



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
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Tahlequah, OK 74464

Legislation Text

File #: 10-119, Version: 1

AN ACT AMENDING LEGISLATIVE ACT 06-10, AS AMENDED BY LA#22-10; REVISING TITLE 26 ("ELECTIONS") OF THE CHEROKEE NATION CODE ANNOTATED; AMENDING CHAPTER 4 §§ 31, 36 AND 37; ADDING PROVISIONS FOR OVERLAPPING TERMS; AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be referred as the "Candidate Qualification and Filing Amendment Act of 2010" and codified at Title 26, Chapter 4, §§ 31, 36 and 37 of the Cherokee Nation Code Annotated ("CNCA").

Section 2. Purpose

The purpose of this Act is to amend the Cherokee Nation Election Code to provide provisions for overlapping terms of incumbents.

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. February 14, 1987
L.A. 4-87 Eff. Feb. 14, 1987
L.A. 7-97 Eff. May 12, 1997 (as revised in its entirety)
L.A. 39-05 Eff. Nov. 14, 2005 (as revised in its entirety)
L.A. 06-10 Eff. Feb. 16, 2010 (as revised in its entirety)
L.A. 22-10 Eff. July 12, 2010

Section 4. Amendment

This Act hereby amends Legislative Act 06-10, as amended by LA#22-10, by the following:

**CHAPTER 4
Qualifications of and Filing by Candidates**

§ 31. General Qualifications of Candidates for Elective Office - Generally; Certifications and Acknowledgments.

A. General Qualifications. Each candidate who desires to run for the elective Cherokee Nation office of Principal Chief, Deputy Principal Chief or Council Member shall meet the following general eligibility requirements consistent with the Constitution of the Cherokee Nation, Article VI, Section 3, Article VII, Sections 2 and 3, and Article IX, Section 2:

1. The candidate shall be a citizen of the Cherokee Nation, in accordance with Article IV of the Constitution of the Cherokee Nation and shall be a citizen by blood of the Cherokee Nation.
2. The candidate shall not have been convicted of or have pled guilty or no defense to a felony charge under the laws of the United States of America, or of any state, territory or possession thereof, or convicted of a crime in any Tribal Court of any Federally recognized Indian Tribe that would be considered a felony in State or Federal Court, unless such person has received a pardon from an authorized official of the jurisdiction in which the candidate was convicted or pled guilty or no defense to said felony charge; provided that for purposes of this Section, a deferred sentence and/or an expungement of a felony record shall not constitute a pardon or affect or erase the felony conviction, a guilty plea to a felony charge, or a plea of no defense to a felony charge.
3. The candidate shall not hold any office of honor, profit or trust in any other tribe of Indians, either elective or appointive, if elected to the Cherokee Nation office which he or she is seeking.
4. Any outstanding fines imposed by the Election Commission during a previous Cherokee Nation Election must be paid before a person can be eligible to run as a candidate for an elective office in a subsequent election.

B. Prerequisites for Filing. In addition to the general eligibility qualifications set forth in subsection A herein, a candidate must not be in violation of any of the following at the time of filing:

1. The candidate shall not be an employee of the Cherokee Nation, including any corporation, agency or other entity which is at least fifty-one percent owned by the Cherokee Nation, as of the date of filing or at any time thereafter if elected provided, that an incumbent serving in an elective office shall not be deemed to be an employee for purposes of this Section. An incumbent must resign from his or her current elective office if filing for an alternative office with a term that overlaps his or her current elective office.
2. The candidate may not file to run for an office if he or she has already filed to run for another office in the same election, unless the prior filing is withdrawn.
3. No candidate shall be permitted to file to run for any office that will overlap with the term of office that he or she is serving as an elected official of the Cherokee Nation at the time of filing.
4. An incumbent may file to run for re-election for his or her current elective office; or an incumbent may file to run for an alternative office as an elected official within the Cherokee Nation, provided that the term of the alternative elective office does not overlap with the term of his or her current elective office. If an incumbent chooses to run for an alternative elective office with a term that overlaps his or her current term, then he or she must resign from his or her current elective office prior to filing for any alternative elective office.

C. Other Qualifications. In addition to the requirements set forth in this Section, each candidate shall meet any other applicable requirements as set forth in the Constitution of the Cherokee Nation and this Chapter.

§ 32. Special Qualifications for Principal Chief and Deputy Principal Chief.

In addition to the general qualifications set forth in Section 31 of this Title, the qualifications for Principal Chief and Deputy Principal Chief as set forth in Article VII of the Constitution shall be as follows:

- A. Age. The candidate shall have obtained the age of thirty (30) years at the time of the election.
- B. Residence. The candidate shall have established a bona fide permanent residence within the jurisdictional boundaries of the Cherokee Nation for no less than 270 days immediately preceding the day of the general election in which he or she is seeking election. Proof of a bona fide permanent residence shall be regulated by the Election Commission. If elected to office, the candidate shall continuously maintain a bona fide permanent residence within the jurisdictional boundaries. Failure to meet this requirement shall subject the person to disqualification and removal from office.

§ 33. Special Qualifications for Council.

In addition to the general qualifications set forth in Section 31 of this Title, the qualifications for Council member shall be as follows:

- A. Age. The candidate shall have obtained the age of twenty-five (25) years of age at the time of the election.
- B. Residence. The candidate shall have established a bona fide permanent residence in the district for which he or she is a candidate for no less than 270 days immediately preceding the day of the general election in which he or she is seeking election. Proof of a bona fide permanent residence shall be regulated by the Election Commission. If elected to office, the candidate shall maintain a bona fide permanent residence in the district which he or she represents. Failure to meet this requirement shall subject the person to disqualification and removal from office. This section shall not apply to "At-Large" district candidates.

§ 34. Establishment of Residency.

Proof of a bona fide permanent residence, necessary to qualify as a candidate for Council, Principal Chief and Deputy Principal Chief shall be regulated by the Election Commission, subject to the following definitions and requirements:

- 1. Definition. Residence is synonymous with the term domicile or abode and means a place where the candidate has a true, fixed and permanent home, and to which, whenever absent, the candidate has the intention to return.
- 2. Verification. Verification of residence may be shown by at least three (3) of the following documents, provided always that such documents show one or more addresses within the required geographic area for a continuous period of 270 days for the time-period outlined in the requirements for each elective office.
 - A. Current driver's license(s).
 - B. Utility bill or bills.
 - C. Income tax return from the preceding year.
 - D. State or county voter's registration.
 - E. Homestead exemption.
 - F. A bona fide document evidencing such verification.

§ 35. Filing fees generally.

- A. Amount; Payment. A filing fee shall be charged each candidate filing for an elected office of the Cherokee Nation. Such fees are to be filed and paid to the Election Commission by cash, cashier's check, money order, or valid check at the Cherokee Nation Election Services Office, Tahlequah, Oklahoma. The fees shall be as follows:

Office of the Principal Chief	\$750.00
Office of the Deputy Principal Chief	\$500.00
Office of the Council	\$250.00

- B. No Refund. No refund of filing fee shall be permitted for any reason, even if the candidate withdraws voluntarily or is disqualified under the provisions of this law.

§ 36. Filing of Candidacy; Withdrawal of Candidacy.

1. Filing Period. The filing date shall be for a four (4) day period commencing at 8:00 a.m. on the first Monday of March of the election year and ending at 5:00 p.m. on the first Thursday following the first Monday of March. The deadline for filing for an elective office of the Cherokee Nation shall be publicized by the Election Commission.
2. Certifications and Acknowledgments. To be eligible to run for elective office, each prospective candidate shall submit an application established by the Election Commission, which at a minimum shall contain the following:
 - A. Proof of citizenship and membership by Indian blood consisting of his or her certificate of degree of Indian blood card and a Cherokee Nation membership card issued in his or her name in accordance with Articles IV, VI, VII of the Constitution. and C.N.C.A. Title 11;
 - B. Proof of residency;
 - C. Proof of age;
 - D. Certification that at time of filing that he or she is not an employee, voting board member or a voting commission member of the Cherokee Nation, including any corporation, agency or other entity which is at least fifty-one percent owned by the Cherokee Nation, and acknowledgment that he or she understands that should he or she become an employee during the election process, he or she shall be automatically disqualified as a candidate;
 - E. Certification that if elected to office, said candidate shall resolve all conflicts of interest as defined by Title 28 of the Cherokee Nation Code Annotated;
 - F. Acknowledgment that said candidate shall be automatically disqualified in the event that any false or misleading information or statements are made in filing for office; and
 - G. Such other documents, certifications and acknowledgments required by regulation of the Election Commission.
3. Background Checks and Eligibility Certification. The Election Commission shall conduct background checks and review all information necessary for a determination of eligibility pursuant to regulations prescribed by the Commission. The Election Commission shall issue an official letter certifying the eligibility of each candidate or denying said eligibility, within twelve (12) working days after the close of the filing period.
4. Withdrawal of Candidacy. Any candidate who wishes to withdraw from the election shall have the opportunity to do so by providing a formal written notice to the Election Commission ten (10) working days after the deadline for filing.
5. Withdrawal of Incumbent. Any incumbent who resigns from his or her current elective office within the Cherokee Nation in order to file for an alternative elective office with an overlapping term who withdraws from the election shall not be eligible to return to serve the remainder of that term (assuming this office has not been filled at the time of withdrawal).

§ 37. Challenges.

1. Third Party Challenge of Eligibility. Any citizen of the Cherokee Nation registered to vote shall have the right to contest the eligibility of any candidate to run for office. The protest shall be received by the Election Commission in writing within five (5) working days after the close of the filing period. The hearing shall be conducted in conformance with rules and regulations adopted by the Election Commission for said proceedings. Said rules and regulations shall provide the candidate reasonable notice of the

challenge and the opportunity to respond at a hearing before the Election Commission.

2. Candidate Eligibility Determination Appeals to Cherokee Nation Supreme Court. An appeal of any decision of the Election Commission concerning a candidate's eligibility shall be filed with the Cherokee Nation Supreme Court in writing no later than five (5) days after receipt of Election Commission's notice of denial or approval of eligibility for candidacy. Only the person denied eligibility or the person who originally filed a protest challenging the person's eligibility shall be permitted to file an appeal. The Election Commission chairperson shall deliver copies of each notice of appeal and all related documents to the Cherokee Nation Supreme Court in a timely manner as directed by the Court.
3. Notice and Scheduling of Hearing. The Cherokee Nation Supreme Court shall issue notice of a hearing date within three (3) working days of the Court's receipt of an appeal of an Election Commission finding of a candidate's eligibility or ineligibility. The hearing shall be held no later than ten (10) working days from date of issuance of said notice. The hearing may be continued to a later designated date for good cause, provided that said date shall not be more than ten (10) working days from date of the originally scheduled hearing.
4. Conduct of Hearing; Decision. At the Cherokee Nation Supreme Court hearing, the candidate who is the subject of the challenge, the third party challenging the finding of eligibility and the Election Commission may each present testimony of witnesses, evidence and legal arguments. The Election Commission may be represented by the Election Commission's independent counsel. No other attorney shall appear on behalf of the Cherokee Nation or the executive or legislative branches at the government's expense. The other parties to the proceedings may be represented by counsel at their own expense. The decision of the Cherokee Nation Supreme Court shall be served on the parties no later than five (5) days following the date of the hearing. The decision of the Cherokee Nation Supreme Court regarding a candidate's eligibility shall be final.
5. Withdrawal of Incumbent. Should an incumbent, who resigns to run for an alternative elective position, be successfully challenged, then said incumbent cannot return to serve the remainder of his or her term of the elective office held prior to resigning.

§ 38. Interference with and improper influences of the Election Commission.

After a hearing held in conformance with the regulations adopted by the Election Commission, any candidate found to be directly or indirectly interfering or attempting to interfere with the Election Commission's performance of its duties, or improperly influencing or attempting to influence the Election Commission while it is performing its duties, shall be disqualified by the Election Commission from running for elected office of the Cherokee Nation for the duration of the upcoming election period. Said regulations shall provide the candidate with reasonable notice of the charges and the opportunity to respond at a hearing before the Election Commission, and shall specify the manner in which the charges shall be presented and by whom. Any candidate disqualified from holding office pursuant to this Section may appeal the Election Commission's disqualification decision by filing a written appeal with the Cherokee Nation Supreme Court in conformance with the requirements of Section 37 B of this Title.

§ 39 and 40. Reserved.

Section 5. Provisions as cumulative

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

Section 6. Severability

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

Section 7. Emergency Declared

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

Section 8m. Self-Help Contributions

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