



AMENDMENTS TO ELECTION LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: GTC	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	To update the Nation's election process to require the Election Board to ensure election polling equipment and ballots are secured and locked; to clarify when a member of the Election Board must recuse themselves from election activities; to remove term limits for members of the Election Board; to clarify the process for submitting referendum questions; to shorten the timeframe for holding an election; to eliminate provisional ballots for voters who do not show a photo ID or are ruled ineligible to vote; to clarify candidate eligibility in regard to positions on the Oneida Business Committee and Judiciary; to transfer hearing authority from the Election Board to the Judiciary; to update the process for conducting a caucus; to require notice of election and election results to be posted on the Nation's website; to shorten the voter registration form; to require a public test of the ballot machines prior to an election; to require separation of ballots between each polling place; to update the process for handling spoiled ballots; to reduce the number of Election Board members required to be at each polling site; to update the process for conducting a recount; and to clarify and update language throughout the law.		
Purpose	The purpose of the Election Law is to govern the procedures for the conduct of orderly elections of the Nation, including pre-election activities such as caucuses and nominations <i>[see 102.1-1]</i> .		
Affected Entities	All qualified voters of the Oneida Nation; all elected officials of the Nation; all candidates for elected office; Election Board; Trust Enrollment Department; Oneida Police Department; Oneida Records Management Department; Zoning Department; the Nation's Secretary; and the Business Committee Support Office.		
Affected Legislation	Election Law; Zoning and Shoreland Protection Law; Open Records and Open Meetings Law; Boards, Committees and Commissions Law; Garnishment Law; Per Capita Law.		
Enforcement/Due Process	Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election <i>[see 102.19-1]</i> . Candidates deemed ineligible for the ballot by Election Board may appeal to the Judiciary <i>[see 102.9-8]</i> . Election Board members who violate the Election Law may be subject to removal in accordance with the Removal Law, termination of appointment if appointed to fill a vacancy, or sanctions and penalties in accordance with laws of the Nation <i>[see 102.4-12]</i> . A member who is removed from the Election Board shall be ineligible to serve on the Election Board for three (3) years from the time he or she is removed from the Election Board <i>[see 102.4-12(a)(1)]</i> .		
Public Meeting	A public meeting was held on November 8 th , 2018.		
Fiscal Impact	See fiscal impact statement prepared by Finance Dept. in accordance with the Legislative Procedures Act.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The Election Law was adopted by General Tribal Council (GTC) in accordance with Article III, Section 5 of the Constitution. The Election law governs the procedures for the conduct of orderly elections of the Nation. The Election Law was most recently amended by GTC on April 23, 2017 to incorporate Constitutional Amendments into the law, including lowering the age of qualified voters from twenty-one (21) to eighteen (18).
- B. On November 12, 2017, GTC passed a motion to “accept the information presented and for the Oneida Business Committee to take this information and the discussion to identify amendments to the Election Law for presentation to and action by the General Tribal Council during calendar year 2018.” The meeting materials and discussion from this meeting included concerns regarding Election Board, recount process, recusal process and security of ballots and ballot machines. In addition to the discussion from this meeting, other potential revisions to the law have been identified by the Election Board, Trust Enrollment Department, and a review of relevant Judiciary decisions.
- C. As a result of this review, the following amendments to this law have been proposed by the Legislative Operating Committee (LOC). The amendments will update the Nation’s election process to require the Election Board to ensure election polling equipment and ballots are secured and locked; clarify when a member of the Election Board must recuse themselves from election activities, remove term limits for members of the Election Board; clarify the process for submitting referendum questions; shorten the timeframe for holding an election; eliminate provisional ballots for voters who do not show a photo ID or are ruled ineligible to vote; clarify candidate eligibility in regard to positions on the Oneida Business Committee and Judiciary; transfer hearing authority from Election Board to the Judiciary; update the process for conducting a caucus; require notice of election and election results to be posted on the Nation’s website; shorten the voter registration form; require a public test of the ballot machines prior to an election; to require separation of ballots between each polling place; update the process for handling spoiled ballots; to reduce the number of Election Board members required to be at each polling site; to update the process for conducting a recount; and clarify and update language throughout the law.

SECTION 3. CONSULTATION AND OUTREACH

- A. The Legislative Operating Committee (LOC) held a work meeting with the Election Board on January 25, 2018 to discuss the board’s ideas for potential amendments. In addition, the LOC reviewed suggested amendments submitted by the Trust Enrollment Department.
- B. The following documents were reviewed in the drafting of this analysis: The Nation’s Constitution, the Election Board’s bylaws and standard operating procedures, Election Board Final Election Reports, relevant Oneida Judiciary decisions, and the November 12, 2017 GTC Meeting minutes and materials.
- C. The following laws were reviewed in the drafting of this analysis: Zoning and Shoreland Protection Law, Open Records and Open Meetings Law, and Boards, Committees and Commissions Law. In addition, the following Election Laws from other tribes were reviewed: Ho Chunk Election Code, Menominee Nation Election Code, Forest County Potawatomi Election Code, and Stockbridge Munsee Election Ordinance.

SECTION 4. PROCESS

- A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- B. The law was added to the Active Files List on December 6, 2017.
- C. At the time this legislative analysis was developed, the following work meetings were held/scheduled regarding the development of this law and legislative analysis:
- January 25, 2018: Work Meeting with Election Board
 - March 16, 2018: LOC Work Meeting
 - March 19, 2018: LOC Work Meeting

- March 23, 2018: LOC Work Meeting
- March 29, 2018: LOC Work Meeting
- April 2, 2018: LOC Work Meeting
- April 19, 2018: LOC Work Meeting
- May 2, 2018: LOC Work Meeting
- June 20, 2018: LOC Work Meeting
- July 12, 2018: LOC Work Meeting
- August 6, 2018: LOC Work Meeting
- August 28, 2018: LOC Work Meeting
- September 5, 2018: LOC Work Meeting
- October 8, 2018: LOC Work Meeting
- October 17, 2018: LOC Work Meeting
- November 16, 2018: LOC Work Meeting

SECTION 5. CONTENTS OF THE LEGISLATION

A. **Election Board.** This section describes the composition and duties of the Election Board. The Election Board consists of nine (9) members elected by the membership. The Election Board is responsible for conducting the elections of the Oneida Nation. The following revisions have been made to the Election Board:

- **Term Limits.** This law eliminates term limits for members of the Election Board. Election Board members are elected by the membership. Currently, Election Board members are limited to two consecutive three-year terms. After serving two terms, Board members must sit out a term before they can run again [*see Election Law, 1 O.C. 102.4-2*]. Now, Election Board members may run for as many terms as they wish.
- **Comparison to other Oneida Boards, Committees and Commissions.** Most other entities of the Nation do not have term limits. For example, other elected entities such as Land Commission, Land Claims Commission, Gaming Commission and Trust Enrollment Committee do not have term limits. Currently, the only other elected board of the Nation with term limits is Oneida Nation Commission on Aging (ONCOA). The Police Commission, an appointed board, has term limit of no more than three consecutive five-year terms.
- **Comparison to Election Boards of other tribal nations:** Menominee Nation, Potawatomi Nation, Ho Chunk Nation and Stockbridge Munsee have appointed Election Boards which do not have term limits. However, the appointing body has control over who is appointed and for how long.
- **Advantages and Disadvantages of Term Limits:** Potential advantages of term limits are that they may bring new ideas and fresh perspectives to an elected body and give more individuals an opportunity to participate in public service. Potential disadvantages of term limits are that they deprive voters of the ability to elect the candidate of their choice and that the elected body loses experienced members and institutional knowledge.
- **Recusal.** Election Board members must recuse themselves from any pre-election, election day and post-election activities if he or she is a petitioner, applicant or candidate in any election, or if there is otherwise a conflict of interest [*see 102.4-3*].
- **Immediate Family:** A new provision has been added clarifying that Election Board members must recuse themselves if an immediate family member is a petitioner, applicant or candidate. This requirement was previously located in the Election Board's bylaws, but has been added directly into the law to strengthen and clarify this requirement [*see 102.4-3(b)*].
- **Definition of Immediate Family Members.** An immediate family member is defined as: an individual's father, mother, grandparent, sister, brother, wife, husband, daughter, son,

father-in-law, mother-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, step-father, step-mother, step-sister, step-brother, step-daughter, step-son and any of these relations obtained through legal adoption [see 102.3(m)].

- **Recusal for Judiciary.** Recusal provisions for members of the Nation’s Judiciary are located in the Oneida Tribal Judiciary Canons of Judicial Conduct. The canons state that a judge shall withdraw from any matter where the judge has or could be perceived to have a conflict of interest. The canons go on to state that this includes personal, professional, or fiduciary relationships between the Judge or an immediate family member of the Judge [see Oneida Tribal Judiciary Canons of Judicial Conduct 8 O.C. 802, Section 2.2].
 - **Securing Ballots and Voting Equipment.** A new provision has been added that requires the Election Board to ensure that election polling equipment and ballots are maintained in a locked and secured area when they are not being used for an Election. This is added to clarify that it is Election Board’s responsibility to secure the equipment, and that failure to do so is a violation of this law [see 102.4-8(a)].
 - **Standard Operating Procedures.** The Election Board will be required to develop and follow standard operating procedures (SOPs) regarding election activities and responsibilities. Any updates to their standard operating procedures must be presented to the Business Committee as information. For more information regarding the Election Board’s current SOPs, see Section 9 “Other Considerations” in this analysis. [see 102.4-8(b)].
 - **Enforcement and Removal.** A new provision has been added regarding Enforcement, which replaces the previous “Removal” section [see 102.4-12]. Election Board members who violate the Election Law may be subject to:
 - **Removal:** Election Board members who violate the Election Law may be removed in accordance with the Removal Law. A member who is removed from the Election Board will be prohibited from serving on the Election Board for three (3) years.
 - **Termination of Appointed Members.** Election Board members who were appointed to fill vacancies on the board may have their appointments terminated by the Oneida Business Committee in accordance with the Boards, Committees and Commissions Law.
 - **Sanctions and Penalties.** Election Board members may be subject to sanctions and penalties in accordance with laws of the Nation regarding sanctions and penalties. The Legislative Operating Committee (LOC) is currently drafting a Sanctions and Penalties Law to increase accountability among elected and appointed officials of the Nation, which will include members of the Election Board. At the time this analysis was drafted, the LOC intends to present a Sanctions and Penalties Law to GTC for consideration once the draft is complete and all legislative requirements are met.
- B. Referendums.** This section describes the process for referendums. Referendum questions may be submitted by qualified voters at a caucus prior to an election. The following revisions have been made to the referendum process to ensure a streamlined process: [see 102.7]
- **Standard Form.** A provision has been added requiring the Secretary to provide a standard form to submit referendum questions.
 - **Yes or No Questions.** In addition, referendum questions must be written in the form of a “yes or no” question. The intent is to ensure that the questions are written clearly for the voter to answer.
- C. Candidate Eligibility.** This section describes the requirements to be a candidate. The following revisions have been made to this section [see 102.9]:
- **Applications.** This provision clarifies that all candidates, including those nominated at caucus, must fill out and turn in a completed application packet. Packets will be available in the BC Support Office. In addition, the Election Board’s current practice is to provide application packets at the caucus for those that have been nominated. The purpose of requiring the

application form is to ensure that candidates meet the eligibility requirements for the office they are seeking [see 102.9-4].

- **Proof of Minimum Eligibility Requirements.** Applicants will now be required to attach proof that they meet the requirements for the position they are running for. The Election Board must include a list of the required documents on the application so that applicants are aware of what they need to submit. If an applicant does not submit the required documentation or does not completely fill out the application form, they will be disqualified by the Election Board [see 102.9-4(e)]. If an applicant feels they were unfairly disqualified, they can appeal to the Judiciary.
 - *Example:* An example of required documentation is proof of residency for positions that require members to reside in Brown or Outagamie County or copies of degrees and transcripts for positions that require a degree.
- **Applying for More than One BC or Judiciary Position.** Under the current law, applicants cannot run for more than one Business Committee or Judicial position. For example, an applicant cannot file to run for both BC Chairperson and Councilperson in the same election. However, the current law doesn't state how the Election Board should handle this situation when it occurs. This has led to cases in the Oneida Judiciary, where the Judiciary noted: "the statute is silent as to whether a person has the opportunity to cure any defects and, if so, how much time is afforded to cure such defects. Furthermore, the statute says nothing about disqualifying a candidate from the election entirely who runs for more than one elective office" [see *Metoxen v. Election Board* 17-AV-007]. Therefore, the following new provisions have been added [see 102.9-5]:
 - **Include Restriction in Application Packet & Announce at Caucus.** The restriction on running for multiple BC or Judicial offices will be included in the application packet and read aloud at the caucus, to ensure that all potential candidates are aware before applying [see 102.9-5(a)].
 - **Process If an Applicant Applies For More Than One BC or Judiciary Position:** If an individual applies to run for more than one BC or Judiciary office, the Election Board will only accept the first application that the individual submitted. Any additional applications from that individual for other BC or Judicial offices will be rejected. The BC Support Office will be required to timestamp all applications in the order they are received, and the time stamp will be used to determine which application the individual filed first.
 - Currently, the Election Board reports that they attempt to contact the applicant to determine which office they want to run for. However, the Election Board has not always been able to reach applicants in time for the deadline. The purpose of this new process is to provide clear guidelines to applicants, the Election Board, and the Judiciary. It places responsibility on applicants to follow the law while ensuring that applicants are not disqualified from the ballot entirely.
- **Transfer of Hearing Authority to Judiciary.** This law removes the Election Board's hearing body authority and transfers it to the Judiciary. In the current law, when an applicant is found ineligible to be on the ballot by the Election Board, they can appeal that decision to a hearing body made up of four (4) members of the Election Board. Instead, applicants will now appeal directly to the Judiciary on an accelerated schedule [see 102.9-8].

Chart 1. Current Appeals Process for Candidates Found Ineligible for Ballot:

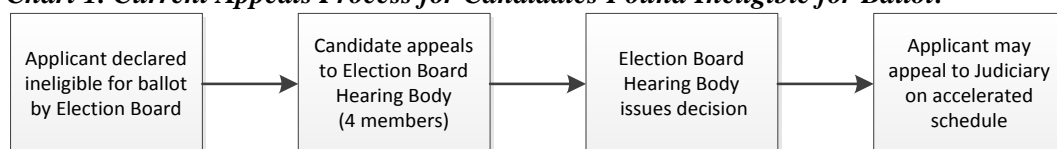
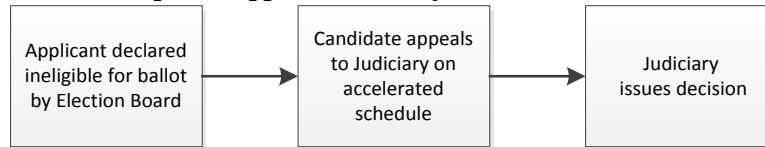


Chart 2. Proposed Appeals Process for Candidates Found Ineligible for Ballot:



- *Transfer of Hearing Body Authority.* GTC established a Judiciary through the adoption of the Judiciary Law by GTC on January 7, 2013 and the approval of Article V to the Nation's Constitution in 2015. Since that time, several boards, committees and commissions have transferred their hearing authority to the Judiciary, including Environmental Resource Board (ERB) and Land Commission. The intent of transferring the Election Board's hearing authority is to continue consolidating administrative and judicial hearing responsibilities in the Judiciary to increase consistency in the hearing process.

D. Restrictions on Campaigning and Campaign Signs. This section describes the restrictions on campaigning, campaign signs and campaign finance. The following revisions have been made to this section [see 102.11].

- **No Campaigning in Nation-Owned Buildings.** A new provision has been added stating that individuals cannot campaign in a building owned and operated by the Nation, with the following exceptions:
 - Private property, such as a residential house or apartment, a private business, or land not owned by the tribe.
 - Official election events sanctioned by the Election Board, including candidate forums and debates. For example, an official candidate forum held at the Radisson.
 - A room or space rented by an individual to hold an event.
- **Existing Campaign Restrictions.** The current law already restricts employees from campaigning during work hours. The current law also restricts candidates from campaigning within 280 feet of the voting area during an election.
- **Process for Fines.** Under the current law, the Election Board may issue fines for violating campaign finance or campaign sign restrictions. This law clarifies that any campaign fines must be paid to the Election Board within (90) ninety days after the fine is issued. The Election Board may seek to collect fines through garnishment and per capita process if not paid in 90 days. Fines will be placed into the Nation's general fund [see 102.10-4 and 102.11-4]
- **Types of Campaign Fines:** In addition to fines for campaign finance violations and campaign sign violations, the Election Board may now impose fines for violating restrictions on campaigning within two hundred eighty (280) feet of the voting area during an election and violating the new restriction on campaigning in buildings owned and operated by the Nation [see 102.11-4].
- **Removal of Campaign Signs.** A provision has been revised clarifying that the Zoning Administrator is responsible for removing any campaign signs that are not in compliance with the Election Law or Zoning and Shoreland Protection Law [see 102.11-5].

E. Candidate Withdrawal from the Election. This section describes the process for a candidate to withdraw from an election prior to the submission of the ballot, prior to the opening of the polls, after the opening of the polls, or after winning an election [see 102.12].

- **Declining Office After Winning Election.** A provision has been added clarifying that if a candidate declines an office after winning an election and after taking the oath of office, it will be treated as a resignation. If a candidate declines an office after winning but before taking the oath of office, then the next highest vote-getter will be declared the winner [see 102.12-6].

F. Shortening Caucus and Primary Election Timeline. Changes have been made to the election timelines to potentially shorten the length of the election season:

- **Caucus Timeline.** In the current law, the caucus must be held at least ninety (90) days prior to the general election. Instead, the caucus will now be held at least seventy-five (75) days prior to the general election [see 102.13-1(a)].
- **Primary Election Timeline.** In the current law, the primary election must be held on a Saturday at least sixty (60) days prior to the general election. Instead, the primary election will now be held on a Saturday at least thirty (30) days prior to the general election [see 102.8-1].
 - Note that these deadlines refer to “at least,” or the minimum number of days prior to an election. This means that Election Board may schedule the caucus or primary election more than seventy-five (75) or thirty (30) days before the election.
- **Effect.** The effect of these changes will potentially:
 - increase the length of time from the caucus to primary election from at least 30 days to at least 45 days;
 - shorten the length of time from the primary election to the general election from at least 60 days to at least 30 days;
 - shorten the length of the entire election season from the caucus to the general election from at least 90 days to at least 75 days;

Chart 3. Current Election Timeline:

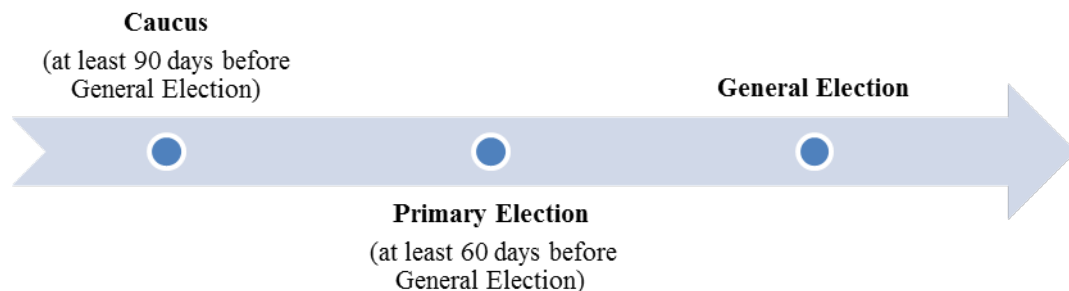
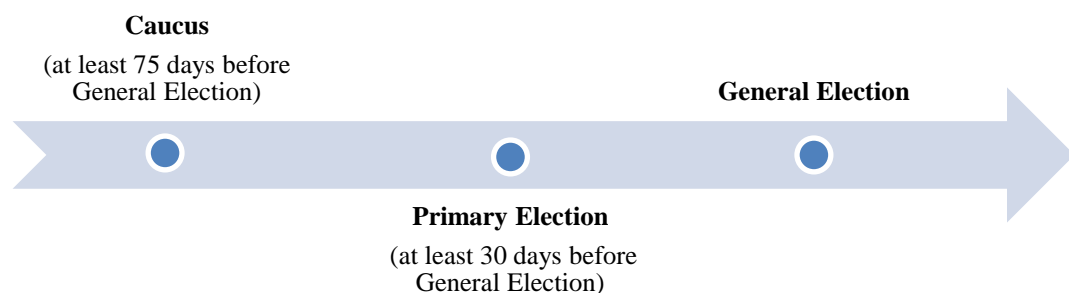


Chart 4. Proposed Election Timeline:



G. Caucus Procedure. The section describes the caucus process for selection of candidates.

- **Nominating Candidates by Motion.** More detail has been added to the law to reflect the current caucus process. The law clarifies that each position will be opened and closed for nomination by motion during the caucus: [see 102.13-2]
 - **Example:** A motion will be made to open nominations for the BC Chairperson position. Once all nominations have been made for BC Chairperson, nominations will be closed for

- 276 that position. Then, a motion will be made to open nominations for BC Vice Chair position,
277 and so on. The intent of this provision is to ensure an orderly caucus.
- 278 ○ If a candidate is not present at the caucus, or arrives late and misses the position they
279 wanted to be nominated for, they can still petition to be on the ballot. A petition to be on
280 the ballot requires only 10 signatures.
- 281 ■ *Nominating Yourself.* A new provision has been added clarifying that an individual cannot
282 nominate themselves at the caucus. They must be nominated by someone else. [see 102.13-
283 2(b)(1)].
- 284 **H. Posting Election Notices & Tentative Results on the Nation's Website.** A provision has been added
285 requiring election notices and tentative election results to be posted on the Nation's website, in
286 addition to being posted to the prominent locations.
- 287 ■ **The prominent locations include:** the polling places, the Norbert Hill Center, the Oneida
288 Community Library, the Oneida Community Health Center, the Southeastern Oneida Tribal
289 Services (SEOTS) building, and all fuel stations operated by the Nation. The prominent
290 locations have been revised to remove Tsyunhehkwa Retail store, which is now called Oneida
291 Market and is located within an Oneida One Stop [see 102.3-2(t)].
- 292 ■ **Require Notices to be posted to Website.** Election notices must be posted in the prominent
293 locations and the Nation's "official media outlets," which includes both the Nation's website
294 and the Nation's newspaper [see 102.14 and BC Resolution 03-22-17-B]. Tentative Election
295 results must be posted to the prominent locations and the Nation's website [see 102.17-2]. The
296 purpose of requiring results to be posted on the website is to ensure that tribal members and
297 candidates receive election results quickly and conveniently.
- 298 **I. Mailing Election Notices.** The current law requires election notices to be mailed to all members of
299 the Nation. This provision has been changed to require election notices to be mailed only to members
300 of the Nation who are eligible to vote in the election. This means that the notice will be mailed to
301 enrolled tribal members age 18 years or older at the time of the election [see 102.14-3].
- 302 **J. Shortened Voter Registration Form at Polling Site.** When voters sign-in at the polls on election
303 day, they must fill out a voter registration form. This form has been shortened to only require name,
304 date of birth and enrollment number. The requirement that voters write down their maiden name and
305 current address has been removed. The intent of shortening this form is to speed up the line for
306 voters on Election Day. The Election Board reports that name, date of birth and enrollment number
307 are enough information to identify voters [see 102.15-1].
- 308 **K. Elimination of Provisional Ballots for Voters Ruled Ineligible.** Voters who are ruled ineligible to
309 vote at the polls by election officials will no longer have the right to cast a ballot or challenge the
310 decision of the election officials. An example of why a voter would be deemed ineligible to vote is
311 failure to show a photo ID [see 102.15-5].
- 312 ■ **Current Process.** Currently, if a voter is deemed ineligible, they are still allowed to cast a
313 ballot. However, the ballot is placed in a sealed envelope and signed by two Election Board
314 members. The voter is then required to submit an appeal to the Election Board within two (2)
315 business days in order to challenge the Election Board's decision. The Election Board then
316 has five (5) business days to issue a final decision on the voter's eligibility. The Election Board
317 will only count the ballot if the board determines the individual was, in fact, eligible to vote.
- 318 **L. Public Test of Ballot Machines.** A new provision has been adding requiring a public test of the
319 ballot machines prior to each election. The Election Board will conduct this test no more than ten
320 (10) days prior to election day, and the public test will be noticed in the Nation's newspaper and
321 website. The test will be performed by running a group of pre-audited marked ballots through the
322 machine to ensure that the machine records the correct, predetermined number. The intent of the
323 public test is to increase voter confidence in the voting equipment [see 102.16-1].
- 324 ■ **Public Tests of Ballot Machines in Wisconsin.** The public test is modeled after public tests
325 held by Wisconsin municipalities to test their own ballot machines under section 5.84(1) of

Wisconsin Statutes. Examples of area municipalities that hold public tests of ballot machines include the City of De Pere, City of Green Bay, and Village of Ashwaubenon.

M. Voter Assistance. The Election Law has been clarified to state that a voter with a disability or other impairment can request assistance from a member of the Election Board or any other qualified voter of their choosing. A qualified voter is an enrolled member of the Oneida Nation aged 18 or older. For example, a voter can request assistance from a family member or friend, as long as that person is a qualified voter. The purpose of this revision is to clarify that voters may be assisted by any qualified voter of their choosing, whether they are a member of the Election Board or not [see 102.16-4].

- **Qualified Voters Only.** The intent of limiting assistance to qualified voters is to restrict the voting area to qualified voters only, consistent with 102.16-8 of this law, which states that this restriction is in the interest of maintaining security of the ballots and the voting process

N. Separation of Milwaukee and Oneida Ballots. A provision has been added to the law requiring ballots from each polling site to be kept separate. There are currently two polling sites, one in Oneida and one in Milwaukee. During the 2017 general election, the ballots from the manual count in Milwaukee were combined with the machine count in Oneida. During recounts, it was no longer possible to determine if a ballot came from the Milwaukee or Oneida count. By keeping the ballots separate throughout the election process, it will be easier to determine if there were irregularities at one of the polling sites [see 102.16-9(a)].

O. Spoiled Ballots Procedure. The process for spoiled ballots has been revised. Spoiled ballots will now be placed in a locked, sealed container marked “spoiled ballots.” Previously, spoiled ballots were placed in a marked envelope. In addition, the voter will now be required to witness their spoiled ballot being placed into the container. The purpose of these provisions is to increase voter confidence and to ensure that spoiled ballots are handled properly [see 102.16-10].

P. Reducing Number of Election Board Members Required at the Polls. The minimum number of Election Board members required to be present at each polling site on Election day to sign the election totals has been reduced from six (6) members to four (4) members. With the new ballot machines, the Election Board reports that they are able to open and close the polls more efficiently, requiring fewer members to be present. The Election Board also reports that lowering the number of Board members required at each polling place may reduce the need for alternates. The Election Board suggests this may produce a cost savings [see 102.16-12].

Q. Recount Process. Several revisions have been made to the recount process:

- **Extension of Deadline for Recount Requests.** A provision has been added regarding deadlines for a candidate to request a recount. Currently, candidates have five (5) business days after an election to request a recount. If a recount reverses the result of an election, the candidate who lost as a result of the recount will now have one (1) additional business day to request their own recount. This ensures that a candidate impacted by a recount will still have the opportunity to request their own recount [see 102.18-2(a)].
- **Require Election Board to Complete Recounts within Two (2) Business Days.** Upon receiving a recount request from the Nation’s Secretary, the Election Board will now have two (2) business days to complete a recount instead of five (5) days. The purpose of shortening the deadline is to get recount results out sooner, especially if the recount changes the result of the election and the losing candidate wishes to request their own recount [see 102.18-4].
- **Recounts Conducted by Hand and by Machine.** Currently, there is a discrepancy in the Election Law regarding whether the Election Board must conduct recounts by hand or by machine. A change has been made that will now require the Election Board to both hand count and machine count the ballots during a recount. The intent of this change is to increase voter confidence in the process and ensure an accurate count [see 102.18-7].
- **Posting Recount Results.** The Election Board will now be required to post the tentative recount results just like any other election results. The results will be posted in the prominent

- 376 locations and the Nation's official media outlets within 24 hours of the recount [see 102.18-
377 9]. The intent of this change is to increase transparency of the recount process.
- 378 **R. Minor Drafting Changes.** Minor drafting changes have been made throughout the law, such as
379 changing "judge" to "Election judge" for clarity.
380

381 **SECTION 6. EFFECT ON EXISTING LEGISLATION**

- 382 **A. References to Other Laws.** The following laws of the Nation are referenced in this law. This law does
383 not conflict with any of the referenced laws.
- 384 ■ *Open Records and Open Meetings Law.* Among the duties of the Election Board Secretary is to
385 keep a record of Election Board meetings and make them available to the Nation's Secretary, other
386 Election Board members, and the public as required by the Open Records and Open Meetings Law
387 [see 102.4-9(c)].
 - 388 ■ *Boards, Committees and Commissions Law.* Stipend rates for Election Board members will be set
389 in accordance with the Boards, Committees and Commissions Law. At the time this analysis was
390 drafted, Election Board members receive \$100 per meeting and \$10 per hour to conduct elections
391 [see 102.4-10].
 - 392 ■ *Personnel Policies and Procedures.* Employees of the Nation are not allowed to campaign during
393 work hours. Employees that violate this provision will be subject to disciplinary action in
394 accordance with the Nation's Personnel Policies and Procedures [see 102.11-1(c)].
 - 395 ■ *Zoning and Shoreline Protection Law.* The Zoning Administrator shall remove any campaign signs
396 that are not in compliance with this law, in accordance with the Zoning and Shoreline Protection
397 Law [see 102.11-3].
 - 398 ■ *Garnishment Law and Per Capita Law.* If a fine issued by the Election Board is not paid by the
399 deadline, the Election Board may seek to collect the money owed through the Nation's garnishment
400 and/or per capita attachment process [see 102.10-4(b)].
401

402 **SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS**

- 403 **A. Elimination of Provisional Voting.** This law eliminates an existing right to challenge the decision of
404 election officials if a voter is deemed ineligible to vote on election day. An example of why a person
405 would be deemed ineligible to vote is failure to show a Photo ID.
- 406 ■ **Current Process:** Under current law, if a voter is deemed ineligible to vote on election day, he or
407 she may still fill out a ballot. This ballot is sealed in a numbered envelope and initialed by two
408 Election Board members. The voter then has two (2) business days to mail a written appeal to
409 Election Board. The Election Board will issue a final decision, and will only count the ballot if it
410 is determined that the voter was, in fact, an eligible voter.
 - 411 ■ **Proposed Process:** Under this proposed law, if a voter is deemed ineligible to vote on election day,
412 they cannot fill out a ballot and cannot challenge the decision of the Election officials.
 - 413 ■ **Provisional Voting in State of Wisconsin.** The Wisconsin Election Commission reports that for
414 state elections, voters can receive a provisional ballot if they are unable or unwilling to provide
415 proof of identification. Provisional ballots are not counted unless the voter provides the required
416 information to the municipal clerk by 4:00 pm of the Friday following the election.
 - 417 ■ **Provisional Voting in Other Tribes.** There are examples of other tribes that allow versions of
418 provisional ballots:
 - 419 ○ *Ho Chunk Nation:* If the eligibility of a voter is questioned, the ballot of that voter will be
420 enclosed in an envelope which will be endorsed with the voter's name, the reason for the
421 challenge, and any refutation of the challenge. The Election Board will make the final
422 determination of the eligibility of the voter and will count the votes of those determined
423 eligible to vote [see *Ho Chunk Election Code 13(j)*].
 - 424 ○ *Forest County Potawatomi:* If the eligibility of a voter is questioned by the Election Board,
425 the ballot of that voter shall be enclosed in an envelope which shall be endorsed with his

or her name and the reason for the challenge. Challenges shall be made only on the basis of eligibility for voting membership in the Tribe as specified in Article VI, Section 5 of the Constitution of the Forest County Potawatomi Community. The eligibility of all challenged ballots must be determined by a majority of the Election Board before tallying any votes. If the voter is determined to be eligible that envelope will be opened and the ballot placed in the ballot box [see *Forest County Potawatomi Election Code 2.8*].

- **Conclusion:** The LOC should be aware that removing provisional voting eliminates an existing right of voters of the Nation. Whether to allow provisional voting is a policy decision.

SECTION 8. ENFORCEMENT AND ACCOUNTABILITY

- A. *Challenging an Election.* Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election [see 102.19-1].
- B. *Challenging Election Board Decision Regarding Candidate Eligibility.* An applicant found to be ineligible for a nominated or petitioned for position shall have two (2) business days to request a hearing with the Judiciary to review the eligibility status of the applicant [see 102.9-8].
- C. *Enforcement and Removal.* Election Board members who violate the Election Law may be subject to removal in accordance with the Removal Law, termination of appointment if appointed to fill a vacancy, or sanctions and penalties in accordance with laws of the Nation [see 102.4-12].
- D. *Final Report.* The Election Board is required to forward a Final Report to the Nation's Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed. The Final Report must include the following information: Total number of persons voting; total votes cast for each candidate by subsection of the ballot; list of any ties and final results of those ties, including the method of resolution; list of candidates elected and position elected to; number of spoiled ballots; and cost of the election, including compensation paid to each Election Board member [see 102.19-2].

SECTION 9. OTHER CONSIDERATIONS

- A. *New Ballot Machines.* The Election Board reports that they have purchased two (2) new DS200 ballot machines. The Election Board reports that these machines include a regular maintenance schedule. For more information regarding these machines, contact the Election Board.
- B. *Election Board Standard Operating Procedures (SOPs).* The Business Committee Support Office has worked with the Election Board to place their Standard Operating Procedures (SOPs) on the Nation's website, so that all members have access to the processes by which an election is conducted. The Election Board's SOPs include detailed instructions regarding ballots, the ballot box, testing ballot machines, conducting elections, breaking a tie, conducting recounts and other-election related topics. The SOPs may be viewed by selecting "Oneida Election Board" at www.oneida-nsn.gov/government/boards-committees-and-commissions/elected/
 - **What is an SOP?** SOPs are the detailed, step-by-step instructions for how an entity implements a law or policy. The intent of an SOP is to ensure consistency in the process. Unlike laws, Election Board SOPs are developed by the Election Board.
- C. *Sanctions and Penalties Law.* The Legislative Operating Committee (LOC) is currently drafting a Sanctions and Penalties Law to increase accountability among elected and appointed officials of the Nation, which will include members of the Election Board. Currently, the only remedy for elected officials is the Removal Law. However, there may be instances of misconduct that do not rise to the level of removal. In these cases, other sanctions such as verbal warnings, written warnings, suspension or fines may be more appropriate. This new law will create a formal complaint process and allow for corrective actions against officials who violate laws, bylaws and SOPs of the Nation. At the time this analysis was drafted, the LOC intends to present a Sanctions and Penalties Law to GTC for consideration once the draft is complete and all legislative requirements are met.
- D. *Update Resolution Setting Fines for Election Violation.* This law states that the Business Committee

will pass a resolution specifying fines for violations of campaign finance restrictions [see 102.10-2(a)]. The Business Committee passed a resolution setting fines for certain campaign violations in 2014 [see BC-01-22-14-A]. However, this resolution does not include fines for campaign finance violations or for the new restrictions on campaigning within buildings owned and operated by the Nation. In addition, references to specific sections of the law within the resolution may become out of date upon adoption of these amendments.

- *Recommendation:* The Business Committee should consider amending resolution BC-01-22-14-A to update references to this law and to specify fines for campaign finance violations and campaigning within buildings owned and operated by the Nation.

E. New Forms or Procedures:

- *Updated Application:* The Election Board will be required to update the application form to include:
 - A list of required documents that applicants must submit to meet minimum eligibility requirements.
 - A statement that applicants cannot apply to run for more than one Business Committee or Judiciary position.
- *Updated Election Board SOPs:* The Election Board will need to update their SOPs to comply with all amendments to this law.
- *New Referendum Form:* The Nation's Secretary will be required to provide a standard referendum form at the caucus.

F. Fiscal Impact. Please refer to the fiscal impact statement for any fiscal impacts.

- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [see *Legislative Procedures Act 1 O.C. 109.6-1*].
- A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee [see *Legislative Procedures Act 1 O.C. 109.6-1(a) and (b)*].