

An Act

Legislative Act 05-12

AN ACT REVISING TITLE 51 (“IMPEACHMENT”), CHAPTER 8, SECTIONS 81 - ? OF THE CHEROKEE NATION CODE ANNOTATED; AMENDING LA#10-02; AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This Legislative Act shall be titled as the “Impeachment Procedures for Elected and Appointed Officials Act of 2011” and codified under Title 51, Chapter 8, Section 81 - ? of the Cherokee Nation Code Annotated (“CNCA”).

Section 2. Purpose

The purpose of this Act is to establish procedures for impeachment of the Principal Chief, the Deputy Principal Chief, Tribal Council members, Attorney General or Marshal, *hereinafter* “Officials.”

Section 3. Legislative History

Article XI Section 1 of the Cherokee Nation Constitution states: "The Principal Chief, Deputy Principal Chief, members of the Council, Attorney General and Marshall shall be subject to removal from office for willful neglect of duty, corruption in office, habitual drunkenness, incompetency or any conviction of a felony, or a crime under the laws of the Cherokee Nation that if committed in some other jurisdiction would be a felony, or a misdemeanor involving moral turpitude or offenses against the Cherokee Nation committed while in office."

Article XI Section 2 of the Cherokee Nation Constitution states: "Except as otherwise provided in this Constitution, all other appointed officials shall be subject to removal for cause, as prescribed by law."

Article XI Section 3 of the Cherokee Nation Constitution states: "No official may be removed under Sections 1 or 2 of this Article or Section 8 of Article VIII except after trial before the Council, with the accused having been afforded due process and opportunity to be heard. Provided, removal under Sections 1 or 2 of this Article or Section 8 of Article VIII shall require a two-thirds (2/3) vote of the members of the Council."

Section 4. Definitions

- A. Special Prosecutor means: An attorney admitted to practice law before the highest Court of the State of which he or she is a resident, and shall not be an employee, contractor or official of the Cherokee Nation.
- B. Impeachment means: The prosecution through the Special Prosecutor of an elected official, under the Constitution, for willful neglect of duty, corruption in office, drunkenness, incompetency, or any conviction involving moral turpitude committed while in office.
- C. Articles of Impeachment means: The Articles of Impeachment are the written accusations of one or more of the grounds for impeachment, prepared and sworn to by the special prosecutor, after his/her investigation and determination that probable cause exists that an impeachable offense has occurred.
- D. Official means: The Principal Chief, Deputy Chief and all members of the Tribal Council, Attorney General and Marshal, including those individuals who have been appointed to serve the remainder of a term of office that has been vacated for any reason.
- E. Presiding Judge means: The Chief Justice of the Supreme Court of the Cherokee Nation, or if he or she cannot serve, another Justice of the Supreme Court of the Cherokee Nation, who will preside over the impeachment proceedings.
- F. Incompetency means: Lack of ability, legal qualification or fitness to discharge a required duty.
- G. Habitual Drunkenness means: One who frequently and repeatedly becomes intoxicated by excessive indulgence in intoxicating liquor so as to acquire a fixed habit and an involuntary tendency to become intoxicated as often as the temptation is presented even though he remains sober for days or even weeks at a time.
- H. Moral Turpitude means: An act of business, vileness or depravity in private and social duties which man owes to his fellow man.
- I. Corruption in Office means: The act of an official or fiduciary person who unlawfully and wrongfully uses his/her station or character to procure some benefit for him/herself or for another person, contrary to duty and the rights of others.
- J. Office of Honor, Profit or Trust means: For the purposes of this Act, such office shall mean, an elected position or a position appointed by a tribes highest governing body, such an office does not include,

employment, contract services or consulting agreements.

Section 5. Substantive Provisions

A. Grounds for Impeachment:

Officials shall be liable and subject to impeachment for willful neglect of duty, corruption in office, habitual drunkenness, incompetency or any conviction of a felony, or a crime under the laws of the Cherokee Nation that if committed in some other jurisdiction would be a felony, or a misdemeanor involving moral turpitude or offenses against the Cherokee Nation committed while in office.

1. Willful neglect within the meaning of this Act shall include the filing of frivolous allegations of impeachment under Section 5(B) of this. The filing of allegations of impeachment that fails to achieve approval of at least a simple majority of the Council or to any committee or sub-committee to which the impeachment allegations are assigned, pursuant to Section 5(B) of this Act, shall create the rebuttable presumption that such allegations were frivolous.

B. Initiation of Impeachment:

1. Initiation by Council: The Council, upon allegations of an impeachable offense or offenses committed by any Official may, by a vote of two-thirds (2/3) of the body, appoint a Special Prosecutor and give the Prosecutor the charges which have been alleged. The Special Prosecutor shall investigate those charges and any other transactions which are grounds for impeachment. If such investigation gives the prosecutor probable cause to believe that activities constituting grounds for impeachment have been committed, he/she shall draft articles of impeachment for presentment to the Supreme Court of the Cherokee Nation. In conducting this investigation the Special Prosecutor shall have the power of subpoena, the power to compel evidence and witnesses and shall have the cooperation of all entities of the Cherokee Nation.
2. Recommendation by Principal Chief: The Principal Chief, upon allegations of an impeachable offense or offenses committed by any Official, may appoint a Special Prosecutor and give the Prosecutor the charges which have been alleged. The Special Prosecutor shall

investigate those charges and any other transactions which are grounds for impeachment. If such investigation gives the prosecutor probable cause to believe that activities constituting grounds for impeachment have been committed, he/she shall draft allegations of impeachment for recommended for action by the Council of the Cherokee Nation pursuant to paragraph B(1), above by filing said allegations with the Speaker of the Council. In conducting this investigation the Special Prosecutor shall have the power of subpoena, the power to compel evidence and witnesses and shall have the cooperation of the all entities of the Cherokee Nation.

3. Filing of Impeachment Allegations: The filing of impeachment allegations pursuant to paragraph B(1) or (2), above, shall be done in writing to the Speaker of the Council with a copy sent to the Official accused of the impeachable offense(s). Said allegations shall be set forth in a statement reciting the basis for the allegation and signed by the Official making the allegation under penalty of perjury. The impeachment allegations shall be assigned by the Speaker of the Council to the Rules committee, and then to such sub-committee that the Rules committee shall deem warranted.
4. Council to Control Impeachment Proceedings, Alternative Disposition of Allegations: The Council shall at all times control the impeachment proceedings, including but not limited to during the investigation stage, by reserving the right to direct the Special Prosecutor to suspend or terminate his/her investigation by majority vote of the Council. Termination of the investigation may be done for any reason, including, but not limited to, resignation of the Official subject of the impeachment allegations or based on a determination by the Council that some other disposition of the allegation, such as censure, is warranted.

C. Presentation of Impeachment:

The Special Prosecutor shall present the Articles of Impeachment to the Supreme Court of the Cherokee Nation by filing the same in the office of the Clerk.

D. Presiding Officer of the Court of Impeachment:

When sitting as a Court of Impeachment, the Tribal Council shall be presided over by the Chief Justice of the Supreme Court of the Cherokee Nation, or if he is absent or disqualified, then by one of the Associate Justices of the Supreme Court of the Cherokee Nation.

E. Oath – Concurrence of Councilors:

When the Tribal Council is sitting as a Court of Impeachment the Councilors shall be on oath or affirmation, impartially to try the party impeached, and no person shall be convicted without the concurrence of two-thirds (2/3) of the members of the Tribal Council and unless it is found, by clear and convincing evidence, that one or more of the grounds for impeachment exist.

F. Judgment – Criminal Liability:

An officer who is convicted of impeachment shall be removed from office, but this shall not prevent punishment of any such officer on either civil or criminal charges growing out of the same matter.

G. Designation of Offense:

The Articles of Impeachment shall state with reasonable certainty, the offense in office for which the officer is impeached and if there be more than one, they shall be stated separately and distinctly.

H. Court of Impeachment:

When Articles of Impeachment shall be presented, the Tribal Council shall, within ten (10) days thereafter, organize as a court of impeachment and may for the purpose of conducting the business of such court, appoint a clerk. The clerk shall issue all process and keep a record of the proceedings of such court. It may employ such stenographic, clerical and other help as may be required.

I. Hearing and Summons:

The Tribal Council, when sitting as a court of impeachment shall appoint a day for hearing the impeachment and the accused shall be required by summons by the clerk to appear on that day. The summons shall be served by delivering a copy of the same and of the Articles of Impeachment to the accused, in person if found, or by leaving the copies at his residence with some member of his family over sixteen (16) years of age.

At said hearing the accused shall have the right to have an attorney present, at his/her own expense, present evidence, object to evidence presented, call witnesses on his/her behalf, confront and cross examine witnesses and do any other action deemed necessary by the Presiding Judge to ensure due process.

J. Powers of Court of Impeachment – Orders and Judgments – Power to Enforce:

The Tribal Council, sitting as a court of impeachment shall, through the Presiding Judge, have the power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, precepts and judgments to preserve order, grant continuances that are for good cause and not for the purposes of delay and to punish in a summary way contempt of and disobedience to, its authority and to make all orders rules and regulations which it may deem essential or necessary for the orderly transaction of its business.

K. Costs – How Paid – Cost of Accused if Acquitted:

If the accused is acquitted, he/she shall be entitled to his costs, including attorney fees, to be taxed by the clerk and paid by the Cherokee Nation out of any funds available and if convicted, he/she shall pay the cost, unless the Supreme Court of the Cherokee Nation otherwise directs.

1. Personal Liability, Treble Damages: If an Official is convicted of impeachment based on the earlier filing of frivolous allegations of impeachment under Section 5(A)(1) of this Act, such convicted shall be liable for up to triple the amount of any cost, including attorney fees, borne by the accused Official subject to said earlier allegations of impeachment, as determined by the Court of Impeachment, unless the Supreme Court of the Cherokee Nation otherwise directs.

L. Expenses – How Paid:

This Act shall be used as authorization to expend funds for the purpose of implementing the procedures and requirements mandated herein.

Section 6. Provisions as Cumulative

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

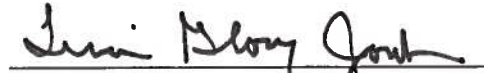
Section 7. Severability

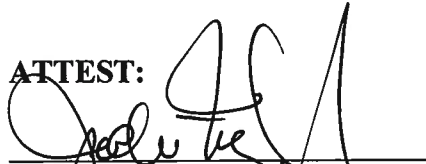
The provisions of this Act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

Section 8. Emergency Declared


It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.


Enacted by the Council of the Cherokee Nation on the 23rd day of February, 2012.


Tina Glory-Jordan, Speaker
Council of the Cherokee Nation

ATTEST:

Jodie Fishinhawk, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 28th day of February, 2012.


Bill John Baker, Principal Chief
Cherokee Nation

ATTEST:

Charles Head, Secretary of State
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Tina Glory Jordan	<u>Yea</u>	Meredith A. Frailey	<u>Yea</u>
Joe Byrd	<u>Yea</u>	Dick Lay	<u>Yea</u>
David Walkingstick	<u>Yea</u>	Cara Cowan Watts	<u>Absent</u>
Jodie Fishinhawk	<u>Yea</u>	Buel Anglen	<u>Absent</u>
Janelle Lattimore Fullbright	<u>Yea</u>	Charles Hoskin, Jr.	<u>Yea</u>
David W. Thornton, Sr.	<u>Yea</u>	Julia Coates	<u>Absent</u>
Don Garvin	<u>Yea</u>	Jack D. Baker	<u>Yea</u>
Lee Keener	<u>Absent</u>	Curtis G. Snell	<u>Yea</u>
Frankie Hargis	<u>Yea</u>		