

VETO

An Act

6/21/10

DATE

PRINCIPAL CHIEF

Legislative Act 18-10

AN ACT AMENDING LEGISLATIVE ACT 06-10 REVISING TITLE 26 ("ELECTIONS") PROVIDING FOR APPORTIONMENT

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be known as the "Election Code Apportionment Act of 2010" and codified under Title 26 Section 5 of the Cherokee Nation Code Annotated (CNCA).

Section 2. Purpose

The purpose of this Act is to provide for methodology using the best available resources to determine the number of citizens that reside within the Cherokee Nation and within the respective Council districts within the Cherokee Nation.

Section 3. Legislative History

L.A. 9-85 Eff. July 13, 1985
L.A. 35-89 Eff. Sept. 9, 1989
L.A. 6-91 Eff. March 9, 1991
L.A. 2-87 Eff. Feb. 14, 1987
L.A. 12-90 Eff. Nov. 13, 1990
L.A. 5-87 Eff. Feb 14, 1987
L.A. 8-87 Eff. Feb. 26, 1987
L.A. 11-87 Eff March 14, 1987
L.A. 6-87 Eff. Feb. 14, 1987
L.A. 9-87 Eff. Feb. 26, 1987
L.A. 14-87 Eff. March 14, 1987
L.A. 7-87 Eff. Feb. 14, 1987
L.A. 12-87 Eff. May 11, 1987
L.A. 23-87 Eff. June 11, 1987
L.A. 3-87 Eff. Feb. 14, 1987
L.A. 4-87 Eff. Feb. 14, 1987
L.A. 7-97 Eff. May 12, 1997
L.A. 39-05 Eff. Nov. 14, 2005
L.A. 06-10 Eff. Feb. 23, 2010

Section 4. Definitions

Section 5. Substantive Provisions of Law

§ 5 Representation by District.

A. Apportionment: Apportionment of representation having been first conducted in 1990, shall be conducted upon passage of this Act and every twelve years thereafter. Apportionment shall be conducted and approved by the Council by amendment of this Section. Said apportionment shall be attained by dividing the combined total population of all citizens of the Cherokee Nation residing within the jurisdictional boundaries of the Cherokee Nation by fifteen (15). This gives the optimal number of citizens to be represented by each of the fifteen (15) councilors within the jurisdictional boundaries of the Cherokee Nation.

B. Population Determination: The total population residing within the jurisdictional boundaries of the Cherokee Nation, and within each district of the Cherokee Nation, shall be based exclusively on data obtained from the Cherokee Nation's Registration Department, except that the population of districts which lay at the border of Cherokee Nation's jurisdictional area, herein referred to as "Border Districts" shall be adjusted by further identifying the population of each Border District in geographical areas where a United States Postal Service Zip Code covers areas inside and outside the jurisdictional boundaries of the Nation, herein referred to as "Partial Zip Code Areas." Such adjustments of the population of Border Districts shall be attained by application of the provisions set forth in paragraph (1) of this subsection, subject to the proviso set forth in paragraph (2) of this subsection:

- (1) Population of Partial Zip Code Areas in Border Districts shall be identified by:
 - (i) Utilizing 911 emergency addresses for each citizen, or
 - (ii) In Partial Zip Code Areas where 911 emergency addresses are not available, the Nation shall use all data resources available to the Nation including, but not limited to, citizen registration information, tax commission information, geo-data information and information obtained through the issuance to citizens in those areas of a residency questionnaire by the Registrar of the Cherokee Nation
- (2) Upon application of the provisions set forth in paragraph (1) of this subsection, the population of Border Districts shall be adjusted, *provided* that no Border District's population shall exceed the population of that Border District as determined by the Cherokee Nation Registration Department.

Section 6. Provisions as cumulative

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

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Section 7. Severability

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect ~~or impair any of the remaining~~ parts or provisions of this act.

DATE

PRINCIPAL CHIEF

Section 8. Effective Date: Emergency Declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this Act shall take effect immediately upon its approval and signatures.

Enacted by the Council of the Cherokee Nation on the 14th day of June, 2010.

Meredith Frailey
Meredith A. Frailey, Speaker
Council of the Cherokee Nation

ATTEST:

Don Garvin
Don Garvin, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this _____ day of _____, 2010.

Chadwick Smith, Principal Chief
Cherokee Nation

ATTEST:

Melanie Knight, Secretary of State
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Tina Glory Jordan	<u>Yea</u>	Meredith A. Frailey	<u>Nay</u>
Bill John Baker	<u>Yea</u>	Chris Soap	<u>Nay</u>
Joe Crittenden	<u>Yea</u>	Cara Cowan Watts	<u>Nay</u>
Jodie Fishinghawk	<u>Yea</u>	Buel Anglen	<u>Yea</u>
Janelle Lattimore Fullbright	<u>Yea</u>	Bradley Cobb	<u>Yea</u>
David W. Thornton, Sr.	<u>Yea</u>	Charles Hoskin, Jr.	<u>Yea</u>
Don Garvin	<u>Nay</u>	Julia Coates	<u>Nay</u>
Harley L. Buzzard	<u>Yea</u>	Jack D. Baker	<u>Yea</u>
Curtis G. Snell	<u>Yea</u>		



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Chad "Cornassel" Smith
Principal Chief
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Joe Grayson, Jr.
Deputy Principal Chief

June 21, 2010

06-21-10P04:00 RCVD

Meredith A. Frailey, Speaker
Cara Cowan Watts, Deputy Speaker
Council of the Cherokee Nation
Tahlequah, Oklahoma

Dear Speaker Frailey and Council Members:

I am returning the enactments passed by the Tribal Council at the regular meeting held on June 15, 2010 as required by our Constitution. The Cherokee Constitution (Article VI, Section 10) requires that every enactment approved by the majority of the Council be presented to the Principal Chief before it becomes effective. I have carefully considered each enactment and I have approved all of them with the exception of two (2) vetoed enactments.

APPROVED RESOLUTIONS

1. Resolution No. 49-10, A Resolution Confirming the Nomination of Tonya Rozell as a Board Member of the Cherokee Nation Education Corporation.
2. Resolution No. 50-10, A Resolution Honoring Derek Ryan Prather for Receiving the Level of Eagle Scout from the Boy Scouts of America.
3. Resolution No. 51-10, A Resolution In Support of the Prospective Nomination of Cherokee Nation Citizen Keith Harper to the United States 10th Circuit Court of Appeals.
4. Resolution No. 52-10, A Resolution Appointing Cherokee Nation Tribal Council Members to the Cherokee Nation Businesses Board of Directors as Advisory Board Members.
5. Resolution No. 53-10, Amended Resolution Authorizing the Sale of Inherited Property in the State of California, and Authorizing the Pledge of Credit of the Cherokee Nation Associated with the Inherited Property.
6. Resolution No. 54-10, A Resolution Authorizing the Submission of a Special Grant Application to the U.S. Department of Education for a Promise Neighborhood Grant.
7. Resolution No. 55-10, A Resolution Authorizing Cherokee Nation to Submit a Grant Application to the U.S. Department of Health and Human Services' Assets for Independence Demonstration Program to Establish an Individual Development Accounts Program for Sequoyah High School Students.
8. Resolution No. 56-10, A Resolution Authorizing the Office of Environmental Programs to Submit a Formal Grant Application to the U.S. Environmental Protection Agency for a Brownfields Grant.

9. **Resolution No. 57-10, A Resolution Authorizing the Donation of Three Computers and Two Printers to the Claremore Veterans Center in Claremore, Oklahoma.**

APPROVED LEGISLATIVE ACTS

1. **Legislative Act No. 17-10, An Act Amending Legislative Act 15-10 the Cherokee Nation General Corporation Act Creating an Advisory Board of Directors and Setting Term Limits on Directors on Corporations in Which the Cherokee Nation is a Majority Shareholder.**

VETOED ENACTMENTS

1. **Legislative Act No. 18-10, An Act Amending Legislative Act 06-10 Revising Title 26 ("Elections") Providing for Apportionment.**

On Friday June 18, 2010 in Cases No.'s CV-2009-65 and CV-2010-53, District Court Judge Bart Fite ruled,

"that the Cherokee Nation Election Commission is ordered to apportion nine districts using information from the registrar of the Cherokee Nation based upon the zip code method. This apportionment shall take place and be delivered to the Tribal Council no later than June 30, 2010 and shall use the date and population numbers as previously set forth."

I am vetoing the Act since the Act, which does not use the zip code method specified by the court, is inconsistent with the order of the Court. It is appropriate for both executive and legislative branches to take in consideration and advisement the findings of fact, conclusions of law, the orders and suggestion of our Court.

2. **Legislative Act No. 19-10, An Act Amending Legislative Act #21-09 Authorizing the Comprehensive Budget for Fiscal Year 2010 – Mod. 8; and Declaring an Emergency.**

While federal funding has remained relatively stable, our general fund income can fluctuate positively and negatively with the economy. That is why I respectfully asked the council to reconsider parts of this budget modification.

The Cherokee Nation has a contingency reserve of just of \$2.2 million dollars, even though our annual budget is more than \$600 million. It is like having a rainy day fund of 30 cents for every hundred dollars we have to spend. That's 1/3 of 1 percent. To put that in perspective, the State of Oklahoma's rainy day fund was nearly 7 percent of its annual budget and that wasn't nearly enough when bad times came. So we have just as tiny amount of money in reserve in case an ice storm hits, a tornado blows through, or we have some other crisis. It is important to note that this is the only contingency fund the Cherokee Nation has; all our other reserves are already committed.

Keep in mind the Cherokee Nation has already had to make some cuts to our general fund budget this fiscal year, and this upcoming budget cycle will not be any easier. We will need to keep our reserve fund intact.

That is why I hoped the council would reconsider taking money from our contingency reserve in this budget modification. Instead, the council voted to take nearly a quarter of our contingency reserve and use it to fund a summer work program for youth. We have a program for low-income youth, and it is funded and already operational, but what is proposed in the budget amendment is to take \$500,000 from our contingency reserve and fund a program for youth who are over income. While the program overall is a good idea, I don't think it constitutes an emergency.

The second item is an increase to the tribal council budget for travel expenses. Since many of our general fund budgets have taken cuts already, including the Executive Branch's budget, I do not approve of our tribal council making an exception for itself and adding money for travel. From a cursory budget analysis, it appears that the council as a whole will be under budget. If the council wants to spend additional money on travel this year, I think it could find room in its existing budget to do so, rather than deplete our emergency fund.

I support the overall budget amendment, but since the Council insisted on including a budget increase for themselves and a program for over income youth program which drains our contingency reserve, sound financial principles leave me no choice but to veto the measure.

Sincerely,



Chadwick Smith
Principal Chief

cc: Legal & Legislative Coordinator, Council of the Cherokee Nation
Councilors (17), Council of the Cherokee Nation
Melanie Knight, Secretary of State