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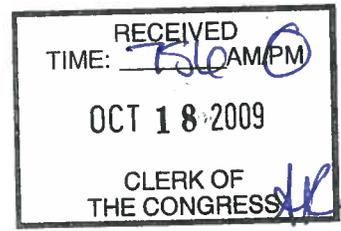
OSAGE NATION CONGRESS

20th Special Session of the 1st Congress

BILL NUMBER ONCA 10-05

ENGROSSED

October 16, 2009



SPONSOR: Raymond Red Corn

CO-SPONSOR(S): Jerri Jean Branstetter and Shannon Edwards

An Act

To establish a law for the protection, maintenance, access and classification of records generated by the government operations of the Osage Nation.

Be it enacted by the Congress of the Osage Nation:

SECTION 1. SHORT TITLE

This Act may be cited as the "Open Records Act."

SECTION 2. DEFINITIONS

- A. "Business day" means a day when the Osage Nation government offices and departments are open for regular operating hours (8:00 a.m. to 4:30 p.m.) which does not include Saturdays, Sundays or holidays recognized by the Osage Nation human resources policy.
- B. "Claims for Records Access" means a pleading filed in the Osage Nation Trial Court which challenges the denial of records access.
- C. "Confidential Information" means information whose unauthorized disclosure is prejudicial to the interest of the Osage Nation.
- D. "Government entity" means any administrative, advisory, executive, judicial or legislative office or body of the Osage Nation, including without limitation, except as listed below, all boards, committees, commissions, departments, agencies and other instrumentalities whose board of directors are appointed or elected by the Osage Nation. Government entity includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of the Osage Nation, or appointed by the Osage Nation, to carry out the public's business. In order to protect the competitive advantage of the Osage Nation's businesses, "Government entity" shall not mean:

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1. Corporation or tribal enterprise;
 2. Limited liability company;
 3. Limited liability partnership; or
 4. Any other business entity of the Osage Nation.
- E. “Memorandum” or “Memoranda”(plural) means a note or communication limited to official writings, either by hard copy or by electronic mail, titled as “Memorandum” or “Memoranda” by an employee, elected official or appointed official.
- F. “Person” means any individual, nonprofit corporation, for profit corporation, partnership, sole proprietorship, or other type of business organization.
- G. “Proprietary” means information in which the owner has a legally protectable interest.
- H. “Protected record” means any record or part of any record containing data that is confidential and/or proprietary or otherwise protected by this Act.
- I. “Public” means any citizens of the United States of America or any non-citizen legally residing or visiting the United States of America.
- J. “Public employee” means all officials and employees of the Osage Nation.
- K. “Public Office” means the physical location where Osage Nation officials and employees conduct business or keep records.
- L. “Public record” means any record that is not confidential, proprietary or otherwise protected and that is not exempt from disclosure as provided in this Act.
- M. “Record” means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, electronic data, or other documentary materials regardless of physical form or characteristics which are prepared, owned, received, or retained by a government entity and where all of the information in the original is reproducible by photocopy or other mechanical or electronic means. “Record” does not mean:
1. Materials that are legally owned by an individual in his or her private capacity;

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2. Materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a government entity;
3. Books and other materials that are catalogued, indexed, or inventoried, and contained in the collections of libraries open to the public;
4. Daily calendars and other personal notes prepared by the originator for the originator's personal use or for the personal use of an individual for whom he is working;
5. Junk mail or commercial publications received by a government entity or an official or employee of a government entity;
6. Computer programs that are developed or purchased by or for any government entity for its own use;
7. Notes or internal memoranda prepared as part of the deliberative process by a member of the judiciary or any other body charged with performing a quasi-judicial function;
8. Inter-office and intra-office electronic mail; or
9. Text messages by mobile telecommunication devices.

N. "Right to privacy" means the right of a person to be free from unwarranted intrusion by a government entity.

SECTION 3. PUBLIC RECORDS

- A. The following records are public except to the extent that they contain information expressly permitted to be treated as protected as provided for in Section 4 of this Act.
1. Laws;
 2. Job titles, job description, business address, and business telephone numbers;
 3. Final opinions, including concurring and dissenting opinions, and orders that are made by a government entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be

- 139 withheld to the extent that they contain information that is
140 protected.
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- 142 4. Final interpretations of statutes or rules by a government entity;
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- 144 5. Information contained in or compiled from a transcript, minutes, or
145 report of the open portions of a meeting, excluding executive
146 sessions, of a government entity;
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- 148 6. All audio recordings of public meetings or public portions of
149 meetings;
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- 151 7. All audio recordings or meeting minutes of executive sessions if
152 the executive session was held in violation of the Open Meetings
153 Act as determined by the Osage Nation courts;
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- 155 8. Judicial records unless a court orders the record to be restricted
156 under the rules of civil or criminal procedure or unless the records
157 are protected under this subchapter;
158
- 159 9. Records filed with or maintained by government entities that
160 evidence incorporations, corporation or business entity names or
161 name changes, and uniform commercial code filings;
162
- 163 10. Documentation of the compensation that a government entity pays
164 or has paid to a contractor or private provider;
165
- 166 11. Data on an individual that would otherwise be protected under this
167 Act if the individual who is the subject of the record has given the
168 government entity signed and notarized written permission to make
169 the records available to the public;
170
- 171 12. Administrative staff manuals and statements of policy and
172 procedure;
173
- 174 13. Information received in response to an invitation for bids or
175 request for proposals after a contract is awarded if the contract is a
176 non-construction contract, except that proprietary information may
177 be redacted;
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- 179 14. Information received in response to an invitation for bids or
180 request for proposals after bids have been opened and before a
181 contract is completed if the contract is a construction contract,
182 except that proprietary information may be redacted;
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15. Records documenting a contractor's or private provider's compliance with the terms of a construction contract or original bid requirements of a construction contract with the government entity subject to the time limitations set forth in the Competitive Bidding Act;
 16. Records documenting a contractor's or private provider's compliance with the terms of a non-construction contract or original bid requirements of a non-construction contract with the government entity except:
 - a. Confidential and/or proprietary information in attorney contracts or billing statements;
 - b. Professional service contracts where descriptions of service contain confidential information, then only the general terms of the contract are public and the protected sections must be segregated.
 17. Contracts, excluding personal addresses, social security numbers and employer identification numbers, entered into by a government entity subject to the provisions of this section;
 18. Any voucher, contract or account information, except account numbers, that deal with the receipt or expenditure of funds by a government entity;
 19. Correspondence by and with a government entity in which the government entity determines or states an opinion upon the rights of the Nation, the public, or any person except that which constitutes an attorney client privilege with a government entity;
 20. Arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;
 21. Search warrants after execution and filing of the return, except that, for good cause, a court may order restricted access to search warrants prior to trial;
 22. Records that would disclose information relating to formal charges or disciplinary action against a past or present government entity employee, elected official or appointed official if:
 - a. The disciplinary action has been completed and all time periods for appeal have expired; and

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b. The formal charges were sustained.

23. Bylaws and charters of any Osage Nation governmental entity.

SECTION 4. PROTECTED RECORDS

- A. The following records are private or otherwise protected and shall not be considered public for purposes of required disclosure;
1. Records concerning an individual's eligibility for social services, welfare benefits, or the determination of benefit levels.
 2. Records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data, including psychiatric or psychological data;
 3. Records concerning a current or former employee of, or applicant for employment with, a government entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions, performance evaluations or personal status information such as race, religion or disabilities;
 4. Records describing an individual's finances, except that the following are public;
 - a. Employment position salaries;
 - b. Ethics or finance statement filings by public officials required by law;
 5. Records which contain the negotiating position of the Osage Nation, including all boards, committees, commissions, departments, agencies or other Osage government entity, before a contract, lease or other agreement is entered into;
 6. Records prepared by or on behalf of a government entity solely in anticipation of litigation that are not available under the rules of discovery;
 7. Records that may otherwise be considered public if they are protected by the attorney-client privilege. This privilege may be waived by the client who created the attorney-client relationship, and if a waiver of the privilege is made the records shall be considered public;

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8. Information and research presented, and discussions conducted by the public bodies of the Osage Nation during executive sessions that are conducted in accordance with the Open Meetings Act;
 9. Confidential and proprietary information collected by a government entity or agency in the performance of its investigative or regulatory functions;
 10. Memoranda prepared by staff and used in the decision-making process by a judge or a member of any other body charged by law with performing judicial or quasi-judicial functions;
 11. Information contained within or related to a contract, lease or other agreement which is confidential and/or proprietary in nature.
 12. Records of a government audit agency relating to an ongoing or planned audit until the final audit is released;
 13. Records to which access is restricted pursuant to court rule or as a condition of participation in a state or federal program or for receiving state or federal funds;
 14. Drafts, unless otherwise classified as public;
 15. Information otherwise protected by applicable laws;
 16. Information which cannot be released without interfering with an individual's right to exercise or practice a chosen religion; and
 17. Records containing data on individuals, which if disclosed, would constitute a clearly unwarranted invasion of privacy.

308 **SECTION 5. DISCLOSURE OF PROTECTED RECORDS**

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- A. Upon request, protected records will be available for disclosure, as follows:
 1. Information shall be available for criminal and civil law enforcement for prosecution purposes, internal audit, and as a result of a court order or Congressional subpoena;
 2. Information relating to an individual shall be available to the individual who is the subject of the record, or if the subject of the record is a minor the information shall be available to a parent or legal guardian, or if the subject of the record is mentally

321 incompetent the information shall be available to the legal
322 guardian subject to verification of any applicable court order;

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324 3. Individual records may be released to third parties with prior
325 written consent, by means of a notarized release, of the individual
326 who is the subject of the records, or his or her legal guardian if a
327 minor or deemed mentally incompetent in a court of competent
328 jurisdiction;

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330 4. Individual records may be used for statistical and other purposes
331 provided that any information which could be used to identify
332 specific individuals is removed or withheld;

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334 5. Protected records may be disclosed to law enforcement agencies,
335 an agency of the United States with authority over the subject
336 matter, or, if applicable, the State of Oklahoma, or if authorized by
337 agency rule, a regulatory agency of the Osage Nation.

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339 B. Before releasing a protected record, the government entity shall obtain
340 evidence of the requester's identity by government issued photo
341 identification.

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343 C. Before releasing a protected record, the government entity shall inform the
344 requester that he or she is prohibited from disclosing or providing a copy
345 of the protected record to any other person and shall obtain the requester's
346 written acknowledgement of this prohibition.

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348 **SECTION 6. SEGREGATION OF RECORDS**

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350 A. Notwithstanding any other provision in this Act, if a government entity
351 receives a request for access to a record that contains both information that
352 the requester is entitled to inspect and information that the requester is not
353 entitled to inspect, and, if the information the requester is entitled to
354 inspect is intelligible and able to be segregated, the government entity:

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356 1. Shall allow access to information in the record that the requester is
357 entitled to inspect under this section; and

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359 2. May deny access to information in the record if the information is
360 exempt from disclosure to the requester, and shall issue a notice of
361 denial as required by Section 8.

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363 B. If there is more than one subject of a protected record, the portion of the
364 record that pertains to another subject shall be segregated from the portion
365 that the requester is entitled to inspect to the extent possible.

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- 367 C. Redaction of specific information in a record is an acceptable form of
368 segregation.
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370 D. Where the information that the requester is not entitled to inspect cannot
371 be segregated from the information the requester is entitled to inspect, or,
372 where the segregation of information will make the remaining portions of
373 the record unintelligible, the government entity may deny access to the
374 entire record.
375

376 **SECTION 7. PROCEDURES FOR REQUESTING PUBLIC RECORDS**
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- 378 A. The Executive Branch of the Osage Nation shall promulgate a
379 standardized form for requesting public records which shall be available in
380 every public office of the Nation.
381
382 B. The public has the right to inspect a public record free of charge, and to
383 request a copy of the public record during normal working hours, subject
384 to Section 7(F).
385
386 C. A government entity is not required to create a record in response to a
387 request. However, upon request, a government entity shall provide a
388 record in a particular format if the government entity is able to do so
389 without unreasonably interfering with the government entity's duties and
390 responsibilities.
391
392 D. Nothing in this section requires a government entity to fulfill a person's
393 records request if the request exceeds two (2) prior requests for the same
394 records from that person.
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396 E. Within ten (10) business days, the government entity shall respond to the
397 request by:
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399 1. Approving the request and providing the record(s); or
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401 2. Denying the request by providing a written explanation of why the
402 record is protected from disclosure; or
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404 3. Notifying the requester in writing that it does not maintain the
405 record and providing, if known, the name and address of the
406 government entity that does maintain the record; or
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408 4. Notifying the requester, if the requested record is more than one
409 hundred (100) pages in length or the sum of all records requested
410 by one request are more than one hundred (100) pages, that the
411 record(s) will be provided within twenty (20) business days from
412 the date of the request.

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- F. In the event that the government entity determines that the requested record is protected from disclosure, or fails to respond to the request within thirty-five (35) business days, the requesting party may make application to the Osage Nation Trial Court for an order to compel the disclosure of the requested record.

- G. The Osage Nation or its government entities may assess the reasonable costs of photocopying and other activities associated with providing the record against the person requesting the record as follows:
 - 1. A single request for a hard copy of a public record or multiple records that are twenty-five (25) pages or less in total when taken together, shall be provided at no charge. If the hard copy is more than twenty-five (25) pages, the first twenty-five (25) pages are provided at no charge.
 - 2. An electronic copy of a public record may be requested, and if an electronic copy is available, it shall be provided in electronic form.
 - 3. A single request for an electronic copy of a public record or multiple records that are one hundred (100) pages or less in total when taken together, shall be provided in electronic form at no charge. If the electronic copy of is more than one hundred (100) pages, the first one hundred (100) pages are provided at no charge.
 - 4. The costs assessed on records after the first twenty-five (25) pages for a hard copy and after the first one hundred (100) pages for an electronic copy shall not exceed twenty five cents (25¢) per page of the record, provided the copies requested do not exceed standard legal size or require special equipment to scan or copy. A reasonable charge for oversize copies may be assessed.

- H. In computing the time for purposes of this Act, the first day shall be excluded and the last day included to complete the time period. When the last day of the period so computed falls on a day when the government office or department at which the act is to be performed or the record requested is not open during the full business day (until 4:00 p.m.), the period shall stand extended to include the next ensuing full business day.

SECTION 8. DENIAL OF RECORD REQUESTS

- A. If the government entity denies the request in whole or in part, it shall provide a notice of denial to the requester either in person or by sending the notice via first class U.S. mail to the requester's address.

- 459 B. The notice of denial shall contain the following information:
460
461 1. A description of the record or portions of the record to which
462 access was denied, provided that the description does not disclose
463 protected information;
464
465 2. Citations to the provisions of this section, court rule or order, tribal
466 or federal statute or regulation that exempt the record or portions
467 of the record from disclosure, provided that the citations do not
468 disclose protected information;
469
470 a. Any member of the Public receiving a notice of denial of a
471 record request may challenge the denial by making a Claim for
472 Record Access in the Trial Court of the Osage Nation.
473
474 3. A statement that the requester has the right to file a petition in the
475 Osage Nation Trial Court for an order releasing the record within
476 180 days from the date of the request denial.
477
478 C. Unless otherwise required by a court of competent jurisdiction, a
479 government entity may not destroy or give up custody of any record to
480 which access was denied until the period for an appeal has expired.
481

482 SECTION 9. CLAIMS IN THE TRIAL COURT

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- 484 A. Any member of the public receiving a notice of denial of a record request
485 may challenge the denial by making a claim for record access in the Trial
486 Court of the Osage Nation.
487
488 B. The Claimant shall follow the Rules of Civil Procedure adopted by the
489 Osage Nation Courts for filing a claim.
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491 C. The Osage Nation Court Clerk's Office shall make a Claim of Records
492 Access form available to the public which explains court procedure,
493 allows the public access to the Court to be heard without an attorney, and
494 upon filing provides a date and time when the matter will be heard.
495
496 D. Court costs and Attorney's fees are recoverable if the Court determines
497 that the denial of the public record was done in bad faith. Money damages
498 are strictly limited to Court costs and Attorney's fees.
499
500 E. The Osage Nation waives its sovereign immunity for the limited purpose
501 of resolving claims filed by the public to produce records under this Act.
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505 **SECTION 10. POLICIES**

- 506
- 507 A. Each government entity may adopt policies applicable throughout its
- 508 jurisdiction relating to information practices including access, denials,
- 509 segregation, and appeals.
- 510
- 511 B. Each set of policies shall establish access criteria and procedures for
- 512 requests to inspect or obtain records of the government entity;
- 513
- 514 C. All policies adopted under this section shall conform to this Act.
- 515

516 **SECTION 11. CONFLICT OF LAWS**

517

518 Any provisions of this Act which are inconsistent with or contrary to the

519 provisions of Osage Nation laws shall supersede, and the provisions of this Act shall

520 prevail. Where not inconsistent, the provisions of this Act shall apply in conjunction with

521 the provisions of other Osage Nation laws. In the event of any conflict between the

522 provisions of this Act and applicable federal statutory laws and regulations, the

523 provisions of the federal law shall apply.

524

525 **SECTION 12. CONGRESSIONAL RECLASSIFICATION OF RECORDS**

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527 The body of Congress may reclassify as public any document marked as

528 protected, confidential, proprietary or non-public after providing notice and an

529 opportunity to be heard to interested parties in executive session and upon an affirmative

530 vote of the majority of the Members of Congress in a regular or special session, except

531 for protected records contained in Sections 4(A)(1), 4(A)(2), 4(A)(3), 4(A)(4) of this Act.

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533 **SECTION 13. CIVIL PENALTIES**

- 534
- 535 A. A public employee or other person who has lawful access to any protected
- 536 record under this Act, who intentionally discloses or provides a copy of a
- 537 protected record to any other person not entitled to lawful access is subject
- 538 to civil penalties of not less than one thousand dollars (\$1,000) nor more
- 539 than five thousand dollars (\$5,000).
- 540
- 541 B. A public employee or other person who has lawful access to any public or
- 542 protected record under this Act, who intentionally destroys a record or
- 543 intentionally causes a record to be lost without authorization in accordance
- 544 with the retention policy of the Osage Nation is subject to civil penalties
- 545 of not less than one thousand dollars (\$1,000) nor more than five thousand
- 546 dollars (\$5,000).
- 547
- 548 C. It is a defense to a civil action under subsection (A) that the actor released
- 549 protected information in the reasonable belief that the disclosure of the
- 550 information was necessary to expose a violation of law involving

551 government corruption, abuse of office, or misappropriation of public
552 funds or property.

553
554 D. A person who by false pretenses, bribery, or theft, gains access to or
555 obtains a copy of any protected record to which he or she is not legally
556 entitled is subject to civil penalties of not less than one thousand dollars
557 (\$1,000) and not more than five thousand dollars (\$5,000). No person
558 shall be subject to civil penalties who received the record, information, or
559 copy after the fact and without prior knowledge of or participation in the
560 false pretenses, bribery or theft of the record.

561
562 E. A public employee who intentionally refuses to release a record knowing
563 its disclosure is required by final order of the Osage Nation Trial Court, or
564 if appealed, by order of the Osage Nation Supreme Court, is subject to
565 civil penalties of not less than one thousand dollars (\$1,000) and not more
566 than five thousand dollars (\$5,000).

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573 ENACTED by the Osage Nation Congress on this _____ day of
574 _____, 2009.

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577 IN WITNESS WHEREOF, the Speaker of the Osage Nation Congress has
578 hereto attached his signature.

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Archie Mason, Speaker
Osage Nation Congress

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586 I, THE UNDERSIGNED, CERTIFY THAT THE FOREGOING IS A TRUE
587 EXTRACT FROM THE MINUTES OF THE Osage Nation Congress comprised of
588 twelve members and one ex-officio member with _____ members attending this
589 meeting on the _____ day of _____, 2009, and that the above is in
590 conformity with the provisions therein adopted by a vote of _____ in favor, _____
591 against, and _____ absent.

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Faren Revard Anderson
Jerri Jean Branstetter
Shannon Edwards
Mark Freeman

597 Debra Atterberry
598 Archie Mason
599 Raymond Red Corn
600 Eddy Red Eagle, Jr.
601 Doug Revard
602 Anthony Shackelford
603 Mark Simms
604 William Supernaw

605
606 Said Bill has not been rescinded or amended in any way and the above is the
607 signature of the Speaker of the Osage Nation Congress.
608

609
610
611 _____
612 Alexis Rencountre, Clerk
613 Osage Nation Congress
614

615
616 **APPROVAL**

617
618 I, the Principal Chief of the Osage Nation, hereby affix my signature this _____ day of
619 _____, 2009, to the above Bill No. ONCA 10-05 authorizing it to become
620 a law under the Constitution of the Osage Nation.
621

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625 _____
626 Jim R. Gray, Principal Chief
627 Osage Nation