



**CHEROKEE NATION**  
**OFFICE OF THE ATTORNEY GENERAL**  
Post Office Box 948  
Tahlequah, Oklahoma 74465-0948  
Telephone: 918-453-5000  
Facsimile: 918-458-6142

**Todd Hembree**  
Attorney General

Sr. Assistant Attorneys General  
Nason Morton  
Susan Work  
Sara Hill

Assistant Attorneys General  
Dana Jim  
N. Cheryl Hamby  
Elizabeth Odell  
Chrissi Ross Nimmo  
Robert Garcia

**OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL**

**Question Submitted by:** Cara Cowan-Watts

**Opinion Number:** 2012-CNAG-02

**Date Decided:** February 15, 2012

This office has been asked for an opinion answering the following:

- I. Does Legislative Act 05-02, as amended by Legislative Act 28-04, Legislative Act 04-05 and Legislative Act 30-07, require the Cherokee Nation to set aside 1.75% of the Comprehensive Operating annual budget and Capital Appropriations Budget to a cash reserve?***

**Answer: No**

Legislative Act 05-02 was passed into law to set forth a “sound fiscal policy” for the Cherokee Nation. The Act balanced current debts of the Cherokee Nation with the available unbudgeted General Fund and Ranch Operations budgets. The Act also created a “cash reserve fund” to be maintained at 1.75% of the total authorized appropriations and such amount to be “adjusted annually with the passage of the initial budget adopted by the Cherokee Nation.” This “cash reserve” is to be maintained at 1.75% of the annual budget for every year thereafter.

There have been significant amendments to Legislative Act 05-02, the first being Legislative Act 28-04. The Nation recognized that it was no longer practical or prudent to rely only on cash balances to satisfy the requirements of the Cash Reserve as well as to provide for the day to day operations of the government. The amount of money needed to satisfy the 1.75% was of such an amount that services to our people were being threatened. Legislative Act 28-04

remedied this by creating a line of credit not to exceed \$5,000,000.00 to meet the Cash Reserve requirements set for in the original act. Both in the purpose of Legislative Act 28-04 (Section 2) and in the substantive provisions (Section 6.1) specifically reference the need to provide for the “operating cash needs of the Nation.” (Exhibit 1)

Operation or cash flow needs for operations has a very distinctive meaning in the accounting field. Operation means the day to day functioning of the entity for the purpose for which it is created. Cash flow needs for operations is simply the money needed to carry out those functions. The amendment in Legislative Act 28-04 alleviated the need of keeping a large sum of money in the cash reserve. It was replaced with a line of credit so the Cherokee Nation could have more money available for its “operations”.

The next amendment to the Cash Reserve Act (LA-05-02) was a technical amendment that created a limited waiver of sovereign immunity to secure the line of credit. This was done under Legislative Act 04-05.

The last amendment to the Cash Reserve Act (LA-05-02) came under Legislative Act 30-07. Here the council again reiterated that the Cash Reserve Act was to “permanently provide for the **operating cash needs of the Nation**”. (emphasis added). The Act amended LA 05-02 to exclude budgeted transfers between funds. The net effect was to limit the amount of funds needed to be placed in the cash reserve. (Exhibit 2)

In Fiscal Year 2012 the Cherokee Nation, for the first time, divided the Cherokee Nation budget into two budgets. The Comprehensive Operating Budget, passed as Legislative Act 20-11 and the Capital Appropriations Budget, passed as Legislative Act 21-11. Each of these Acts

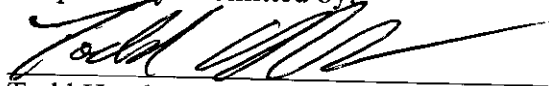
was brought forward by then Treasurer, Callie Catcher. There are sound accounting justifications for doing the budget in this manner.

The Capital Appropriations Budget (LA-21-11) consists of one-time capital expenditures that are fully funded and the Nation has the money in hand. These monies can only be spent on particular projects and there is no uncertainty related to their funding, therefore no cash reserve is needed or warranted. In fact, providing for a cash reserve for these projects would be an unsound use of the Cherokee Nation funds.

The Comprehensive Operating Budget (LA-20-11) provides for the day to day functioning of government. It is these types of expenditures for which a cash reserve or contingency fund would be needed or required. However, it is important to note that even under these budgets the vast majority has been forward funded and the money is in the hands of the Cherokee Nation. Because of this forward funding, the Cherokee Nation has never had to access the line of credit established in Legislative Act 28-04. Also, forward funding greatly reduces the risk of salary interruption or disaster relief. That being said, the Cherokee Nation Tribal Council has made it clear with the subsequent amendments of the Cash Reserve Act (LA-05-02) that the reserve is to “permanently provide for the operating cash needs of the Nation.”

Therefore, it is the opinion of the Attorney General of the Cherokee Nation that the Cash Reserve referred to in Legislative Act 05-02 which requires 1.75% of the Nations annual budget relates only to the Comprehensive Operating Budget of the Cherokee Nation, passed as Legislative Act 20-11.

Respectfully Submitted by:



Todd Hembree  
Attorney General for the Cherokee Nation

# Exhibit 1

Committee: Executive & Finance  
Date: 6-18-04 Committee Date: 7-01-04

Author: Callie Catcher  
Sponsor: \_\_\_\_\_

*Amended See  
LA# 04-05*

## An Act

Legislative Act 28-04

### AN ACT AMENDING LEGISLATIVE ACT 5-02, THE FISCAL POLICY AND RESPONSIBILITY ACT; AUTHORIZING A LINE OF CREDIT; AND, DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

#### Section 1. Title and Codification

This act shall be known as the “**Fiscal Policy and Responsibility Act Amendments of 2004**,” and codified as \_\_\_\_\_ (Title) \_\_\_\_\_ (Section) \_\_\_\_\_ of the Cherokee Nation Code Annotated.

#### Section 2. Purpose

The purpose of this Act is to amend the Fiscal Policy and Responsibility Act of 2002 to authorize a line of credit to be utilized in satisfying the permanent Cash Reserve required by the Act, and to permanently provide for operating cash needs of the Nation.

The total annual authorized budget and expenditures of the Nation have grown to such an extent to make it no longer practical or prudent for the Nation to rely only upon cash balances to satisfy the requirements of both the Cash Reserve required by the Act, as well as to provide for day-to-day cash flow needs for operations. A line of credit, authorized by this Act, will provide alternative and supplemental means of addressing cash flow and Cash Reserve requirements of governmental operations.

#### Section 3. Legislative History

- A. The Constitution and laws of the Cherokee Nation, including Title 62 of the Cherokee Nation Code Annotated (CNCA) provide the requirements for appropriations, review and authorization for the use of all funds.
- B. Section 7 of Article X of the Cherokee Constitution, and 62 CNCA § 61 contain the specific requirements for pledges of credit of the Cherokee Nation.
- C. Legislative Act 5-02, dated January 29, 2002, the “Fiscal Policy and Responsibility Act of 2002” provides in part for a permanent Cash Reserve to be maintained at 1.75% of total authorized appropriations in the annual comprehensive budget each year.
- D. All other applicable resolutions, statutes and Court decisions are hereby acknowledged.

#### Section 4. Amendments

Legislative Act 5-02 is hereby amended to add the following new provisions:

##### Section 2.1 Definitions

For purposes of this Act:

Line of Credit means a margin or fixed limit of credit intended to cover a series of transactions, in which case it is expected that the debtor will reduce his/her indebtedness by payments before drawing upon it further.

**Section 6.1. Line of Credit Authorized**

- A. A line of credit to provide cash requirements for the Cash Reserve and/or cash flow for operations is hereby authorized, not to exceed \$5,000,000 at any given time.
- B. Bank of America is the financial institution authorized from which to obtain such line of credit.
- C. The Principal Chief or his/her designee is authorized to negotiate and execute the line of credit, including the interest rate applicable to same.
- D. Any interest expense incurred under this line of credit must be provided for by appropriations in the annual Comprehensive Budget of the Nation.
- E. No additional budget authority is conferred or authorized by this Act. The use of the line of credit is limited to expenditures authorized by the annual Comprehensive Budget.
- F. No waiver of sovereign immunity is granted associated with the authorized line of credit.
- G. The authorized term of the line of credit will not expire until and unless amended or rescinded by Legislative Act; or, unless limited in the debt agreement executed by the Principal Chief or his/her designee.
- H. In accordance with 62 CNCA § 72 the Controller is required to report in the monthly financial report to the Council of the Cherokee Nation the status of the line of credit authorized herein.

**Section 5. Provisions as cumulative**

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

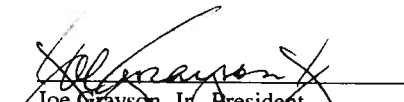
**Section 6. Severability**

The provisions of this act are severable and if any part 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 7. 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.

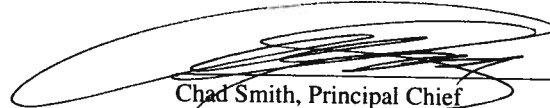
Enacted by the Council of the Cherokee Nation on the 12<sup>th</sup> day of July, 2004.

  
Joe Grayson, Jr., President  
Cherokee Nation Tribal Council

ATTEST:


  
Bill John Baker, Secretary  
Cherokee Nation Tribal Council

Approved and signed by the Principal Chief this 16th day of JULY, 2004.



Chad Smith, Principal Chief  
Cherokee Nation

**ATTEST:**



Callie Catcher, Secretary/Treasurer  
Cherokee Nation

**YEAS AND NAYS AS RECORDED:**

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

**Cherokee Nation  
Act /Resolution Proposal Form**

Act       Resolution

TITLE: "Fiscal Policy and Responsibility Act Amendment of 2004"

DEPARTMENT CONTACT: Callie Catcher

Resolution Presenter: Callie Catcher

SPONSOR: \_\_\_\_\_

NARRATIVE:  
*(See Attached Outline for Information Needed)*

This amendment is to authorize a line of credit to be utilized in satisfying the permanent Cash Reserve and to permanently provide for operating cash needs of the Nation required by the Fiscal Policy and Responsibility Act of 2002.

**Administrative Clearance**

Program/Project Manager  
\_\_\_\_\_  
Signature/Initial      Date

Department Director:  
\_\_\_\_\_  
Signature/Initial      Date

Executive Director:  
\_\_\_\_\_  
Signature/Initial      Date

Controller: *(Required)*  
Callie Catcher 6/18/04  
Signature/Initial      Date

Government Resources Dept:  
M. Kuyper 6/18/04  
Signature/Initial      Date

Administration Approval:  
M. Kuyper 6/18/04  
Signature/Initial      Date

for Chad Smith

**Legislative Clearance**

Legislative Aide:  
js 6-18-04  
Signature/Initial      Date

Standing Committee:  
E+7

16-1-04  
Next Meeting Date

Chairperson:  
G. Leary  
Signature/Initial      Date

Returned to Presenter: \_\_\_\_\_  
Date

13-04P04-42 R.C.V.D



# Exhibit 2

# An Act

## Legislative Act 30-07

### AN ACT AMENDING LEGISLATIVE ACT 04-05, THE FISCAL POLICY AND RESPONSIBILITY ACT AMENDMENTS OF 2005 AND DECLARING AN EMERGENCY

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

#### Section 1. Title and Codification

This act shall be known as the “**Fiscal Policy and Responsibility Act Amendments of 2007**,” and codified as \_\_\_\_\_ (Title) \_\_\_\_\_ (Section) \_\_\_\_\_ of the Cherokee Nation Code Annotated.

#### Section 2. Purpose

The purpose of this Act is to amend the Fiscal Policy and Responsibility Act Amendments of 2004,” which authorized a line of credit to be utilized in satisfying the permanent Cash Reserve required by Legislative Act 5-02, and to permanently provide for operating cash needs of the Nation. This amendment is necessary to change Section 2 (D) of the Act, to exclude budgeted transfers between funds.

#### Section 3. Legislative History

- A. The Constitution and laws of the Cherokee Nation, including Title 62 of the Cherokee Nation Code Annotated (CNCA) provide the requirements for appropriations, review and authorization for the use of all funds.
- B. Section 7 of Article X of the Cherokee Constitution, and 62 CNCA § 61 contain the specific requirements for pledges of credit of the Cherokee Nation.
- C. Legislative Act 5-02, dated January 29, 2002, the “Fiscal Policy and Responsibility Act of 2002” provides in part for a permanent Cash Reserve to be maintained at 1.75% of total authorized appropriations in the annual comprehensive budget each year.
- D. Legislative Act 28-04, dated July 12, 2004, the “Fiscal Policy and Responsibility Amendments of 2004” amended LA 5-02, authorized the Principal Chief or his/her designee to negotiate and execute documents to secure a line of credit not to exceed \$5,000,000, and contained other provisions related to same.
- E. Legislative Act 04-05 eliminated Section G.I.F. stating that a waiver of sovereign immunity is not associated with a line of credit.
- F. All other applicable resolutions, statutes and Court decisions are hereby acknowledged.

#### Section 4. Amendments

Legislative Act 04-05 is hereby amended as follows:

##### Section 2 (D)

“To authorize the establishment of a permanent Cash Reserve Fund to be maintained at 1.75% of total authorized appropriations in the annual comprehensive budget, **excluding budgeted transfers between funds**, for each and every subsequent year hereafter, such amount to be adjusted annually with the passage of the initial budget adopted by the Cherokee Nation.

**Section 5. Provisions as cumulative**

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

**Section 6. Severability**

The provisions of this act are severable and if any part 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.

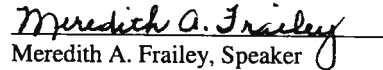
**Section 7. Emergency declared**

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.

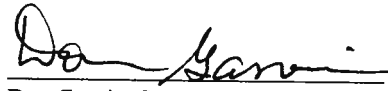
**Section 8. Self-Help Contributions**

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


Enacted by the Council of the Cherokee Nation on the 16<sup>th</sup> day of July, 2007.

  
Meredith A. Frailey, Speaker  
Council of the Cherokee Nation


ATTEST:

  
Don Garvin, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 23<sup>rd</sup> day of July, 2007.

  
Chad Smith, Principal Chief  
Cherokee Nation

ATTEST:

  
Melanie Knight, Secretary of State  
Cherokee Nation

**YEAS AND NAYS AS RECORDED:**

Audra Smoke-Conner	<u>Yea</u>	Melvina Shotpouch	<u>Yea</u>
Bill John Baker	<u>Yea</u>	Meredith A. Frailey	<u>Yea</u>
Joe Crittenden	<u>Yea</u>	John F. Keener	<u>Yea</u>
Jackie Bob Martin	<u>Absent</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. Johnson	<u>Yea</u>
Don Garvin	<u>Yea</u>	Charles "Chuck" Hoskin	<u>Yea</u>
Linda Hughes-O'Leary	<u>Absent</u>	Jack D. Baker	<u>Yea</u>
Taylor Keen	<u>Yea</u>		