



RECONSIDERATION OF NCA 11-058 AFTER VETO

I, the undersigned, certify that the foregoing "Reconsideration of NCA 11-058" is a true extract from the March 26, 2011, Regular Session Journal of the Muscogee (Creek) National Council.

AND THAT, NCA 11-058 entitled, A LAW OF THE MUSCOGEE (CREEK) NATION CREATING A NEW CHAPTER UNDER MCNCA TITLE 30 ENTITLED BUDGET AND FINANCE AND REPEALING MCNCA TITLE 30 §§4-102 AND 7-109 was presented to the National Council acting as a Council as a Whole and was approved in Regular Session on March 26, 2011, National Council by a vote of 17 in favor, 6 against, 0 abstention;

AND THAT, Said legislation was returned as a Veto with objections by the Principal Chief on April 8, 2011 and said objections have been entered at large in the Journal of the Muscogee (Creek) National Council;

AND THAT, The National Council taking action to reconsider the Bill to let the veto stand at the Quarterly Session on April 30, 2011;

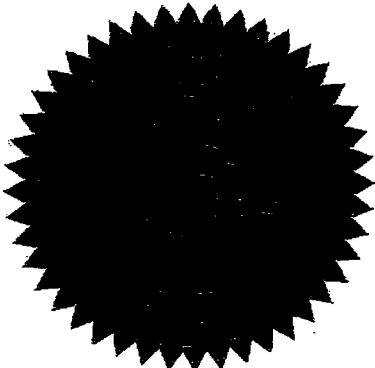
AND THAT, The record of vote reflects there were Nineteen present with a vote of 17 in favor, 1 against;

THEREFORE, BE IT KNOWN, under Article VI., Section 6. (a) of the Muscogee (Creek) Nation Constitution, NCA 11-058 is hereby recorded as a "VETO" on this 2nd day of May 2011.

ShaRee Edmondson, Acting Recording Secretary
National Council
Muscogee (Creek) Nation

CERTIFICATION OF APPROVAL

IN WITNESS WHEREOF, I, the Presiding Officer of the Muscogee (Creek) National Council have hereto attached my signature this 2nd day of May 2011.



Roger Barnett, Speaker
National Council
Muscogee (Creek) Nation



Muscogee (Creek) Nation

PRINCIPAL CHIEF

A.D. Ellis

SECOND CHIEF

Alfred Berryhill

OFFICE OF THE PRINCIPAL CHIEF

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April 8, 2011

Muscogee (Creek) National Council
Honorable Speaker Barnett

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National Council Office

Dear Speaker Barnett:

I am returning NCA 11-058 herewith:

A MESSAGE OF THE PRINCIPAL CHIEF RETURNING NCA 11-058 TO THE NATIONAL COUNCIL AS A VETO WITH OBJECTIONS

In accordance with the Constitution of the Muscogee (Creek) Nation, I, A. D. Ellis, Principal Chief of the Muscogee (Creek) Nation, do hereby return NCA 11-058, entitled **"A LAW OF THE MUSCOGEE (CREEK) NATION CREATING A NEW CHAPTER UNDER MCNCA TITLE 30 ENTITLED BUDGET AND FINANCE AND REPEALING MCNCA TITLE 30 §§ 4-102 AND 7-109"** as a VETO with the following objections:

OBJECTION ONE: The proposed NCA 11-058 is in violation of Article V, Section 1 of the Constitution of the Muscogee (Creek) Nation which vests the Executive power in the Office of the Principal Chief. In general, NCA 11-058 violates the principle of separation of powers, since it attempts to improperly inject the opinions and influence of the National Council into the functioning of the Executive Branch, in particular the Controller. In addition, NCA 11-058 violates the principle of separation of powers, since it attempts to improperly remove powers from, and limit the powers of, the Executive Branch.

OBJECTION TWO: The proposed NCA 11-058 is additionally in violation of Article V, Section 2 of the Constitution of the Muscogee (Creek) Nation which provides that the Principal Chief, not the National Council, shall "create and organize the Executive Office of the Principal Chief." The proposed NCA 11-058 has been passed unilaterally by the National Council, with no collaboration or consultation of any sort with the Principal Chief. As such, proposed NCA 11-058 is an unconstitutional infringement on the powers of the Principal Chief and the Executive Branch, by the National Council.

OBJECTION THREE: The provisions of NCA 11-058 are vague, unwieldy and improperly prevent the Executive Branch from acting in the best interests of the citizens of the Muscogee (Creek) Nation. By way of illustration, and not by way of limitation, the interest of the Nation will best be served by allowing continued oversight of budgets by the Controller who has the requisite expertise for this function. The creation of an additional Financial Officer in the legislative branch is an unnecessary and duplicative function which will add to tribal bureaucracy and increase the costs and expenses of tribal government in a time of fiscal uncertainty. In any event, no restructuring of the Executive Branch is proper or Constitutional without the involvement of the Principal Chief pursuant to Article V, Section 2 of the Constitution of the Muscogee (Creek) Nation.

OBJECTION FOUR: The Constitution of the Muscogee (Creek) Nation and the judicial decisions of the Muscogee (Creek) Nation Supreme Court support the proposition that the powers of the National Council are limited to passing laws, appropriating money and legitimate advice and consent. By way of illustration and not by way of limitation, the provisions of NCA 11-058 exceed the boundaries of legitimate legislation by unnecessarily extending the normal advice and consent, as envisioned by the Constitution of the Muscogee (Creek) Nation to an unnecessary, unauthorized and unconstitutional reorganization of tribal government. NCA 11-058 is the latest example of the National Council's ongoing attempts to usurp the legitimate authority of the Muscogee (Creek) Nation Executive Branch and to ignore the controlling judicial decisions of the Muscogee (Creek) Nation Supreme Court.

OBJECTION FIVE: The Principal Chief believes that the amendments contained in NCA 11-058 are unnecessary and are not in the best interests of the Muscogee (Creek) Nation. They represent an unwarranted and unwise intrusion of the National Council into the workings of the Executive Branch.


OBJECTION SIX: The Principal Chief believes that the amendments contained in NCA 11-058 are not necessary in that the current statutes of the Muscogee (Creek) Nation provide for sufficient appropriate advice and consent authority of the National Council and therefore do not require any amendments. Further to the extent any amendments are warranted, they must be initiated by the Principal Chief pursuant to Article V, Section 2 of the Constitution of the Muscogee (Creek) Nation.

OBJECTION SEVEN: The Principal Chief believes that the amendments and repeals contained in NCA 11-058 are inconsistent with the current and best budget practices of the Muscogee (Creek) Nation and further constitute bad financial policy decisions on the part of the Legislative Branch.

OBJECTION EIGHT: As a general matter, the Principal Chief owes a duty to the citizens of the Muscogee (Creek) Nation to oversee the tribal budget and the tribal government in a fiscally prudent manner according to sound financial principles. The proposed legislation allows excessive special interest and political interference in general budgetary matters and therefore is not in the best interests of the citizens of the Muscogee (Creek) Nation. Further, potential inefficiencies in the provisions of the proposed NCA 11-058 would constitute a wasteful and unnecessary use of scarce tribal revenues and resources. In particular, if the provisions of proposed NCA 11-058 are adopted, there will be no separate and independent oversight of National Council spending on its members. Therefore, the Principal Chief is additionally compelled to veto NCA 11-058 as a matter of general fiscal responsibility in order to protect the Tribal Treasury for the benefit of all of the citizens of the Muscogee (Creek) Nation.

For the reasons outlined above, NCA 11-058 is hereby returned as a **VETO**.

Sincerely,



A. D. Ellis, Principal Chief
Muscogee (Creek) Nation

DATED: April 8, 2011

ADE/vb

VETO



NCA 11-058

CLASSIFICATION: #30 NATIONAL COUNCIL/LEGISLATIVE BRANCH

A LAW OF THE MUSCOGEE (CREEK) NATION CREATING A NEW CHAPTER UNDER MCNCA TITLE 30 ENTITLED BUDGET AND FINANCE AND REPEALING MCNCA TITLE 30 §§4-102 AND 7-109

Be it Enacted by the National Council of the Muscogee (Creek) Nation:

SECTION ONE. FINDINGS. The National Council finds that:

- A. The National Council is a separate branch of government with separate needs than the other branches of government.
- B. The Executive Branch has been withholding monies that belong to the National Council, which have been approved through the budget process.
- C. The National Council has been subjected to the undue political interference of the Executive Branch by improperly withholding payments when vouchers have been presented to the Controller for payment.
- D. Though the Executive Branch Attorneys are being paid, the Controller has recently refused to pay the Attorneys for the Legislative Branch even though services have been rendered and payment is due for those services.
- E. According to well-established law, "It is not a Constitutional function of the Executive Branch to approve or question the financial activities of another branch of government, but only to perform the ministerial duty required in processing and paying appropriated budgeted claims." *Childers v. Bryant, et al.*
- F. In addition, the establishment of the Controller's Office was created and established as authority with attendant powers subordinate to the Principal Chief and the National Council under the terms of MCNCA Title 37 §2-702.
- G. Specifically, the law requires the Controller to pay any vouchers presented to him by the Principal Chief or the Speaker when funds are appropriated by laws of the Creek Nation according to MCNCA Title 37 §2-713.

H. Both the Judicial Branch and the Executive Branch have taken the position that as a tripartite government all three branches are separate but equal and should be in control of their own finances.

I. Both the Executive Branch and the Judicial Branch maintain their own finances and accounting without any oversight from another Branch of Government.

J. Because the Controller has been directed to not adhere to the laws of the Nation, it has become necessary to transfer all accounting and finance to the Legislative Branch.

SECTION TWO. PURPOSE. The purpose of this Act is to move the finances from the Controller to the National Council.

SECTION THREE. NEW LAW. The following new law shall be codified in Title 30 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of said new law and its inclusion in pocket parts for the Code of Laws of the Muscogee (Creek) Nation, the *Codification Committee is hereby authorized*: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated in this law in order to be consistent with the format in the Code of Laws published in 2003 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws; and (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following new law:

CHAPTER 9. BUDGET & FINANCE

§9-101. General Provisions

A. The Finance Officer of the Legislative Branch shall maintain the budget and all monies of the Legislative Branch.

B. The Finance Officer of the Legislative Branch, and National Council Speaker, Second Speaker and Sergeant of Arms shall have the authority to sign checks.

C. Two authorized signatures shall be required on all checks.

§9-102. Preparation of budget

A. The Finance Officer shall be responsible for the annual preparation of the National Council budget with input from the Speaker.

B. The Business & Government Committee shall approve the budget before submission to the Principal Chief for the preparation of the annual comprehensive annual budget, which shall be forwarded to the National Council for final approval as required by the Muscogee (Creek) Nation Constitution.

§9-103. Budget Modifications

All modifications to line item appropriations shall be made in writing and approved by the Speaker before taking effect.

§9-104. Accounting Policies and Procedures

The Legislative Branch shall maintain financial books and records in accordance with accounting principles generally accepted in the United States.

§9-105. Financial Statements

Monthly financial statements shall be prepared no later than the 15th day of the following month.

§9-106. Federal Regulations

The Legislative Branch shall follow OMB Circular A-87, A-102, and the Common Rule Administration Requirements currently in effect as they apply to Indian Tribal Governments.

§9-107. Travel

A. National Council Representatives and Legislative Branch Staff travel requests must be made in writing and approved by the Speaker.

B. The Finance Officer or designee shall be responsible for the preparation of all National Council Representatives and Legislative Branch Staff travel documentation, thus ensuring all federal government and Muscogee (Creek) Nation travel regulations in effect are complied with and General Accounting Policies and Procedures are strictly adhered to and followed.

§9-108. Expense Reimbursements

A. National Council Representatives and Legislative Branch Staff shall receive mileage while on business in the amount per mile set out by Federal Travel Regulations for government employees.

B. Upon completion of Reimbursement Voucher with proper documentation, National Council Representatives and Legislative Branch Staff shall receive reimbursement for expenses associated with performing services and duties of the Legislative Branch once approved by the Speaker.

§9-109. Expenditures

Expenditures shall follow the usual accounting procedures as set out by the laws of this Nation.

§9-110. Annual audit

The financial statements of the Legislative Branch shall be included in the annual audit of the Muscogee (Creek) Nation.

§9-110. Management procedures

All contracts and funds shall be managed according to Generally Accepted Accounting Procedures (GAAP).

SECTION FOUR. REPEALER. MCNCA Title 30 §§4-102, 7-109 and any other laws inconsistent with this Act are hereby repealed and shall have no force and effect from this date forward.

SECTION FIVE. AMENDMENT. MCNCA Title 37, §2-717., (The Controller Act) is hereby amended to read as follows:

G. The provisions of this section shall also not apply to funds or accounts of the Legislative Branch, as it is a separate branch of government.


SECTION SIX. TRANSFER OF FUNDS. The Controller shall transfer all funds that have been appropriated to the National Council/Legislative Branch budgets to one or more Qualified Accounts determined by the National Council in accordance with the instructions of the Legislative Branch Finance Officer. The Controller shall prepare, execute and deliver any and all documents, forms, account agreements or other instruments that may be required to complete the transfer. Each bank account shall be promptly reconciled upon receipt and the books of account adjusted accordingly.

SECTION SEVEN. BENEFITS. Legislative Branch Staff benefits, including accrued annual leave, accrued sick leave, insurance and retirement benefits shall remain intact under the Muscogee (Creek) Nation.

SECTION EIGHT. EFFECTIVE DATE. This Act shall become effective immediately upon proper approval and execution in accordance with the requirements of the Muscogee (Creek) Nation Constitution.

ENACTED by the Muscogee (Creek) National Council on this 26th day of March 2011.


IN WITNESS WHEREOF, the Speaker of the Muscogee (Creek) National Council has hereto attached his signature.



Roger Barnett, Speaker
National Council
Muscogee (Creek) Nation

CERTIFICATION

I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council comprised of twenty-six members with **Twenty-Four** members attending this meeting on the **26th day of March, 2011** and that the above is in conformity with the provisions therein adopted by a vote of **17** in favor, **6** against, **0** abstentions, and that said Law has not been rescinded or amended in any way and the above is the signature of the Speaker of the National Council.



ShaRee Edmondson, Acting Recording Secretary
Muscogee (Creek) National Council

APPROVAL

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature this _____ day of _____, 2011, to the above Law, **NCA 11-058** authorizing it to become a Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.

A. D. Ellis, Principal Chief
Muscogee (Creek) Nation