

TO APPROVE A COUNCIL BILL ENACTING THE CONSTITUTIONAL AMENDMENT PROCEDURES CODE

IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION

RONALD PERRY INTRODUCED THE FOLLOWING COUNCIL BILL

A COUNCIL BILL

TO APPROVE a Council Bill enacting the Constitutional Amendment Procedures Code for the Choctaw Nation of Oklahoma.

WHEREAS, Article IX, § 4, of the Constitution of the Choctaw Nation of Oklahoma, (the "Constitution") states that the Tribal Council of the Choctaw Nation of Oklahoma (the "Council") shall enact legislation, rules, and regulations consistent with the Constitution;

WHEREAS, Article XVIII, § 1 of the Constitution allows for two ways to propose amendments to the Constitution: 1) the Council may propose amendments with at least eight affirmative votes of Council members, or 2) by petition containing the entire text of the amendment and signed by at least 30% of the total registered voters from the last Chief's election;

WHEREAS, Article XVIII, § 2 of the Constitution states an amendment must be approved by at least 51% of the total number of qualified voters in the last Chief's election;

WHEREAS, the Choctaw Nation of Oklahoma (the "Nation") currently has no rules, regulations, or procedures to propose an amendment and place an amendment on a ballot for consideration;

WHEREAS, this Council Bill will adopt the Constitutional Amendment Procedures Code for the Choctaw Nation of Oklahoma. See Exhibit A; and

WHEREAS, the Council finds it is in the best interest of the Nation to approve the Constitutional Amendment Procedure Code for the Choctaw Nation of Oklahoma as attached as Exhibit A.

THEREFORE BE IT ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma, that this Act be cites as approval of the adoption of the Constitutional Amendment Procedures Code of the Choctaw Nation of Oklahoma.

CERTIFICATION

I, the undersigned, as speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that twelve (12) members answered roll call and that a quorum was present at the Regular Session of the Tribal Council at Tuskahoma, Oklahoma on May, 11 2019. I further certify that the foregoing Council Bill CB- 102 -19 was adopted at such meeting by the affirmative vote of twelve (12) members, zero (0) negative votes, and zero (0) abstaining.

Delton R. Cox
Delton Cox, Speaker
Choctaw Nation Tribal Council

Ronald Perry, Secretary
Choctaw Nation Tribal Council

Gary Batton, Chief
Choctaw Nation of Oklahoma

Date 5-15-19

Purpose/Need of Council Bill: This council bill approves and enacts the Constitutional Amendment Procedures code. Currently the Nation has no rules, regulations, or procedures for proposing and placing a constitutional amendment on the ballot when needed. The legislation approves the attached Constitutional Amendment Procedures Code and makes the Code effective upon passage.

Title of Council Bill: To Approve A Council Bill Enacting the Constitutional Amendment Procedures Code

Agency: Legal and Compliance

Budget: N/A

Match Required: N/A

Request by Project Director: Brad Mallett, SEO, Legal and Compliance

EXHIBIT A

Constitutional Amendment Procedures Code

Section 1. Short Title

This Code shall be known and may be cited as the “Constitutional Amendment Procedures Code.”

Section 2. Definitions

As used in this Code, unless the context otherwise requires:

1. “Circulate” means to offer or accept signatures on a signature sheet which is or should be part of a petition pamphlet;
2. “Circulation period” means the period between the issuance of the petition and signature sheet and the last day for filing the petition and signature sheet with the Election Board as specified in this Code.
3. “Code” means the Constitutional Amendment Procedures Code;
4. “Constitution” means the Choctaw Constitution of 1983, as amended;
5. “Council” means the Tribal Council of the Choctaw Nation established by Article VIII of the Constitution;
6. “Election Board” means the governmental entity created by Article V of the Chief and Tribal Council Election Ordinance pursuant to Article IX, Section 5 of the Constitution or, where permitted, a person designated by the Board or this Code to perform a function of the Election Board under this Code;
7. “General Counsel” means the General Counsel of the Choctaw Nation;
8. “Nation” means the Choctaw Nation of Oklahoma;
9. “Petition” means a document used for proposing an amendment to the Choctaw Constitution;
10. “Petition Pamphlet” means a copy of the petition and a sheet for signatures, including any affidavits for signatures by mark;

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11. "Signature" includes a mark which is intended to be a signature if supported by an affidavit as required by this Code;

12. "Signature Sheet" means a document used for obtaining signatures in support of a petition which is part of a petition pamphlet; and

13. "Tribal Court" means the court established in Article XII of the Choctaw Constitution.

Section 3. Proposal of Amendments

A. Amendments to the Constitution may be proposed only in the manner provided in this Code. Amendments to the Constitution may be proposed by the Tribal Council, pursuant to subsection B of this Section, or by petition, pursuant to subsection C of this Section.

B. Amendments to the Constitution by the Tribal Council shall be in a bill approved by at least eight (8) affirmative votes of the Council. The bill shall include the following:

1. The entire text of the proposed amendment; and
2. A ballot title which complies with the requirements of this Code.

C. Amendments to the Choctaw Constitution may be proposed by a petition, which complies with this Code, signed by not less than thirty percent (30%) of the total number of qualified voters voting in the last Chief's election, and shall include the following:

1. The entire text of the proposed amendment; and
2. A ballot title which complies with the requirements of this Code.

Section 4. Requirements for Ballot Titles

A. When an amendment to the Choctaw Constitution is proposed by petition, the person or persons proposing the amendment shall file a copy of the petition and a separate proposed ballot title with the Secretary of the Election Board and with the General Counsel.

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B. The proposed ballot title shall explain the proposed amendment in words which can be easily found in dictionaries of general usage, shall expressly state that a “yes” vote is a vote in favor of the proposition and a “no” vote is a vote against the proposition. The ballot title shall not:

1. Contain more than two hundred (200) words;
2. Contain any words which have a special meaning for a particular profession or trade not commonly used by the citizens of the Nation;
3. Advocate for or against the adoption of the proposed amendment; or
4. Contain language such that a “yes” vote is, in fact, a vote against the proposition or a “no” vote is, in fact, a vote in favor of the proposition.

Section 5. Requirements for Petitions

A. Any qualified voter or voters of the Nation may apply to the Election Board for the necessary forms for a petition to propose an amendment to the Constitution. The application shall be on a form prepared by the Election Board and shall be accompanied by a non-refundable filing fee of One Thousand Five Hundred Dollars (\$1,500.00). The Election Board shall have no discretion to withhold any form required by this Code. The application shall include the following:

1. The name, address, and telephone number of the person or persons responsible for proposing an amendment to the Constitution, which shall be kept confidential except as the Election Board deems necessary for communicating with the responsible persons or as otherwise provided by this Code;
2. The entire text of the proposed amendment;
3. A proposed ballot title; and
4. A warning in a clearly legible san serif, 12-point or larger, boldface type as follows:

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WARNING: Any person who knowingly provides false information on this application shall be guilty of a felony and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00).

- B. A petition to propose an amendment to the Constitution shall:
1. Be addressed to the Secretary of the Election Board;
 2. Include the entire text of the proposed amendment;
 3. Include a signature page which shall include the following:

a. For each person signing, a space for the person's name to be printed, a space for the person's signature, and a space for the person's street address. Use of a post office box for an address is not allowed. A signature by mark is allowed, but must be witnessed in a separate affidavit on a form provided by the Election Board, which shall be attached to the signature page;

b. The gist of the proposed amendment, which may be the same or substantially similar to the ballot title; and

c. Be on a form provided by the Election Board which shall include the following:

To the Honorable _____, Secretary of the Election Board of the Choctaw Nation

We, the undersigned qualified voters of the Choctaw Nation, respectfully order that the following proposed amendment to the Constitution shall be submitted to the qualified voters of the Nation, for their approval or rejection, at the next practicable regular election after submission of this petition to the Election Board with sufficient signatures as determined by the Election Board.

C. Within ten (10) business days after the date the application is filed, the General Counsel shall notify the Election Board of the following:

1. The approval or modification of the proposed ballot title; and
2. The approval or modification of the proposed gist of the proposed amendment.

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D. A person applying for the petition may, within ten (10) business days, challenge a modified ballot title or gist of the proposed amendment by an appeal to the Election Board. The Election Board shall grant or deny the appeal within twenty (20) business days. A person applying for the petition may, within ten (10) business days, appeal the decision of the Election Board under this subsection to the Tribal Court.

E. The Election Board shall approve or reject the application and issue reproducible forms within ten (10) business days after receipt of the ballot title and gist of the proposed amendment from the General Counsel, unless appealed; in which case, the Election Board shall approve or reject the application and issue reproducible forms within ten (10) business days after expiration of the time to appeal or after receipt of the ballot title and gist of the proposed amendment from the Tribal Court, whichever is later.

F. The Election Board shall approve the ballot title and gist of the proposed amendment approved by the General Counsel.

G. The time for circulation of a petition shall begin on the day an application is approved by the Election Board pursuant to subsection A of this Section and shall continue for no more than ninety (90) days.

H. Every qualified voter of the Choctaw Nation may sign a petition circulated pursuant to this Code.

Section 6. Petition and Signature Sheets; Verification

A. Each petition and signature sheet issued by the Election Board may be duplicated for the securing of signatures. One signature sheet shall be attached to one copy of the petition for circulation.

B. Petitions and signature sheets shall be printed on white paper which is at least twenty (20) pound weight, and having dimensions of eight and one-half inches (8 ½") in width by fourteen inches (14") in length, with a margin of one and three-fourths inches (1 ¾") at the top for binding, and one-half inch (1/2") or more on each side and on the bottom, unless otherwise ordered by the Election Board.

C. On the first page of the petition pamphlet and at the top of each signature page in no less than ten-point type shall be a warning as follows:

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I knowingly make this statement under penalty of perjury.

Dated this ____ day of _____, _____.

Signature

Subscribed to and sworn before me this ____ day of _____, _____.

Notary

My Commission expires: _____

My Commission number: _____

Section 7. Circulation of Petitions

A. Once a petition and signature sheet is approved and issued by the Election Board, the person or persons proposing the amendment may duplicate the petition pamphlets for distribution to petition circulators for collection of signatures. Knowingly soliciting or obtaining signatures prior to approval of the petition and signature sheet is a felony. Signatures collected prior to the approval of the petition and signature sheet are invalid.

B. A petition circulator must be a qualified voter of the Choctaw Nation.

C. Persons proposing an amendment to the Constitution shall exercise due diligence to obtain signatures only from qualified voters of the Choctaw Nation, and to obtain all other information required or requested by the Election Board. Signatures obtained from unqualified voters or other persons shall not be counted. Valid signatures with partial or incorrect information shall be counted if the validity of the signature is verified.

Section 8. Filing and Numbering of Petition Pamphlets

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A. Persons proposing an amendment may present petition pamphlets to the Election Board for counting and verification at only one time during the circulation period.

B. The Election Board shall receive, or cause to be received, all petition pamphlets for a proposed amendment to the Constitution. The person receiving the petition pamphlets on behalf of the Election Board shall, in the presence of a person submitting the pamphlets:

1. Detach the signature sheets containing one or more signatures and any affidavits and cause them to be attached to one or more copies of the petition in volumes bound at the top;

2. Number each page and each volume consecutively;

3. Return copies of the petition, any unsigned signature sheets, and any unused affidavits to a person submitting the petition pamphlets; and

4. Give a person submitting the petition pamphlets a receipt for the number of signature sheets by volume and the number of volumes.

C. If the process described in subsection B of this section cannot be completed during normal business hours, the process may continue from day-to-day until completed; however, no additional signature sheets may be presented after the last day of the circulation period and the Election Board shall maintain the security of the petition pamphlets.

D. The Election Board shall adopt procedures for handling documents submitted under this Code which reasonably ensure the integrity of the documents and process.

Section 9. Physical Count of Signatures

A. The Election Board shall make, or cause to be made, a physical count of the number of signatures submitted. The Election Board shall not knowingly include in the count any of the following:

1. A signature on any signature sheet which is not verified by the petition circulator as required by this Code;

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2. A signature of any person who is not a qualified voter of the Choctaw Nation; provided, the Election Board may rely on the verification of the petition circulator and shall not be required to verify each person's qualifications;

3. A signature on a signature sheet which was not attached to a copy of the petition when submitted for filing;

4. A signature which is not bound in a volume as required by this Code;

5. A signature which is for a person whose signature has already been included in the count;

6. A signature which is not reasonably on a printed signature line;

7. A signature by a person which is not his or her own; provided, the Election Board shall not be required to determine the validity of each signature; and

8. A mark intended as a signature which is not accompanied by an affidavit.

B. A person who submits a petition to the Election Board pursuant to this Code or a designee may attend and witness the counting, but shall not interfere with the physical counting of signatures.

C. The Election Board shall resolve any question about a signature prior to certifying the total number of signatures.

D. The Election Board shall preserve evidence of criminal violations of this Code and refer such violations for prosecution.

Section 10. Determination of Sufficiency of Number of Signatures; Publication of Notice of Proposed Amendment

A. The Election Board shall certify the total number of valid signatures.

B. Prior to certification, the Election Board shall maintain the security of the signature sheets and shall not allow inspection or copying, except as necessary to perform its functions under this Code.

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C. After certification, the Election Board shall make copies of the signature sheets available for inspection and copying during normal business hours subject to the provisions of this Code.

D. If the total number of valid signatures certified by the Election Board is more than thirty percent (30%) of the total number of qualified voters voting in the last Chief's election, the Election Board shall publish notice of the proposed amendment in a newspaper of general circulation in each Oklahoma county in the geographical area of the Choctaw Nation, on the Nation's website, and in any other format or medium the Election Board determines to be necessary to adequately inform the qualified voters of the Choctaw Nation.

E. The notice shall include the following:

1. A statement that a proposed amendment to the Choctaw Constitution has been received and a sufficient number of signatures has been certified by the Election Board to qualify the proposed amendment for consideration at an election for that purpose;

2. The ballot title proposed by the General Counsel; and

3. A statement that objections to the petition, objections to signatures, and objections to the ballot title must be filed with the Election Board by a date certain which shall be fifteen (15) business days after the certification of the number of signatures by the Election Board.

Section 11. Objections to Petition, Validity of Signatures, Sufficiency of Number of Signatures

A. An objection to the petition, an objection to the sufficiency of the number of signatures certified, an objection to the ballot title, and any other objection under this Code shall be filed with the Election Board and a copy served on a person shown on the petition as proposing the amendment in the manner provided for service of process when initiating a civil action.

B. Within five (5) business days after the filing of an objection, the Election Board shall set a date, time, and place for hearing. The hearing shall be held within fifteen (15) business days after the filing of an objection, but may be continued as the Election Board directs. At the hearing, the Election Board shall

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consider evidence and argument of interested parties concerning the sufficiency of the petition, the signatures, the ballot title, and any other objection under this Code. The Election Board shall make its determinations within ten (10) business days after the conclusion of the hearing.

C. Any party aggrieved by a determination of the Election Board under this section may appeal to the Tribal Court within ten (10) business days after said determination. A copy of the appeal shall be filed with the Election Board. The Election Board shall transmit the record of the proceedings to the Tribal Court within ten (10) business days. The Tribal Court shall decide the appeal on the record presented to the Election Board within twenty (20) business days. Upon decision of the appeal, the Tribal Court shall notify the parties and the Election Board.

D. If the proposed amendment is determined to be sufficient for inclusion on a ballot, the Election Board shall proceed to place the question on the next general election at least sixty (60) days after said determination.

Section 12. Publication of Proposed Amendments; Effect of Failure to Publish

A. The Election Board shall publish the proposed amendment at least thirty (30) days but not more than sixty (60) days prior to the election in a newspaper of general circulation in each Oklahoma county in the geographical area of the Choctaw Nation, on the Nation's website, and in any other format or medium the Election Board determines to be necessary to adequately inform the qualified voters of the Choctaw Nation.

B. The failure to publish the proposed amendment as required by subsection A of this section shall not invalidate the amendment or the results of the election.

Section 13. Time for and Conduct of Election; Canvass of Returns; and Substantial Compliance

A. The Election Board shall submit to the people for their adoption or rejection any amendment to the Constitution proposed by petition or by Tribal Council Bill and approved for submission pursuant to this Code at the next general election to be held pursuant to the Chief and Tribal Council Election Ordinance.

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B. The Election Board shall conduct the election on a proposed amendment in substantial compliance with this Code, with the requirements of the Chief and Tribal Council Election Ordinance, and with the laws of the Choctaw Nation.

Section 14. Conflicting Proposals for Amendment at One Election

If two or more amendments are adopted at the same election, the amendment receiving the most affirmative votes shall, to the extent of any conflict, prevail over any other amendment.

Section 15. Distribution of Information on Proposed Amendments

The Election Board may prepare and distribute to the public and press the following:

1. Information concerning the procedures for amending the Choctaw Constitution; and
2. Information concerning a proposed amendment; however, the information shall be limited to explaining the amendment and may not advocate for or against the amendment.

Section 16. Mandamus and Prohibition

A. The prerogative writs of prohibition and mandamus shall be available to any qualified voter to prevent violations of, or to require compliance with, the provisions of this Code.

B. The District Court of the Choctaw Nation shall have jurisdiction to issue writs pursuant to this section.

Section 17. Preservation and Use of Petitions and Signatures

A. The bound petitions and signature sheets shall be preserved in original condition for five (5) years. The bound petitions and signature sheets shall be preserved in either the original paper form or in a record or records which are retrievable in perceivable form for ten (10) years.

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B. Any person requesting a copy of a petition or signature shall agree in writing that the information obtained will not be used for any commercial or political purpose other than as allowed by this Code for the proposed amendment, and that all copies of the petition or signature will be destroyed within thirty (30) days after the conclusion of proceedings on the proposed amendment. The Election Board shall charge Twenty-five Cents (\$0.25) per page for copying.

C. After the conclusion of proceedings under this Code for the proposed amendment, signatures shall not be copied for any purpose without the approval of the Election Board.

Section 18. Effective Date of Amendment

An amendment approved at an election in conformity with Article XVIII, § 2 of the Constitution shall become effective upon certification of the election results by the Secretary of the Interior.

Section 19. Penalties for Violations of this Code

A. It shall be a felony for any person to knowingly sign a petition:

1. With a name other than his or her own;
2. For the same measure more than once at the same election; or
3. When not a qualified voter.

B. It shall be a felony for any person to knowingly and intentionally destroy a petition or any part thereof to prevent submission of the petition for signature or for filing with the Election Board.

C. It shall be a felony for any person to knowingly make a petition or signature sheet for submission for signature or for filing without the approval of the Election Board.

D. It shall be a felony for any person to knowingly solicit or obtain a signature on a signature sheet prior to approval of the petition and signature sheet by the Election Board.

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E. It shall be a felony for any person to aid or abet another in the violation of any provision of this section.

F. It shall be a felony for any person who is not a qualified voter of the Choctaw Nation to circulate any petition to amend the Constitution of the Choctaw Nation.

G. It shall be a felony to use anything of value belonging to the Choctaw Nation to support or oppose a proposed amendment to the Choctaw Constitution, unless authorized by this Code.

H. Violation of this section shall be punishable by a fine not exceeding One Thousand Dollars (\$1,000.00).