



RECONSIDERATION OF NCA 11-156 AFTER VETO

I, the undersigned, certify that the foregoing "Reconsideration of NCA 11-156 After Veto" is a true extract from the, September 24, 2011, Regular Session, Journal of the Muscogee (Creek) National Council.


AND THAT, NCA 11-156 entitled, A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 19, CHAPTER 2, ENTITLED, "Organization of Election Board and Precinct Election Committees" was presented to the National Council and was approved in Regular Session on September 24, 2011 by a vote of 22 in favor, 0 against, 0 abstention.

AND THAT, Said legislation was returned as a Veto with objections by the Principal Chief on, October 7, 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 reconsider the Bill to **OVER-RIDE THE VETO** at the Quarterly Session on October 29, 2011, in accordance with the Constitution, Article VI, Section 6(a), requires a (2/3) vote of the full membership, which consists of Twenty-six members;

AND THAT, The record of vote reflects there were Twenty-four present with a vote of 21 in favor, 3 against;


THEREFORE, BE IT KNOWN, under Article VI., Section 6. (a) of the Muscogee (Creek) Nation Constitution, NCA 11-156 is hereby recorded as a "VETO OVER-RIDE" on this 29TH day of October 2011.



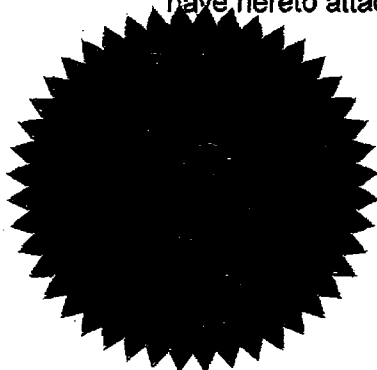
Terry A. Fish, Recording Secretary
National Council
Muscogee (Creek) Nation

CERTIFICATION OF APPROVAL

IN WITNESS WHEREOF, I, the Presiding Officer of the Muscogee (Creek) National Council have hereto attached my signature this 31st day of October 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

PO Box 580

(HWY 75, Loop 56)

Okmulgee, OK 74447

918.732.7600

October 7, 2011

Muscogee (Creek) National Council
Honorable Speaker Barnett

Dear Speaker Barnett:

I am returning NCA 11-156 herewith:

RECEIVED

OCT 07 2011

National Council Office

A MESSAGE OF THE PRINCIPAL CHIEF RETURNING NCA 11-156 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 11-156, entitled "**A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 19, CHAPTER 2 ENTITLED 'Organization of Election Board and Precinct Election Committee'**" as a VETO with the following objections:

OBJECTION ONE: The proposed NCA 11-156 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 11-156 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 Election Board.

OBJECTION TWO: The proposed NCA 11-156 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 11-156 has been passed unilaterally by the National Council, with no collaboration or consultation of any sort with the Principal Chief. As such, proposed NCA 11-156 is an unconstitutional infringement on the powers of the Principal Chief and the Executive Branch, by the National Council.

OBJECTION THREE: The proposed NCA 11-156 conflicts with the current Title 16, Chapter 3 of the Muscogee (Creek) Nation Code, which generally provides that the Attorney General of the Muscogee (Creek) Nation shall provide legal representation in "all legal matters in which the Muscogee (Creek) Nation Government has an interest." Title 16, § 3-103. The provisions of proposed NCA 11-156 regarding the appointment of separate counsel for the Election Board conflict with the current statutes, are unnecessary in that the current statutes have worked well, and, among other things, would increase the overall costs of tribal government by creating a duplication of services.

OBJECTION FOUR: The provisions of NCA 11-156 are vague, unwieldy and improperly prevent the Executive Branch from acting in the best interests of the citizens of the Muscogee (Creek) Nation. No restructuring of the duties and authority 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 FIVE: 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 11-156 exceed the boundaries of legitimate legislation by unnecessarily extending the normal opinions of the Council into the workings of the Executive Branch, in particular the Election Board. NCA 11-156 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 SIX: The Principal Chief believes that the amendments contained in NCA 11-156 are unnecessary and unwieldy, 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 Election Board. The National Council has not conferred or consulted with either the Principal Chief or the members of the Supreme Court with regard to the passage of this legislation.

OBJECTION SEVEN: The Principal Chief believes that the amendments contained in NCA 11-156 are not necessary in that the current statutes of the Muscogee (Creek) Nation provide for sufficient means for the Election Board to respond to issues which may arise from National elections in the future, 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.

For the reasons outlined above, NCA 11-156 is hereby returned as a **VETO**.

Sincerely,



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

ADE/vb

DATED: October 7, 2011

VETO OVERRIDE



NCA 11-156

CLASSIFICATION: #19. ELECTIONS

A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 19, CHAPTER 2, ENTITLED, "Organization of Election Board and Precinct Election Committees"

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

SECTION ONE. FINDINGS. The National Council finds that:

A. The Election Board, an Independent Agency of the Muscogee (Creek) Nation, is charged with the responsibility of conducting all regular and special elections.

B. One of the main duties of the Election Board is to promulgate, repeal or modify rules or regulations to ensure the integrity of an election, which is of utmost importance to the Citizens of the Muscogee (Creek) Nation.

C. As an Independent Agency, the Election Board should be entitled to retain outside legal counsel to assist them in carrying out their duties. Other Independent Agencies/Entities of the Nation, such as, the Tribal Trade and Commerce Authority Board, Muscogee Nation Business Enterprise, Muscogee Nation Board of Regents, and the Gaming Commissioner of the Office of Public Gaming have the authority to hire legal counsel.

SECTION TWO. AMENDMENT. This amendment shall be codified in Title 19, Chapter 2 §§104 and 105, of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of 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 THREE. AMENDMENT. MCNCA Title 19 §§ 104 and 105 are hereby amended to read as follows:

§2-104. ~~Meetings/Chairperson~~ Election Board duties

The Election Board shall elect from its membership a Chairperson whose term of office shall be for 2 (two) years. The Chair shall preside over all Board meetings. The Board shall adopt a schedule of meetings, attendance requirements and methods of recording minutes of all Election Board business.

~~The Election Board shall perform such duties as may be prescribed by law.~~

§2-105. Chairman dDuties

A. Chairperson Duties. The Chairman~~person~~ of the Election Board shall be the administrative officer of the Election Board and,

- ~~1.~~(a) shall have general supervisory authority;
- ~~2.~~(b) shall have the authority to assign and fix the duties of personnel as may be necessary to perform the duties of the Election Board;.

B. Election Board Duties. **The Election Board shall be charged with the responsibility of conducting all Muscogee (Creek) Nation elections and administering and enforcing the provisions of this Title. Duties shall include but are not limited to the following:**

- ~~1.~~(c) **The Election Board** may ~~shall~~ promulgate, repeal, or modify such rules or regulations as he or she deems necessary to facilitate and assist in achieving and maintaining uniformity in the application, operation and correctness, impartiality and efficiency in the administration of this ~~Title Revised Election Code~~; provided that such rules or regulations, to be binding and effective, must be consistent with this ~~Title Code~~ and must have been officially adopted by the Election Board;.
- ~~2.~~(d) **The Election Board** shall promote and encourage voter registration and voter participation in elections.
- ~~3.~~ **The Election Board may employ consultants, advisors, planners and other experts by written contract in accordance with Tribal and federal law. and employ outside legal counsel by written contract subject to National Council approval by Tribal Resolution.**

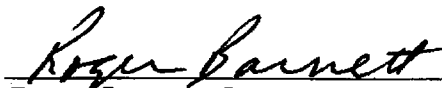
- 4.** The Election Board may employ legal counsel by written agreement subject to National Council approval by Tribal Law or Resolution. Legal Counsel shall be independent and free from political interference from any other entity or Department of the Nation and shall have charge over legal matters the Election Board designates through the approved agreement.
5. Requirements for approval of Legal Counsel's written agreement by National Council by Tribal Law or Resolution is hereby waived for Fiscal Year 2011 and Fiscal Year 2012, and the Election Board may hire legal counsel immediately provided there is no waiver of sovereign immunity to the Agreement.

SECTION FOUR. All laws which are inconsistent or conflict with this Act shall have no force and effect.

SECTION FIVE. 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 **24th** day of **September** **2011.**

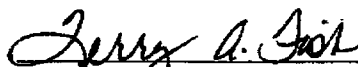
IN WITNESS WHEREOF, the Speaker of the Muscogee (Creek) National Council has hereto attached his signature.



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-three** members attending this meeting on the **24th day of September, 2011** and that the above is in conformity with the provisions therein adopted by a vote of **22** in favor, **0** against, **0** abstention, 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.



Terry A. Fish, Recording Secretary
Muscogee (Creek) National Council

VETO OVERRIDE



NCA 11-156

CLASSIFICATION: #19. ELECTIONS

A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 19, CHAPTER 2, ENTITLED, "Organization of Election Board and Precinct Election Committees"

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

SECTION ONE. FINDINGS. The National Council finds that:

A. The Election Board, an Independent Agency of the Muscogee (Creek) Nation, is charged with the responsibility of conducting all regular and special elections.

B. One of the main duties of the Election Board is to promulgate, repeal or modify rules or regulations to ensure the integrity of an election, which is of utmost importance to the Citizens of the Muscogee (Creek) Nation.

C. As an Independent Agency, the Election Board should be entitled to retain outside legal counsel to assist them in carrying out their duties. Other Independent Agencies/Entities of the Nation, such as, the Tribal Trade and Commerce Authority Board, Muscogee Nation Business Enterprise, Muscogee Nation Board of Regents, and the Gaming Commissioner of the Office of Public Gaming have the authority to hire legal counsel.

SECTION TWO. AMENDMENT. This amendment shall be codified in Title 19, Chapter 2 §§104 and 105, of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of 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 THREE. AMENDMENT. MCNCA Title 19 §§ 104 and 105 are hereby amended to read as follows:

§2-104. Meetings/Chairperson

The Election Board shall elect from its membership a Chairperson whose term of office shall be for 2 (two) years. The Chair shall preside over all Board meetings. The Board shall adopt a schedule of meetings, attendance requirements and methods of recording minutes of all Election Board business.

§2-105. Duties

A. **Chairperson Duties.** The Chairperson of the Election Board shall be the administrative officer of the Election Board and,

1. shall have general supervisory authority;
2. shall have the authority to assign and fix the duties of personnel as may be necessary to perform the duties of the Election Board.

B. **Election Board Duties.** The Election Board shall be charged with the responsibility of conducting all Muscogee (Creek) Nation elections and administering and enforcing the provisions of this Title. Duties shall include but are not limited to the following:

1. The Election Board shall promulgate, repeal, or modify such rules or regulations as deemed necessary to facilitate and assist in achieving and maintaining uniformity in the application, operation and correctness, impartiality and efficiency in the administration of this Title; provided that such rules or regulations, to be binding and effective, must be consistent with this Title and must have been officially adopted by the Election Board.
2. The Election Board shall promote and encourage voter registration and voter participation in elections.
3. The Election Board may employ consultants, advisors, planners and other experts by written contract in accordance with Tribal and federal law.
4. The Election Board may employ legal counsel by written agreement subject to National Council approval by Tribal Law or Resolution. Legal Counsel shall be independent and free from political

interference from any other entity or Department of the Nation and shall have charge over legal matters the Election Board designates through the approved agreement.


5. Requirements for approval of Legal Counsel's written agreement by National Council by Tribal Law or Resolution is hereby waived for Fiscal Year 2011 and Fiscal Year 2012, and the Election Board may hire legal counsel immediately provided there is no waiver of sovereign immunity to the Agreement.

SECTION FOUR. All laws which are inconsistent or conflict with this Act shall have no force and effect.

SECTION FIVE. 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 **24th** day of **September** **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-three** members attending this meeting on the **24th** day of **September, 2011** and that the above is in conformity with the provisions therein adopted by a vote of **22** in favor, **0** against, **0** abstention, 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.



Terry A. Fish, Recording Secretary
Muscogee (Creek) National Council

