



NCA 14-026

CLASSIFICATION: #16. EXECUTIVE BRANCH

A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 16, CHAPTER 9, TRIBAL EMPLOYMENT RIGHTS OFFICE ACT, §9-103, §9-105, §9-129, §9-130, AND §9-135

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

SECTION ONE. AMENDMENT. These amendments shall be codified in Title 16, Chapter 9, Subchapter 1 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification said amendment and its inclusion in pocket parts of 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 consistent with the format in the Code of Laws published in 2010 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 amendment, without further National Council approval:

SECTION TWO. AMENDMENT. MCNCA Title 16, §9-103, is hereby amended to read as follows:

§ 9-103. Definitions

A. "Administration" shall mean the Executive Branch of the Muscogee (Creek) Nation as provided in the Muscogee (Creek) Nation Constitution.

B. "Muscogee (Creek) Nation Indian Country" shall mean all land held in trust or subject to restrictions by the United States for the Muscogee (Creek) Nation, or land within the original boundaries of the Muscogee (Creek) Nation and held in trust or subject to restrictions for an individual, and all land held by the Muscogee (Creek) Nation or its entities, in fee simple, and any other land within the jurisdiction of the Muscogee (Creek) Nation which land comes within the definition of "Indian Country" as defined in 18 U.S.C. § 1151.

C. "Core crew" shall mean a member of a contractor or subcontractor's crew who is a regular permanent employee that is or has been on the employer's or subcontractor's payroll for a period of one year continuously, or is an owner of the firm.

D. "Covered Contract" means any contract between any department or office of the Nation, including all commercial enterprises and independent agencies, and any Employer for goods or services in an amount exceeding \$5,000.

D.E. "Debarment List" shall be a list of contractors which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations, or laws.

E.F. "EEOC" shall mean the Equal Employment Opportunity Commission of the United States.

F.G. "Employer" shall mean the Nation, Tribal Government, all commercial and enterprise entities, all independent agencies, and any other person, company, contractor, subcontractor or other entity located in or on Muscogee (Creek) Nation Indian Country or engaged in work with the Muscogee (Creek) Nation, its entities or wholly-owned corporations who employs at least one individual.

G.H. An employer is "engaged in work" if, during any portion of a business enterprise or specific project, contract or subcontract, the employer performs work under contract with the Muscogee (Creek) Nation, its entities and wholly-owned corporations and/or the work is performed on Muscogee (Creek) Nation Indian Country.

H.I. "Indian" shall mean a person who is an enrolled Citizen of a federally recognized Indian tribe.

I.J. "Indian organization" shall mean the governing body of any Indian Tribe or entity established or recognized by such governing body.

J.K. "Indian-owned economic enterprise" shall mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent

(51%) of the enterprise, and the ownership shall encompass active operations, control, and manage the enterprise.

K.L. "Indian Tribe" means an Indian Tribe, pueblo, band, Nation, or other organized group or community, including any Alaska Native Claims Settlement Act (85 Stat. 688,43 U.S.C. § 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

L.M. "Locally Owned" means a business that has its headquarters and majority of its employees residing within the jurisdictional boundaries of the Muscogee (Creek) Nation.

M.N. An employer is "located in or on the Muscogee (Creek) Nation" if, during any portion of a business enterprise or specific project, contract or subcontract, the employer maintains a temporary or permanent office or facility on or performs work on Muscogee (Creek) Nation Indian Country.

N.O. "Major Muscogee (Creek) Employer" shall mean a business either Indian Owned or not that employs at least fifty (50) Muscogee Citizens as either part of the core crew or project crew, or has at least 75% of its entire workforce comprised of Muscogee Citizens as certified by the TERO. A business may be certified as Indian Owned, major Muscogee Employer, or both.

O.P. "Nation" shall mean the Muscogee (Creek) Nation.

P.Q. "Tribal Citizen" or "Citizen" shall mean any person who is a duly enrolled citizen of the Muscogee (Creek) Nation or other Federally Recognized Tribe, unless the context clearly indicates otherwise.

Q.R. "TERO" shall mean the Tribal Employment Rights Office.

R.S. "TERO Staff" shall mean employees hired by the TERO Office to carry out the functions of this Act.

SECTION THREE. AMENDMENT. MCNCA Title 16, §9-105, is hereby amended to read as follows:

§ 9-105. Powers and Duties

The TERO shall have the authority to carry out the day-to-day operations of the Office, and to enforce this ordinance. The TERO shall have the following powers and duties:

A. To operate consistent with the provisions of this Title and to develop rules and regulations governing activities of the TERO. The TERO may adopt EEOC guidelines or may adopt other requirements to eliminate employment barriers unique to Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes in Indian Country.

B. To obtain funding from federal, state and other sources to supplement National Council appropriations as delegated by the Administration.

C. To negotiate cooperative agreements with federal, state, local, and other authorities on matters dealing with employment rights and the TERO activities, subject to National Council Approval, and to operate pursuant to finalized cooperative agreements and/or memoranda of understanding or agreements.

D. To use the information, facilities, personnel, and other resources of federal, state, and local agencies, as well as any and all Muscogee (Creek) Nation departments to accomplish the goals of this Act.

E. To establish numerical hiring goals and timetables specifying the minimum number of Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes an employer shall hire by craft or skill level.

F. To require employer to establish or participate in job training programs as the TERO deems necessary to increase the pool of Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes eligible for employment.

G. To establish and administer a tribal job bank and require employers to use it.

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- H. To prohibit employers from using job-qualifications criteria or personnel requirements that may bar Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes from employment unless such criteria or requirements are required by business necessity.
- I. To engage in the process of certifying businesses as "Indian-owned economic enterprises" with documented evidence of at least 51% ownership, control and management of the business to determine whether business may be given Indian preference.
- J. To determine and assess an application fee to businesses seeking certification. Upon certification, to determine and assess a certification fee to be paid by all businesses determined to be "Indian owned economic enterprises." Also, to annually determine and assess a re-certification fee to those enterprises.
- K. To direct inspections of regulated sites and determine compliance with rules, regulations, and/or contract requirements.
- L. To facilitate agreements with unions to insure union compliance with this Title.
- M. To require employers to give preference to Indian-owned economic enterprises in the award of contracts and subcontracts.
- N. To establish counseling programs to assist Muscogee (Creek) Citizens in obtaining and retaining employment.
- O. To require employers to submit reports and take all actions deemed necessary by the TERO for the fair and vigorous implementation of this Act.
- P. To enter into cooperative agreements, subject to National Council Approval, with employment rights agencies to eliminate adverse discrimination against Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes.
- Q. To take such actions as are necessary to achieve the purposes and objectives of the Muscogee (Creek) Nation employment rights program established in this Title.

R. To publish a listing of certified "Indian-owned economic enterprises" on a monthly basis.

S. To review and propose changes to this Title and related regulations as necessary.

T. To hold hearings in accordance with this chapter.

U. To register and keep file of complaints concerning certified, Indian-owned economic enterprises and with individuals and companies doing business with the Muscogee (Creek) Nation.

V. To assess an Employment Rights Fee of one and a half percent (1.5%) on all Covered Contracts as defined in § 9-103.D. This fee shall be paid in full before any work under a Covered Contract may commence, unless other arrangements for payment are made with the TERO Director in writing. Failure of an Employer to make the Employment Rights Fee payment by the required date may result in the assessment of the penalties listed in § 9-130.A. All fees collected pursuant to this section shall be deposited in accordance with § 9-120.

W. To organize and coordinate a Committee to approve applicants to be certified by the TERO. The Committee shall consist of the Secretary of the Nation, a Business Development Specialist from the Nation's Small Business Development Center, one member from the Business Finance & Justice Committee and one member from the Land, Natural Resources & Cultural Preservation Committee of the National Council, the Chief of Staff, the Secretary of Education, Employment and Training, the Controller, the CEO of MNBE, a Designee from the Tribal Construction Department, and an Assistant Attorney General of the Muscogee (Creek) Nation.

X. To issue and assess fees for Work Permits which shall be obtained for all non-Indian employees of a covered employer.

1. Any employer, as defined in this act shall be required to pay a fee of not less than Twenty-Five Dollars (\$25.00) per employee per award per day for non-Indian employees hired for the project that are in addition to the core crew.

2. Each such employer shall be required to submit a core crew list to the TERO
3. Once the core crew list is submitted the TERO will confirm the essential employees the vendor has listed.
4. If the TERO has identified Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes that can be used for non-Indian Employees it shall require the employer to place the qualified Tribal Citizen.
5. The TERO is also authorized to administer other fees and penalties as provided in this act.

SECTION FOUR. AMENDMENT. MCNCA Title 16, §9-129, is hereby amended to read as follows:

§ 9-129. Appeals from decisions of TERO Appeals Board

A. Any party to a hearing shall have the right to appeal any decision of the Appeals Board to the District Trial Court of the Muscogee (Creek) Nation.

B. Standard Review. The District Trial Court shall review decisions of the TERO Appeals Board without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the TERO Appeals Board, not shown in the record, testimony thereon may be taken by the District Trial Court. The District Trial Court, upon request, shall hear oral arguments and receive written briefs.

C. Appeals of the decisions of the District Trial Court may be taken in the Supreme Court under the rules and procedures governing civil appeals before that Supreme Court.

SECTION FIVE. AMENDMENT. MCNCA Title 16, §9-130, is hereby amended to read as follows:

§ 9-130. Penalties for Violations of chapter and rules, regulations or orders of the ~~TERO or Employee Appeals Board~~

A. Any employer, contractor, subcontractor or union who violates this Title or rules, regulations or orders of the TERO shall be subject to penalties for the violation, including, but not limited to:

1. Denial of the right to commence or continue business within the jurisdiction of the Muscogee (Creek) Nation.
2. Suspension of operations within the jurisdiction of the Muscogee (Creek) Nation.
3. Payment of back pay and damages to compensate any injured party.
4. An Order to summarily remove employees hired in violation of this Title or rules, regulations or orders of the TERO.
5. Imposition of monetary civil penalties.
6. Prohibition from engaging in future operations within the Muscogee (Creek) Nation boundaries.
7. An order requiring employment, promotion, and training of Muscogee (Creek) Citizens and Citizens of other Federally Recognized Tribes injured in the violation.
8. An order requiring changes in procedures and policies necessary to eliminate the violation.
9. An order making any other provision deemed necessary to alleviate, eliminate, or compensate for any violation.

B. The Maximum monetary penalty which may be imposed is Five Thousand Dollars (\$5,000.00) for each violation. The penalties will be graduated as follows:

1. The first violation will incur a fine of Two Hundred Dollars (\$200.00).
2. The second violation will incur a fine of One Thousand Dollars (\$1,000.00).
3. The third violation will incur a fine of Five Thousand Dollars (\$5,000.00).

C. Each day during which a violation exists shall constitute a separate violation.

D. Monetary penalties assessed by TERO may be doubled if it is shown that the violation occurred egregiously or with reckless or wanton behavior.

E. Attorney Fees and Cost of pursuing or defending an action of the TERO may be awarded to the prevailing party.

SECTION SIX. AMENDMENT. MCNCA Title 16, §9-135, is hereby amended to read as follows:

§ 9-135. TERO Administrative Appeals Board

The Administrative TERO Appeals Board of the Muscogee (Creek) Nation shall consist of the Attorney General, a member of the National Council, Second Chief, and the Secretary of the Interior, and the Secretary of Housing.

SECTION SEVEN. EFFECTIVE DATE. These Amendments 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 22nd day of February, 2014.

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



Thomas Yahola, 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 Sixteen members with Fifteen members attending this meeting on the 22nd day of February, 2014 and that the above is in conformity with the provisions therein adopted by a vote of 14 in favor, 0 against, 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.



Kristie A. Sewell, Recording Secretary
Muscogee (Creek) National Council

APPROVAL

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature on this 26th day of Feb, 2014 to the above Law, **NCA 14-026** authorizing it to become a Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.



George Tiger, Principal Chief
Muscogee (Creek) Nation

