



Legislation Text

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AN ACT REVISING TITLE 26 ("ELECTIONS") OF CHEROKEE NATION CODE ANNOTATED; AMENDING LA#06-10, AS AMENDED BY LA#22-10, LA#32-10 AND LA#04-11; AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be known as the "The Cherokee Nation Special Election Amendments of 2011" and codified in Title 26 of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to amend the Cherokee Nation Election Code to address issues and policy that were illuminated during the 2011 electoral process. The intention is to strengthen the Nation's election processes, and provide third-party observation during the new election for Principal Chief, thus increasing citizen confidence in Cherokee Nation elections.

Section 3. Legislative History

Legislative Act 9-85, Effective July 13, 1985;
Legislative Act 35-89, Effective September 9 1989;
Legislative Act 6-91, Effective March 9, 1991;
Legislative Act 2-87, Effective February 14, 1987;
Legislative Act 12-90, Effective November 13, 1990;
Legislative Act 5-87, Effective February 14, 1987;
Legislative Act 8-87, Effective February 26, 1987;
Legislative Act 11-87, Effective March 14, 1987;
Legislative Act 6-87, Effective February 14, 1987;
Legislative Act 9-87, Effective February 26, 1987;
Legislative Act 14-87, Effective March 14, 1987;
Legislative Act 7-87, Effective February 14, 1987;
Legislative Act 12-87, Effective May 11, 1987;
Legislative Act 23-87, Effective June 11, 1987;
Legislative Act 3-87, Effective February 14, 1987;
Legislative Act 4-87, Effective February 14, 1987;
Legislative Act 7-97, Effective May 12, 1997 (as revised in its entirety);
Legislative Act 39-05, Effective November 14, 2005 (as revised in its entirety);
Legislative Act 06-10, Effective February 16, 2010 (as revised in its entirety);
Legislative Act 22-10, Effective July 12, 2010;
Legislative Act 32-10, Effective October 11, 2010;
Legislative Act 36-10, Effective December 24, 2010;
Legislative Act 04-11, Effective February 14, 2011.

Section 4. Amendment

This Act hereby amends Title 26 ("Elections") of the Cherokee Nation Code Annotated and Legislative Act 06-10, as amended by LA#22-10, LA#32-10, LA#36-10 and LA#04-11 by the following:

§22. Registration Process.

- A. Ongoing Process The Election Services Office shall conduct registration of voters on an ongoing basis. This process shall include periodic publicity and community outreach efforts by the Election Services Office. The Election Service Office shall publish information promoting voter registration at least four (4) times annually, in the Cherokee Phoenix and Cherokee Nation web sites.
- B. Cards. The Election Services Office shall issue voter identification cards to registered voters. Whenever possible, the card should be in a picture ID format. The card may be used as a convenient means of identification of persons whose names appear on the voters list. Such cards shall contain, at a minimum, the voter's name, address, precinct as well as key election dates. Voter identification cards shall be mailed to each registered voter prior to any General or Special election.

§ 52. Electioneering.

- A. Electioneering Near Polling Area: No person shall be allowed to electioneer inside any precinct or within three hundred (300) feet outside of the entrance to any precinct while an election is in progress, nor shall any person or persons, except precinct officials and other persons authorized by law, be allowed to approach the ballot box while an election is in progress. Prohibited activities within the prescribed area by a candidate or other persons on election day which might reasonably be construed as electioneering shall include the following: wearing any article of clothing with any candidate's name or office on it or holding any article with any candidate's name or office on it; or distribution or display of any written materials, campaign literature or campaign items of any kind or nature within the prescribed area, other than that provided by the Election Commission.
- B. Obstructing or Impeding Voter Access to Polling Place: No person shall be allowed to impede or obstruct voters attempting to access polling places while an election is in progress, including, but not limited to, by obstructing or impeding any entrances or exits utilized by vehicles occupied by voters traveling to or traveling from the polling place.
- C. Loitering: Persons who are neither poll workers, employees nor agents of the Election Commission, Commissioners, or persons who are not actively voting shall be prohibited from loitering inside or outside a polling location, within three hundred (300) feet outside of the entrance to the precinct while an election is in progress.
- D. Enforcement, Notice to Law Enforcement and Regulations: Persons engaged in the conduct proscribed in paragraphs A, and B and C above, shall be subject to removal by local law enforcement and/or the Cherokee Nation Marshal Service at the request of the appropriate official, including but not limited to any precinct official. The Election Commission shall notify appropriate law enforcement departments of the provisions set forth in §52(A), (B) and (C) and §52(B) of this Act.
- E. Employee Solicitation: Use of official website of the Cherokee Nation, the Cherokee Nation intranet, employee e-mail list, office phone extensions for political purposes is prohibited. Any candidate, other person, corporation or legal entity that violates this section shall be fined One Hundred Dollars (\$100.00) per occurrence.

§ 62. Manner of Voting Generally.

- A. Secret Ballot. Voting shall be by secret ballot.
- B. Procedure for Voting in Person. Except as provided in Section 78 of this Title or as otherwise provided, any registered voter may vote by appearing at his or her designated precinct, announcing to precinct officials his or her name and address, presenting either a voter card, citizenship (blue) card, drivers license or other identification specified by the Election Services Office, signing the registry, marking a ballot and placing in the ballot box or counting device.
- C. Absentee Ballot. Any registered voter may at his or her request vote by absentee ballot as prescribed in

Article 3 of this Chapter.

D. In person absentee voting:

Any voter may vote by utilizing an in-person absentee ballot at the Election Commission Office located at Tahlequah, Oklahoma from 9:00 a.m. to 5:00 p.m. on a minimum number of days immediately preceding any election provided for by this Act and at any other locations or times that the Election Commission deems necessary and appropriate. As part of the application for an in-person absentee ballot, such voter shall swear or affirm that he or she has not voted a regular mail absentee ballot and that he or she will not vote at the regular polling place in the election for which the in-person absentee ballot is requested. Any voter who violates the provisions of this section shall be guilty of a crime.

The Election Commission shall develop rules and procedures to carry out the requirements of this section.

§ 64. Challenged Ballots.

A. Voting Procedure. If the precinct Voter List does not contain a voter's name, or if a precinct official should challenge the voter's right to vote for other reasons, said voter shall be allowed to vote only if the voter completes a voter registration application for a residence address within the district or as an At-Large voter and signs a statement swearing or affirming that the voter is currently eligible to vote in said precinct and has not already cast a regular or absentee ballot for said election.

B. Preservation and Counting. Each challenged ballot shall be placed in a secrecy envelope attached to the voter registration application and statement executed by the voter. Challenged ballots shall not be counted at the time the ballots are cast, but shall be maintained in a separate box marked "challenged ballot box."

C. Counting. Following the close of the election, precinct officials designated by Election Commission regulation shall determine whether the person who cast a challenged ballot was entitled to vote in the precinct where the ballot was cast; **provided, that challenge ballots from At-Large voters shall be counted to the extent the voter has not otherwise voted in that election.** If the person was so entitled, the ballot will be opened, counted, returned to the challenged ballot box and totaled with other votes before certification of the election. If the person was not entitled to vote, the ballot will not be counted, but will be returned to the challenged ballot box.

D. Policy. The Election Commission shall develop a policy describing the criteria under which challenged ballots will be accepted or rejected. Such policy shall be published on the website and posted prominently at each polling location.

§ 74. Procedure upon Rejection of Application for Absentee Ballot.

A. Notification to Voter. In the event an application for an absentee ballot is rejected for any reason, the Election Commission shall immediately notify said voter in writing of the rejection and the reason therefore.

B. Notice on Website. At the end of each business day while absentee ballot requests are being accepted, the Election Services Office shall publish a list of names of voters whose absentee ballot requests have been accepted, along with the voter's city and state.

§ 78. Return of Absentee Ballots.

A voter shall mark his ballot in permanent ink; seal the ballot in the secrecy envelope; fill it out completely and sign the affidavit or statement in the presence of a notary public; and return the documents in the return envelope via the United States mail to the Election Commission. [Notarizations that comply with the laws of the State in which the notary is licensed shall be considered valid.](#) Only those absentee ballots which are mailed to the Election Commission and which reach the Election Commission post office box in Tahlequah, Oklahoma no later than 7:00 p.m. on election day shall be counted; provided that personal delivery of an absentee ballot shall be accepted from the Wednesday prior to election day until election day only if the voter or a person designated by the voter delivers the ballot to the Election Services Office between the hours of 7:00 a.m. and 7:00 p.m. during those four days. Voting in person at a precinct by a voter who has requested and received an absentee ballot shall not be permitted; but a voter who claims that he or she never received an absentee ballot may cast a challenged ballot as set forth in Section 64 of this Title.

The Election Commission is authorized and directed to reach agreements with the appropriate jurisdictions to ensure free notarization of the ballots to the greatest extent possible.

[The following new provisions of Title 26, Cherokee Nation Code Annotated apply specifically to the new election to be held for Principal Chief in 2011, and shall sunset after the 2011 election year:](#)

§ 54. Election Observation.

[The Election Commission shall hire or engage an independent election service organization of high reputation to observe overall election execution; review law, policies and procedures related to the election; and, prepare a report of findings and recommendations. Such report shall be provided to the Election Commission, the Council of the Cherokee Nation, and the Principal Chief.](#)

§ 73. Time for Filing of Requests for Absentee Ballots; Furnishing of Ballots Generally.

[D. New Election. For new elections called under § 103, registered voters may request absentee ballots by mail or in person at the Election Services Office for a period of no less than 10 business days. In such elections, the Election Services Office shall automatically send an absentee ballot to all registered voters who were sent an absentee ballot for the general and/or runoff elections.](#)

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 8. 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.