consider including in their respective procurement policies provisions targeting “Local Indian-owned businesses” as appropriate. Such policies shall not be to the detriment of Indian preference as described in A., above.
- D. The Cherokee Nation and its entities shall each establish annual recruitment goals for increasing Cherokee citizen representation in their respective employee population. Progress toward goal attainment shall be reported at least quarterly to the Executive and Legislative branches, as well as the affected Boards of Directors.
- E. The Nation and its entities shall create procurement and contracting policies and procedures for application of said preference.
- F. Procurement and/or contracting ~~may~~ shall maintain 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 must have policies and procedures to define poor performance of a contractor/employer. Documentation of poor performance or non-compliance must be available and provided to the contractor upon request.

- G. Nothing shall require the Nation or its entities to contract with or hire any Indian or certified Indian-owned businesses which have previously provided poor performance or engaged in non-compliance with contract provisions, rules, regulations, or laws. Policies and procedures for declining to contract due to performance or non-compliance must be developed and consistently applied by the Nation and its entities.

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

Indian preference in contracting and subcontracting

In the award of contracts or subcontracts, ~~whenever feasible~~, the Nation, its entities and contractor/employers as defined in this Title shall give preference to Indian organizations and to certified Indian-owned ~~businesses~~ economic enterprises and Major Cherokee employer businesses as defined in this Title, and as described in Title 40 § 1021. The TERO staff shall maintain and publish separate lists of Indian organizations and Indian-owned ~~businesses~~ economic enterprises, and Major Cherokee employer businesses which shall be available for this purpose.

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

Preference in promotions

The Nation, its entities and contractor/employers as defined in this Title shall, in accordance with Title 40 § 1021, apply Indian preference for all promotion opportunities and shall encourage Indians to seek such opportunities.

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

Preference in employment of students

The Nation, its entities and contractor/employers as defined in this Title shall apply Indian preference in accordance with Title 40 § 1021 to students for summer student employment as available. The Nation, its entities and contractor/employers shall make every effort to promote after-school, summer, and vacation employment for Indian students.

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

Establishment and review of numerical goals for Indian employment generally

- A. The TERO may establish the minimum number of Indians each contractor/employer must employ on its work force during any year that the contractor/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 contractor/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 contractor/employer's work force in the job classification involved.
- B. For both new and existing contractor/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 contractor/employer shall submit a monthly report to TERO on a form provided by the TERO staff, indicating the number of Indians in the contractor/employer's work force, the progress towards the contractor/employer's goals, all persons hired or fired during the month, the job positions involved, and other information required by the TERO Office.
- C. Contractor/employers shall be required to pay a fee of not less than ~~fifty dollars (\$50.00)~~ twenty five dollars (\$25.00) per day, per employee, per award for non-Indian employees hired in for the project that are in addition to the core crew, as defined in Title 40 § 1004. Provided that if said penalty is assessed against the Cherokee Nation or its entities an exception may be allowed by TERO for good cause shown.

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

Participation in training programs

Contractor/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 contractor/employer. The ratio of Indian trainees to fully qualified workers shall be set by the TERO after consultation with the contractor/employer.

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

Establishment by TERO staff of counseling and other support programs

The TERO may establish counseling and other support programs to assist Indians in obtaining and retaining employment. The departments of the Nation, its entities and contractor/employers as defined in this Title 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

The Nation, its entities and contractor/employers as defined in this Title 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 contractor/employers

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

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

Duties of contractors and subcontractors; Liabilities of contractor/employers for violations

A. The Indian preference requirements contained in this Title shall be binding on all contractors and subcontractors of the Nation, its entities and contractor/employers as defined in this Title, regardless of tier, and shall be deemed a part of all contract and subcontract specifications. Contractor/employers shall be subject to penalties provided herein for violation of this Title if the contractor or subcontractor fails to comply.

B. When any contract is awarded to a General Contractor, said General Contractor may award subcontract provided that if said contract is awarded to a non-TERO entity there shall be a twelve percent (12%) penalty to the General Contractor, if there are five (5) or more TERO Vendors in that field, that have been qualified to do such work by TERO and who are not otherwise unavailable.

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

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

The TERO shall establish and administer a Job Bank to assist the Nation, its entities and contractor/employers in placing Indians in job positions. Recruitment and hiring may be funded from whatever sources are available and by whatever process an employer chooses, as long as the respective employer complies with this Title and applicable Indian preference law and regulations. Fines for failure to use this service shall go to fund recruitment, training potential employees, training for employees, or for personnel staff recruitment or job training.

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

Prohibition on brokering and fronting services

No Indian person or 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 person or entity. Such improper representation shall be a crime under Cherokee Nation law.

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

Duties of unions generally

Every union with a collective bargaining agreement with a contractor/employer as defined in this Title 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 contractor/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 contractor/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 contractor/employer.

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

Recognition of unions or endorsement of union activities

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.

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 a department of the Nation or its entities, contractor, subcontractor, or union has failed to comply with this Title or any rules, regulations or orders of the TERO, it shall file a complaint with the TERO Director and notify such party of the alleged violations. A complaint may also be initiated by a certified Indian-owned business economic enterprises. The TERO Director will attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the TERO may:

- B. impose penalties to contractor/employers as provided in Section 1061 herein. Should any

contractor/employer fail to comply with orders of the TERO, the TERO, through and with approval of the Attorney General of the Nation, may pursue a civil legal action against the contractor/employer in the Cherokee Nation District Court.

- C. issue reports of non-compliance to the Principal Chief, Tribal Council and applicable Boards of Directors for violations by departments of the Nation or its entities.

This section does not supersede the remedies and procedures for employees of the Cherokee Nation and its entities.

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 a contractor/employer as defined in this Title 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 a contractor/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 contractor/employer as defined in this Title fires, lays off, or penalizes in any manner any Indian employee for utilizing the individual complaint procedure, or any other right provided herein, the contractor/employer shall be subject to the penalties provided in Section 1061 of this Title.
- C. The TERO Director, or a designee, shall be selected as the EEOC officer for the Nation, and shall serve as the principal point of contact in carrying out any agreements under EEOC and processing any complaints filed under that authority.
- D. The Administrative Appeals Board shall, for each EEOC complaint filed, provide technical support to, and oversight for processing and due diligence for EEOC cases until they are closed by federal authorities.
- E. Nothing in this Title shall prohibit the aggrieved Indian from pursuing from the employer other remedies available by law.
- F. Unless specifically provided herein, this title does not provide any cause of action for employees of the Cherokee Nation, its entities or wholly owned corporations.

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

Filing complaints against the Nation or its entities and proceedings thereon generally:

Any contractor/employer, as defined in this Title, that has been substantially damaged by a violation of Section 8 A.2 by a department of the Nation or its entities, may bring a cause of action in accordance with this Section.

- A. Any complaint or cause of action must be initiated by a Certified Indian owned business that is owned by a Cherokee citizen.
- B. An informal complaint must first be filed with TERO within 10 days of award of the subject contract.
- C. The informal complaint filed pursuant to this Section shall be investigated by TERO and TERO will attempt to achieve an informal settlement of the matter.
- D. If an informal settlement cannot be achieved, as certified by TERO, the contractor/employer may bring an action within six (6) months before the Administrative Appeal Board under Section 27 of this Title and appealed, if necessary, under Section 28 of this Title.
- E. Remedies for action brought under this Section are limited to the following:

1. Declaratory judgement
2. Injunctive relief, provided that TERO shall be the only entity that may request such relief.
3. Payment of damages to compensate the injured party provided that damages herein shall not exceed one hundred thousand dollars (\$100,000.00). The sovereignty of the Cherokee Nation is specifically waived as to this amount.

No other remedies other than those expressly listed herein may be available for actions against the Nation or its entities.

Section 27. Title 40 § 1072 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 Administrative Appeals Board. Administrative Appeals Board shall hold a hearing in accordance with this Act and will either confirm or deny the TERO Office decision.

- A. Hearings shall be governed by the following rules or procedure:
 2. All parties may present testimony of witnesses and other evidence and may be represented by counsel at their expense.
 3. The Board may have the advice and assistance at the hearing of counsel provided by the Nation.
 4. 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.
 5. 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.
- D. The Board shall notify all parties 45 days after the last hearing or its decision in the matter.
- E. The Board shall conclude this process within ninety (90) days of the request for a hearing.

Notice of Hearings

- A. The Administrative Appeals Board, as established pursuant to Title 51, Section 1001, et seq., of the Cherokee Nation Code Annotated, as amended shall have the power and duty to hear appeals of TERO decisions denying certification of Indian-owned businesses or Major Cherokee employer businesses. The Administrative 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 cases brought pursuant to this Title.
- B. The Administrative Appeals Board shall have the power to create rules as may be necessary to perform the duties and functions delegated to the Administrative Appeals Board herein.
 1. If a hearing is requested by the Board, an individual, a contractor/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 testimony of witnesses and other evidence and to be represented by counsel at their own expense.

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

Appeals from decisions of Board

- 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 of Review. The District Court shall review decisions of the Administrative Appeals Board based on ~~abuse of discretion or capriciousness~~ clearly erroneous standard.

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

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

- A. Any contractor/employer, 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.
 - 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.
- 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 30. Title 40, § 1073 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 31. Title 40, § 1074 shall read as follows:

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

- A. The TERO shall notify all departments of the Nation, its entities and contractor/employers as defined of

this Title and of the 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 contractor/employer as defined doing business with the Cherokee Nation.

Section 32. Title 40, § 1075 shall read as follows:

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

- A. Contractor/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 contractor/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 contractor/employer, or any signatory union or subcontractor, and shall have a right to speak to workers and conduct investigations on job sites.

Section 33. Title 40, § 1081 to read as follows:

Applicability of federal law.

Notwithstanding any other provision in this or any other tribal law, the Nation and its entities shall comply with applicable federal laws, regulations or other requirements for the particular federal funding source it has accepted.

Section 34. Title 40, § 1082 shall 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 35. Title 40, § 1083 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 36. Title 40, § 1084 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 37. Title 40, § 1085 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.

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 day of , 200__.