



MUSCOGEE (CREEK) NATION

TERO

TRIBAL EMPLOYMENT RIGHTS OFFICE

CODE OF LAWS

TITLE 16. EXECUTIVE BRANCH

CHAPTER 9. MUSCOGEE (CREEK) NATION

TRIBAL EMPLOYMENT RIGHTS OFFICE ACT

NCA 12-198

A LAW OF THE MUSCOGEE (CREEK) NATION CREATING A NEW CHAPTER UNDER MCNCA TITLE 16 ENTITLED “Muscogee (Creek) Nation Tribal Employment Rights Office Act”

Be it enacted by the National Council of the Muscogee (Creek) Nation:

Section One: NEW LAW. This Act shall be codified in Title 16, Chapter 9, of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of said amendment and its inclusion in pocket parts of the Code of Laws of the Muscogee (Creek) Nation, the Codification Committee is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated consistent with the format in the Code of Laws published in 2010 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws and (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following amendment, without further National Council Approval:

SECTION TWO. NEW LAW. The following new law is hereby enacted and shall be codified as Chapter 9, Sub-chapter 9-101 through 9-134 of the Muscogee (Creek) Nation code of laws:

**TITLE 16. EXECUTIVE BRANCH
CHAPTER 9. MUSCOGEE (CREEK) NATION
TRIBAL EMPLOYMENT RIGHTS OFFICE ACT**

§ 9-101. Title

This Act shall be known and cited as the Muscogee (Creek) Nation Tribal Employment Rights Office Act.

§ 9-102. Purpose

The purpose of this title is to encourage the employment of “Muscogee (Creek) Citizens and Citizens of other federally recognized tribes” (hereinafter “Citizens”) and to assist in and require the employment of Citizens, and to prevent discrimination against Citizens in the employment practices of employers who are doing business with the Muscogee (Creek) Nation on Muscogee (Creek) Nation Indian Country or in such jurisdiction as is provided in a cooperative agreement between the Muscogee (Creek) Nation and another government.

§ 9-103. Definitions

- A. “Administration” shall mean the Executive Branch of the Muscogee (Creek) Nation as provided in the Muscogee (Creek) Nation Constitution.
- B. “Muscogee (Creek) Nation Indian Country” shall mean all land held in trust or subject to restrictions by the United States for the Muscogee (Creek) Nation, or land within the original boundaries of the Muscogee (Creek) Nation and held in trust or subject to restrictions for an individual, and all land held by the Muscogee (Creek) Nation or its entities, in fee simple, and any other land within the jurisdiction of the Muscogee (Creek) Nation which land comes within the definition of “Indian Country” as defined in 18 U.S.C. § 1151.
- C. “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 employer’s or subcontractor’s payroll for a period of one year continuously, or is an owner of the firm.
- D. “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.
- E. “EEOC” shall mean the Equal Opportunity Commission of the United States.

- F. "Employer" shall mean the Nation, Tribal Government, all commercial and enterprise entities, all independent agencies, and any other person, company, contractor, subcontractor or other entity located in or on Muscogee (Creek) Nation Indian Country or engaged in work with the Muscogee (Creek) Nation, its entities or wholly-owned corporations who employs at least one individual.
- G. 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 Muscogee (Creek) Nation, its entities and wholly-owned corporations and/or the work is performed on Muscogee (Creek) Nation Indian Country.
- H. "Indian" shall mean a person who is an enrolled Citizen of a Federally Recognized Indian Tribe.
- I. "Indian organization" shall mean the governing body of any Indian Tribe or entity established or recognized by such governing body.
- J. "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 operations, control, and manage the enterprise.
- K. "Indian Tribe" means an Indian Tribe, pueblo, band, Nation or other organized group or community, including any 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.
- L. "Locally Owned" means a business that has its headquarters and majority of its employees residing within the jurisdictional boundaries of the Muscogee (Creek) Nation.
- M. An employer is "located in or on the Muscogee (Creek) Nation" if, during 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 Muscogee (Creek) Nation Indian Country.

- N. "Major Muscogee (Creek) Employer" shall mean a business either Indian Owned or not that employs at least fifty (50) Muscogee Citizens as either part of the core crew or project crew, or has at least 75% of its entire workforce comprised of Muscogee Citizens as certified by the TERO. A business may be certified as Indian Owned, Major Muscogee Employer, or both.
- O. "Nation" shall mean the Muscogee (Creek) Nation.
- P. "Tribal Citizen" or "Citizen" shall mean any person who is a duly enrolled citizen of the Muscogee (Creek) Nation or other Federally Recognized Tribe, unless the context clearly indicates otherwise.
- Q. "TERO" shall mean the Tribal Employment Rights Office.
- R. "TERO Staff" shall mean employees hired by the TERO Office to carry out the functions of this Act.

§ 9-104. Establishment and Name

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

§ 9-105. Powers and Duties

The TERO shall have the authority to carry out the day-to-day operations of the Office, and to enforce the ordinance. The TERO shall have the following powers and duties:

- A. To operate consistent with the provisions of this Title and to develop rules and regulations governing activities of the TERO. The TERO may adopt EEOC guidelines or may adopt other requirements to eliminate employment barriers unique to Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes in Indian Country.
- B. To obtain funding from federal, state and other sources to supplement National 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 the TERO activities, subject to National Council Approval, and to operate pursuant to finalized cooperative agreements and/or memoranda of understanding or agreements.
- D. To use the information, facilities, personnel, and other resources of federal, state and local agencies, as well as any and all Muscogee (Creek) Nation departments to accomplish the goals of this Act.
- E. To establish numerical hiring goals and timetables specifying the minimum number of Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes eligible for employment.
- F. To require employer to establish or participate in job training programs as the TERO deems necessary to increase the pool of Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes eligible for employment.
- G. To establish and administer a tribal job bank and require employers to use it.
- H. To prohibit employers from using job-qualifications criteria or personnel requirements that may bar Muscogee (Creek) Citizens or Citizens of other Federally Recognized Tribes from employment unless such criteria or requirements are required by business necessity.
- I. To engage in the process of certifying businesses as “Indian-owned economic enterprises” with documented evidence of at least 51% ownership, control and management of the business to determine whether business may be given Indian preference.
- J. To determine and assess an application fee to businesses seeking certification. Upon certification, to determine and assess a certification fee to be paid by all businesses determined to be “Indian Owned Economic Enterprises.” Also, to annually determine and assess a re-certification fee to those enterprises.
- K. To direct inspections of regulated sites and determine compliance with rules, regulations and/or contract requirements.

- L. To facilitate agreements with unions to insure union compliance with this Title.
- M. To require employers to give preference to Indian-owned economic enterprises in the award of contracts and subcontracts.
- N. To establish counseling programs to assist Muscogee (Creek) Citizens in obtaining and retaining employment.
- O. To require employers to submit reports and take all actions deemed necessary by the TERO for the fair and vigorous implementation of this Act.
- P. To enter into cooperative agreements, subject to National Council Approval, with employment rights agencies to eliminate adverse discrimination against Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes.
- Q. To take such actions as are necessary to achieve the purposes and objectives of the Muscogee (Creek) Nation employment rights program established in this Title.
- R. To publish a listing of certified "Indian-owned economic enterprises" on a monthly basis.
- S. To review and propose changes to this Title and related regulations as necessary.
- T. To hold hearings in accordance with this chapter.
- U. To register and keep file of complaints concerning certified, Indian-owned economic enterprises and with individuals and companies doing business with the Muscogee (Creek) Nation.
- V. To assess an employment rights fee of one and a half percent (1.5%) on all covered contracts.
- W. To organize and coordinate a Committee to approve applicants to be certified by the TERO. The Committee shall consist of the Secretary of the Nation, one member from the Business & Finance Justice Committee and one member from the Land, Natural Resources & Cultural Preservation Committee of the National Council, the CEO of MNBE, a Designee from the Tribal Construction Department, and an Assistant Attorney General of the Muscogee (Creek) Nation.

- X. TERO may issue and assess fees for Work Permits which shall be obtained for all non-Indian employees of a covered employer.
1. Any employer, as defined in this act shall be required to pay a fee of not less than Twenty-Five Dollars (\$25.00) per employee per award per day for non-Indian employees hired for the project that are in addition to the core crew.
 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 the vendor has listed.
 4. If the TERO has identified Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes that can be used for non-Indian Employees it shall require the employer to place the qualified Tribal Citizen.
 5. The TERO is also authorized to administer other fees and penalties as provided in this Act.

§ 9-106. 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.

§ 9-107. Job Bank

- A. The TERO shall create a job bank and shall maintain a listing of individuals and their skills to be utilized by the TERO when filling job vacancies that have been negotiated with employers covered by this Act.
- B. Employers covered under this Act shall be required to utilize the Job Bank and comply with the Muscogee (Creek) Nation TERO Act and policies and procedures established under this Act. Preference shall be given to qualified Muscogee (Creek) Citizens as first preference.

- C. Employers covered under this Act do not have to hire or employ a job bank participant who is not qualified for the open position. This decision should be made in a good faith effort and the employer shall have valid reasons with documentation for not hiring a job bank referral.
- D. Employers covered under this Act shall notify the TERO of all job openings and shall submit to the TERO job descriptions, applications forms and other relevant information to comply with goals of this Act. If an employer advertises the job position, the advertisement shall state that preference will be given.

§ 9-108. Preference Requirements

- A. All employers are required to give preference to Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes in hiring, promotions, training, and all other aspects of employment, contracting, or sub-contracting, and shall comply with this Title and the rules, regulations, and order of the TERO.
- B. The Muscogee (Creek) Nation government is an “employer” for the purposes of this title and any of its business entities shall be an employer for the purpose of this title.
- C. However, if potential contractors are otherwise equally qualified to complete the relevant contract work and respective bids are otherwise equal, the Muscogee (Creek) Nation, its entities and wholly owned corporations shall apply a preference for Indian-owned economic enterprises in procurement and contracting. Exceptions to this requirement shall be permitted when no Indian-owned economic enterprise is readily available; 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; or in an emergency situation as determined by the Principal Chief.

1. Primary preference shall be given to certified “Indian Owned Businesses” where the Majority Owner is a Muscogee (Creek) Citizen.
 2. Second preference shall be given to other certified “Indian Owned Businesses.”
 - a. A business may be certified as both an “Indian Owned” and “Major Muscogee Employer” business. In this case, such dually certified business would receive preference over other Indian-owned businesses.
- D. A contractor shall extend a preference to qualified individuals with respect to hiring each and every employment position utilizing the Muscogee (Creek) Nation TERO job bank. If the Contractor, Sub-Contractor and the TERO Office are unable to fill the job positions after applying the preference provisions, then the job positions may be filled by other individuals, subject to the TERO work permit fees of non-Indian Employees.
- E. Preference shall be given in the following order:
1. First preference shall be given to Muscogee owned businesses that are Major Muscogee Employers.
 2. Second preference shall go to Muscogee Owned Businesses.
 3. Third preference shall go to businesses that are certified as Indian Owned.
 4. Final preference shall go to those businesses that are certified as Indian Owned.
 5. Following the preferences in item 2. Above, the procurement offices of the Nation may develop policies to administer to “Locally-Owned businesses.” In no instance shall this preference supersede the Muscogee (Creek) Citizen or Citizens of other Federally Recognized Tribes Preference.
 6. Any contract awarded to a general contractor may be subcontracted, provided that the Preference requirements stated in this Act apply, regardless of the level of subcontracting activity. Failure to apply Preference requirements to subcontracts shall be deemed by the TERO a violation of this Act.

7. The Muscogee (Creek) Nation Administration may create procurement and contracting policies and procedures for application of said preference. The Muscogee (Creek) Nation procurement and/or contracting offices 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.
- F. Nothing shall require the Muscogee (Creek) 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 Muscogee (Creek) 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.
 - G. 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. Nothing shall require the Nation to contract with or hire any economic enterprises 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 shall 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 for Technical assistance and Improvement.
 1. Debarment list, Annual Certification; in compiling the debarment list the TERO Office shall require, on an annual basis, Employers to certify;
 - a. Compliance with the following laws, and any other such laws deemed appropriate by the TERO: Title VII of the Civil Rights Act of 1964, Americans with Disabilities Act, Equal Pay Act, Occupational Health

and Safety Act, Muscogee (Creek) Nation Minimum Wage Act and Muscogee (Creek) Nation Employment Tribal Employment Rights Act.

- b. Whether the employer is currently the subject of any investigation by any Tribal, State or Federal Government agency or the subject of any lawsuit in any tribal, state or federal court, concerning an allegation that the employer violated any law set forth above.
2. The period of Debarment by the TERO shall be for a period of no less than two (2) years.
- H. The TERO shall address complaints of violations of the Act or the TERO Rules; and, 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, National Council and applicable Boards.

§ 9-109. Preference in contracting and subcontracting

In the award of contracts or subcontracts, whenever feasible, employers shall give preference to Indian organizations and to Indian-owned economic enterprises as defined in this Title. 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.

§ 9-110. Preference in Promotions

Every employer shall, in accordance with the TERO regulations, give Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes preferential consideration for all promotion opportunities and shall encourage Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes to seek such opportunities.

- A. Primary preference to Muscogee Citizens.
- B. Second preference to other Tribal Citizens.

§ 9-111. Preference in employment of students

Employers shall give Muscogee (Creek) Citizen students and other Citizens of Federally Recognized Tribes student's preferential consideration for summer student employment. The employer shall make every effort to promote after-school, summer, and vacation employment for Muscogee (Creek) Citizen students and other Citizens of Federally Recognized Tribes students.

§ 9-112. Establishment and review of numerical goals for employment generally

- A. The TERO may establish the minimum number of Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes each employer shall employ on its work force during any year that the employer or any of its employees are located or engaged in work within Muscogee (Creek) Nation Indian Country. Numerical goals may be set for each craft, skill, job classification, etc. used by the employer and shall include, but not 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 Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes available or changes in employer hiring plans. Each employer shall submit a monthly report to TERO on a form provided by the TERO stall, including the number of Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes in the employers work force, the progress towards the employer's goals, all persons hired during the month, the job positions involved, and other information required by the TERO Office.

§ 9-113. Participation in training programs by employers

Employers may be required by the TERO to participate in training programs to assist Muscogee (Creek) Citizens and other Citizens of Federally Recognized Tribes (“Citizens”) to become qualified in the various job classifications used by the employer. The ratio of Citizens trainees to fully qualified workers shall be set by the TERO after consultation with the employer.

§ 9-114. Establishment by the TERO staff of counseling and other support programs; Cooperation by employers

The TERO may establish counseling and other support programs to assist Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes in obtaining and retaining employment. Every employer shall be required to cooperate with the TERO regarding such counseling and support programs.

§ 9-115. Use of job qualification criteria and personnel requirements by employers

Employers are prohibited from using job-qualification criteria or personnel requirements which bar Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes from employment unless such criteria or requirements are required by business necessity.

§ 9-116. Implementation of layoffs and reductions in force by employers

In all layoffs and reductions in force, employers shall maintain the required ratio of Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes employees.

§ 9-117. Duties of contractors and subcontractors; Liabilities of employers for violations of by contractors and subcontractors

The Muscogee (Creek) Citizens and other Citizens of Federally Recognized Tribes (Indian) preference requirements contained in this Title shall be binding on all contractors and subcontractors of employers, regardless of tier, 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.

§ 9-118. 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 Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes in job positions. An employer may recruit and hire workers from 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.

§ 9-119. 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.

§ 9-120. 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 National Council.

§ 9-121. Duties of unions generally

Every union with collective bargaining agreement with an employer shall 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 Muscogee (Creek) Nation Indian Country.

§ 9-122. Contents of union agreements

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

- A. Indian preference. The union will give preference to Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes 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 Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes who do not wish to join the union.

§ 9-123. 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.

§ 9-124. Unions and union activities

- A. Nothing herein, nor any activity by the TERO authorized hereby, shall constitute official Muscogee (Creek) Nation recognition of any union or endorsement of any union activities within the Muscogee (Creek) Nation.

Nothing herein bars any employer, Muscogee (Creek) Nation or its entities, from recognizing any union.

- B. Any prohibition against endorsement of any Union activities in this Section shall not include the provision of any assistance to any Muscogee (Creek) Nation citizen to utilize any apprentice or job training program operated by any Union or Union affiliated entity.

§ 9-125. Filing of complaints by the TERO and proceedings there on 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 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 9-130 of this Title. Should any entity fail to comply with orders of the TERO, the TERO may pursue a civil legal action against the entity in the Muscogee (Creek) Nation District Trial Court.

§ 9-126. Filing of complaints by Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes and proceedings thereon generally; Penalties for retaliatory actions by employers against employees filing complaints

- A. If any Muscogee (Creek) Citizen or Citizen of another Federally Recognized Tribe (“Citizen”) believes that an employer has failed to comply with this Title or rules, regulations or orders of the TERO, or if the Citizen believes he or she has been adversely discriminated against by an employer because he or she is Indian, the Citizen 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 the TERO may take further action as provided for by law.

- B. If any employer fires, lays off or penalizes in any manner any Citizen employee for utilizing the individual complaint procedure, or any other right provided herein, the employer shall be subject to the penalties provided by Section 9-130 of this Title.
- C. Nothing in this Title shall prohibit the aggrieved Citizen from pursuing from the employer other remedies available by law.
- D. This Title does not provide any cause of action for employees of the Muscogee (Creek) Nation its entities or wholly owned corporations.

§ 9-127. Conduct of Hearings

IF any employer or person feels aggrieved by a decision made by the TERO they may appeal that decision to the TERO Appeals Board. The TERO Appeals Board shall hold a hearing in accordance with this Act and will either confirm or deny the TERO decision.

- 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 Appeals Board may have the advice and assistance at the hearing of counsel which shall be 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 forty-five (45) days after the last hearing or of its decision in the matter.

- D. The Board shall conclude this process within ninety (90) days of the request for hearing.

§ 9-128. Notice of Hearings

- A. The TERO Appeals Board 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 TERO 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 TERO Appeals Board shall have the power to create rules as may be necessary to perform the duties and functions delegated to the TERO Appeals Board.
 - 1. If a hearing is requested by 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.

§ 9-129. Appeals from decisions of Appeals Board

- A. Any party to a hearing shall have the right to appeal any decision of the Appeals Board to the District Trial Court of the Muscogee (Creek) Nation.
- B. Standard Review. The District Trial Court shall review decisions of the TERO Appeals Board without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the TERO Appeals Board, not shown in the record, testimony thereon may be taken by the District Trial Court, upon request, shall hear oral arguments and receive written briefs.

- C. Appeals of the decisions of the District Trial Court may be taken in the Supreme Court under the rules and procedures governing civil appeals before that Supreme Court.

§ 9-130. Penalties for Violations of chapter and rules, regulations or order 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 Muscogee (Creek) Nation.
 - 2. Suspension of operations within the jurisdiction of the Muscogee (Creek) 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 Muscogee (Creek) Nation boundaries.
 - 7. An order requiring employment, promotion, and training of Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes 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 Two Hundred Dollars (\$200.00).

2. The second violation will incur a fine of One Thousand Dollars (\$1,000.00).
 3. The third violation will incur a fine of Five Thousand Dollars (\$5,000.00).
- C. Each day during which a violation exists shall constitute a separate violation.
 - D. Monetary penalties assessed by TERO may be doubled 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.

§ 9-131. 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 not be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by the Muscogee (Creek) 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 Muscogee (Creek) 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.

§ 9-132. 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 Muscogee (Creek) Nation agencies responsible for issuing business permits for activities within the Muscogee (Creek) Nation or otherwise engaged in activities involving contact with prospective employers within the Muscogee (Creek) 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 Muscogee (Creek) Nation.

§ 9-133. 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.

§ 9-134. 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.

§ 9-135. Administrative Appeals Board

The Administrative Appeals Board of the Muscogee (Creek) Nation shall consist of the Attorney General, a member of the National Council, Second Chief, and the Secretary of the Interior, and the Secretary of Housing.

SECTION THREE. REPEALER. MCNCA Title 32, Chapters 1. and 2. which are known as the “Buy Creek Act” and the “Local Hire Act” respectively are hereby repealed.

SECTION FOUR. EFFECTIVE DATE. This Act shall become effective immediately upon proper approval and execution in accordance with the requirements of the Muscogee (Creek) Nation Constitution.

ENACTED by the Muscogee (Creek) National Council on this 29th day of September, 2012.

APPROVED by the Principal Chief, George Tiger, of the Muscogee (Creek) Nation on the 5th day of October, 2012 to the above law, NCA 12-198 authorizing it to become Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.

NCA 13-113

A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 16, CHAPTER 9, TRIBAL EMPLOYMENT RIGHTS OFFICE ACT, §9-105 ENTITLED “Power and Duties” AND §-120 ENTITLED “Funds”

Be it enacted by the National Council of the Muscogee (Creek) Nation:

SECTION ONE. AMENDMENT. This amendment shall be codified in Title 16, Chapter 9, Subchapter 1 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification said amendment and its inclusion in pocket parts of the Code of Laws of the Muscogee (Creek) Nation, the Codification Committee is hereby authorized: (1) to approve any changes related to the

manner in which sections, articles, chapters and sub-chapters are designated consistent with the format in the Code of Laws published in 2010 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws and (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following amendment, without further National Council approval:

SECTION TWO. AMENDMENT. MCNCA Title 16, §9-105, is hereby amended to read as follows:

§9-105. Powers and Duties

The TERO shall have the authority to carry out the day-to-day operations of the Office, and to enforce this ordinance. The TERO shall have the following powers and duties:

- A. To operate consistent with the provisions of this Title and to develop rules and regulations governing activities of the TERO. The TERO may adopt EEOC guidelines or may adopt other requirements to eliminate employment barriers unique to Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes in Indian Country.
- B. To obtain funding from federal, state and other sources to supplement National 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 the TERO activities, subject to National Council Approval, and to operate pursuant to finalized cooperative agreements and/or memoranda of understanding or agreements.
- D. To use the information, facilities, personnel, and other resources of federal, state, and local agencies, as well as any and all Muscogee (Creek) Nation departments to accomplish the goals of this Act.

- E. To establish numerical hiring goals and timetables specifying the minimum number of Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes an employer shall hire by craft or skill level.
- F. To require employer to establish or participate in job training programs as the TERO deems necessary to increase the pool of Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes eligible for employment.
- G. To establish and administer a tribal job bank and require employers to use it.
- H. To prohibit employers from using job-qualifications criteria or personnel requirements that may bar Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes from employment unless such criteria or requirements are required by business necessity.
- I. To engage in the process of certifying businesses as “Indian-owned economic enterprises” with documented evidence of at least 51% ownership, control and management of the business to determine whether business may be given Indian preference.
- J. To determine and assess an application fee to businesses seeking certification. Upon certification, to determine and assess a certification fee to be paid by all businesses determined to be “Indian owned economic enterprises.” Also, to annually determine and assess a re-certification fee to those enterprises.
- K. To direct inspections of regulated sites and determine compliance with rules, regulations, and/or contract requirements.
- L. To facilitate agreements with unions to insure union compliance with this Title.
- M. To require employers to give preference to Indian-owned economic enterprises in the award of contracts and subcontracts.
- N. To establish counseling programs to assist Muscogee (Creek) Citizens in obtaining and retaining employment.
- O. To require employers to submit reports and take all actions deemed necessary by the TERO for the fair and vigorous Implementation of this Act.

- P. To enter into cooperative agreements, subject to National Council Approval, with employment rights agencies to eliminate adverse discrimination against Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes.
- Q. To take such actions as are necessary to achieve the purposes and objectives of the Muscogee (Creek) Nation employments rights program established in this Title.
- R. To publish a listing of certified “Indian-owned economic enterprises” on a monthly basis.
- S. To review and propose changes to this Title and related regulations as necessary.
- T. To hold hearings in accordance with this chapter.
- U. To register and keep file of complaints concerning certified, Indian-owned economic enterprises and with individuals and companies doing business with the Muscogee (Creek) Nation.
- V. To assess an employment rights fee of one and a half percent (1.5%) on all covered contracts.
- W. To organize and coordinate a Committee to approve applicants to be certified by the TERO. The Committee shall consist of the Secretary of the Nation, one member from the Business and Finance & Justice Committee and one member from the Land, Natural Resources & Cultural Preservation Committee of the National Council, the Chief of Staff, the Secretary of Education, Employment and Training, the Controller, the CEO of MNBE, a Designee from the Tribal Construction Department, and an Assistant Attorney General of the Muscogee (Creek) Nation.
- X. To issue and assess fees for Work Permits which shall be obtained for all non-Indian employees of a covered employer.
 - 1. Any employer, as defined in this act shall be required to pay a fee of not less than Twenty-Five Dollars (\$25.00) per employee per award per day for non-Indian employees hired for the project that are in addition to the core crew.
 - 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 the vendor has listed.
4. If the TERO has identified Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes that can be used for non-Indian Employees it shall require the employer to place the qualified Tribal Citizen.
5. The TERO is also authorized to administer other fees and penalties as provided in this act.

SECTION THREE. AMENDMENT. This amendment shall be codified in Title 16, Chapter 9, Subchapter 1 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification said amendment and its inclusion in pocket parts of the Code of Laws of the Muscogee (Creek) Nation, the Codification Committee is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated consistent with the format in the Code of Laws published in 2010 by West Publishing Company; (2) to include footnoted reference to the legislative history in said pocket parts to the Code of Laws and (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following amendment, without further National Council approval:

SECTION FOUR. AMENDMENT. MCNCA Title 16, §9-120, is hereby amended to read as follows:

§9-120 Funds

All funds from application, certification, re-certification, and employer fees and other sources collected by the TERO shall be properly accounted for and deposited at least monthly into an account established for the TERO with the Office of the Controller. All funds from such account shall be used for the purposes for which TERO was established and to carry out its powers and duties.

SECTION FIVE. EFFECTIVE DATE. These Amendments shall become effective immediately upon proper approval and execution in accordance with the requirements of the Muscogee (Creek) Nation Constitution.

ENACTED by the Muscogee (Creek) Nation Council on this 18th day of May, 2013.

APPROVED by the Principal Chief, George Tiger, of the Muscogee (Creek) Nation on the 28th day of May, 2013 to the above law, NCA 13-113 authorizing it to become Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.

NCA 14-026

A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 16, CHAPTER 9, TRIBAL EMPLOYMENT RIGHTS OFFICE ACT, §9-103, §9-105, §9-129, §9-130, AND §9-135

Be it enacted by the National Council of the Muscogee (Creek) Nation:

SECTION ONE. AMENDMENT. This amendment shall be codified in Title 16, Chapter 9, Subchapter 1 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification said amendment and its inclusion in pocket parts of the Code of Laws of the Muscogee (Creek) Nation, the Codification Committee is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated consistent with the format in the Code of Laws published in 2010 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws and (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following amendment, without further National Council approval:

SECTION TWO. AMENDMENT. MCNCA Title 16, §9-103, is hereby amended to read as follows:

§9-103. Definitions

- A. "Administration" shall mean the Executive Branch of the Muscogee (Creek) Nation as provided in the Muscogee (Creek) Nation Constitution.
- B. "Muscogee (Creek) Nation Indian Country" shall mean all land held in trust or subject to restrictions by the United States for the Muscogee (Creek) Nation, or land within the original boundaries of the Muscogee (Creek) Nation and held in trust or subject to restrictions for an individual, and all land held by the Muscogee (Creek) Nation or its entities, in fee simple, and any other land within the jurisdiction of the Muscogee (Creek) Nation which land comes within the definition of "Indian Country" as defined in 18 U.S.C. §1151.
- C. "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 employer's or subcontractor's payroll for a period of one year continuously, or is an owner of the firm.
- D. "Covered Contract" means any contract between any department or office of the Nation, including all commercial enterprises and independent agencies, and any Employer for goods or services in an amount exceeding \$5,000.
- E. "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.
- F. "EEOC" shall mean the Equal Opportunity Commission of the United States.
- G. "Employer" shall mean the Nation, Tribal Government, all commercial and enterprise entities, all independent agencies, and any other person, company, contractor, subcontractor or other entity located in or on Muscogee (Creek) Nation Indian Country or engaged in work with the

Muscogee (Creek) Nation, its entities or wholly-owned corporations who employs at least one individual.

- H. 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 Muscogee (Creek) Nation, its entities and wholly-owned corporations and/or the work is performed on Muscogee (Creek) Nation Indian Country.
- I. “Indian” shall mean a person who is an enrolled Citizen of a Federally Recognized Indian Tribe.
- J. “Indian organization” shall mean the governing body of any Indian Tribe or entity established or recognized by such governing body.
- K. “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 operations, control, and manage the enterprise.
- L. “Indian Tribe” means an Indian Tribe, pueblo, band, Nation or other organized group or community, including any 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.
- M. “Locally Owned” means a business that has its headquarters and majority of its employees residing within the jurisdictional boundaries of the Muscogee (Creek) Nation.
- N. An employer is “located in or on the Muscogee (Creek) Nation” if, during 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 Muscogee (Creek) Nation Indian Country.
- O. “Major Muscogee (Creek) Employer” shall mean a business either Indian Owned or not that employs at least fifty (50) Muscogee Citizens as either part of the core crew or project crew, or has at least 75% of its entire workforce comprised of Muscogee Citizens as certified by the TERO. A

business may be certified as Indian Owned, Major Muscogee Employer, or both.

- P. "Nation" shall mean the Muscogee (Creek) Nation.
- Q. "Tribal Citizen" or "Citizen" shall mean any person who is a duly enrolled citizen of the Muscogee (Creek) Nation or other Federally Recognized Tribe, unless the context clearly indicates otherwise.
- R. "TERO" shall mean the Tribal Employment Rights Office.
- S. "TERO Staff" shall mean employees hired by the TERO Office to carry out the functions of this Act.

SECTION THREE. AMENDMENT. MCNCA Title 16, §9-105, is hereby amended to read as follows:

§9-105. Powers and Duties

The TERO shall have the authority to carry out the day-to-day operations of the Office, and to enforce the ordinance. The TERO shall have the following powers and duties:

- A. To operate consistent with the provisions of this Title and to develop rules and regulations governing activities of the TERO. The TERO may adopt EEOC guidelines or may adopt other requirements to eliminate employment barriers unique to Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes in Indian Country.
- B. To obtain funding from federal, state and other sources to supplement National 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 the TERO activities, subject to National Council Approval, and to operate pursuant to finalized cooperative agreements and/or memoranda of understanding or agreements.

- D. To use the information, facilities, personnel, and other resources of federal, state and local agencies, as well as any and all Muscogee (Creek) Nation departments to accomplish the goals of this Act.
- E. To establish numerical hiring goals and timetables specifying the minimum number of Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes eligible for employment.
- F. To require employer to establish or participate in job training programs as the TERO deems necessary to increase the pool of Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes eligible for employment.
- G. To establish and administer a tribal job bank and require employers to use it.
- H. To prohibit employers from using job-qualifications criteria or personnel requirements that may bar Muscogee (Creek) Citizens or Citizens of other Federally Recognized Tribes from employment unless such criteria or requirements are required by business necessity.
- I. To engage in the process of certifying businesses as “Indian-owned economic enterprises” with documented evidence of at least 51% ownership, control and management of the business to determine whether business may be given Indian preference.
- J. To determine and assess an application fee to businesses seeking certification. Upon certification, to determine and assess a certification fee to be paid by all businesses determined to be “Indian Owned Economic Enterprises.” Also, to annually determine and assess a re-certification fee to those enterprises.
- K. To direct inspections of regulated sites and determine compliance with rules, regulations and/or contract requirements.
- L. To facilitate agreements with unions to insure union compliance with this Title.
- M. To require employers to give preference to Indian-owned economic enterprises in the award of contracts and subcontracts.
- N. To establish counseling programs to assist Muscogee (Creek) Citizens in obtaining and retaining employment.

- O. To require employers to submit reports and take all actions deemed necessary by the TERO for the fair and vigorous implementation of this Act.
- P. To enter into cooperative agreements, subject to National Council Approval, with employment rights agencies to eliminate adverse discrimination against Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes.
- Q. To take such actions as are necessary to achieve the purposes and objectives of the Muscogee (Creek) Nation employment rights program established in this Title.
- R. To publish a listing of certified "Indian-owned economic enterprises" on a monthly basis.
- S. To review and propose changes to this Title and related regulations as necessary.
- T. To hold hearings in accordance with this chapter.
- U. To register and keep file of complaints concerning certified, Indian-owned economic enterprises and with individuals and companies doing business with the Muscogee (Creek) Nation.
- V. To assess an Employment Rights Fee of one and a half percent (1.5%) on all Covered Contracts as defined in §9-103.D. This fee shall be paid in full before any work under a Covered Contract may commence, unless other arrangements for payment are made with the TERO Director in writing. Failure of an Employer to make the Employment Rights Fee payment by the required date may result in the assessment of the penalties listed in §9-130.A. All fees collected pursuant to this section shall be deposited in accordance with §9-120.
- W. To organize and coordinate a Committee to approve applicants to be certified by the TERO. The Committee shall consist of the Secretary of the Nation, a Business Development Specialist from the Nation's Small Business Development Center, one member from the Business & Finance Justice Committee and one member from the Land, Natural Resources & Cultural Preservation Committee of the National Council, the CEO of MNBE, a Designee from the Tribal Construction Department, and an Assistant Attorney General of the Muscogee (Creek) Nation.

- X. TERO may issue and assess fees for Work Permits which shall be obtained for all non-Indian employees of a covered employer.
1. Any employer, as defined in this act shall be required to pay a fee of not less than Twenty-Five Dollars (\$25.00) per employee per award per day for non-Indian employees hired for the project that are in addition to the core crew.
 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 the vendor has listed.
 4. If the TERO has identified Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes that can be used for non-Indian Employees it shall require the employer to place the qualified Tribal Citizen.
 5. The TERO is also authorized to administer other fees and penalties as provided in this Act.

SECTION FOUR. AMENDMENT. MCNCA Title 16, §9-129, is hereby amended to read as follows:

§9-129. Appeals from Decisions of TERO Appeals Board

- A. Any party to a hearing shall have the right to appeal any decision of the Appeals Board to the District Trial Court of the Muscogee (Creek) Nation.
- B. Standard Review. The District Trial Court shall review decisions of the TERO Appeals Board without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the TERO Appeals Board, not shown in the record, testimony thereon may be taken by the District Trial Court, upon request, shall hear oral arguments and receive written briefs.

- C. Appeals of the decisions of the District Trial Court may be taken in the Supreme Court under the rules and procedures governing civil appeals before that Supreme Court.

§ 9-130. Penalties for Violations of chapter and rules, regulations or order

- 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 Muscogee (Creek) Nation.
 - 2. Suspension of operations within the jurisdiction of the Muscogee (Creek) 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 Muscogee (Creek) Nation boundaries.
 - 7. An order requiring employment, promotion, and training of Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes 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 Two Hundred Dollars (\$200.00).

2. The second violation will incur a fine of One Thousand Dollars (\$1,000.00).
 3. The third violation will incur a fine of Five Thousand Dollars (\$5,000.00).
- C. Each day during which a violation exists shall constitute a separate violation.
 - D. Monetary penalties assessed by TERO may be doubled 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 SIX. AMENDMENT. MCNCA Title 16, §9-135, hereby amended to read as follows:

§ 9-135. TERO Appeals Board

The TERO Appeals Board of the Muscogee (Creek) Nation shall consist of the Attorney General, a member of the National Council, Second Chief, and the Secretary of the Interior, and the Secretary of Housing.

SECTION SEVEN. EFFECTIVE DATE. These Amendments shall become effective immediately upon proper approval and execution in accordance with the requirements of the Muscogee (Creek) Nation Constitution.

ENACTED by the Muscogee (Creek) National Council on this 22nd day of February 2014.

APPROVED by the Principal Chief, George Tiger, of the Muscogee (Creek) Nation on the 26th day of February, 2014 to the above law, NCA 14-026 authorizing it to become Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.

NCA 14-159

A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 16, CHAPTER 9, TRIBAL EMPLOYMENT RIGHTS OFFICE ACT, §9-105 X. AND §9-108.

Be it enacted by the National Council of the Muscogee (Creek) Nation:

SECTION ONE. AMENDMENT. This amendment shall be codified in Title 16, Chapter 9, of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification said amendment and its inclusion in pocket parts of the Code of Laws of the Muscogee (Creek) Nation, the Codification Committee is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated consistent with the format in the Code of Laws published in 2010 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws and (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following amendment, without further National Council approval:

SECTION TWO. AMENDMENT. MCNCA Title 16, §9-105 X., is hereby amended to read as follows:

§9-105. Powers and Duties

X. To issue and assess fees for Work Permits which shall be obtained for all non-Indian employees of a covered employer **when there is otherwise an eligible and qualified Indian applicant available.**

1. Any employer, as defined in this act shall be required to pay a **work permit** fee ~~not less than~~ of Twenty-Five Dollars (\$25.00) per employee per day for non-Indian employees hired for the project that are in addition to the core crew, **if the employer**

hires a non-Indian employee when otherwise there is a qualified Indian applicant available.

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 the vendor has listed.
4. If the TERO has identified **qualified** Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes that can be used for non-Indian Employees it shall require the employer to place the qualified Tribal Citizen.
5. The TERO is also authorized to administer other fees and penalties as provided in this act.

SECTION THREE. AMENDMENT. This amendment shall be codified in Title 16, Chapter 9, of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification said amendment and its inclusion in pocket parts of the Code of Laws of the Muscogee (Creek) Nation, the Codification Committee is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated consistent with the format in the Code of Laws published in 2010 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws and (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following amendment, without further National Council approval:

SECTION FOUR AMENDMENT. MCNCA Title 16, §9-108 D., is hereby amended to read as follows:

§9-108. Preference requirements

- D. A contractor shall extend a preference to qualified individuals with respect to hiring each and every employment position utilizing the Muscogee (Creek) Nation TERO job bank. If the Contractor, Sub-Contractor and the TERO Office are unable to fill the job positions **with qualified employees** after applying the preference provisions, then the job positions may be

filled by other individuals, ~~subject to the TERO work permit fee of non-Indian Employees.~~

SECTION FIVE EFFECTIVE DATE. These Amendments shall become effective immediately upon proper approval and execution in accordance with the requirements of the Muscogee (Creek) Nation Constitution.

ENACTED by the Muscogee (Creek) National Council on this 27th day of September 2014.

APPROVED by the Principal Chief, George Tiger, of the Muscogee (Creek) Nation on the 2nd day of October, 2014 to the above law, NCA 14-159 authorizing it to become Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.