



## 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 <sup>th</sup> , 2018.		
Fiscal Impact	See fiscal impact statement prepared by Finance Dept. in accordance with the Legislative Procedures Act.		

## SECTION 2. LEGISLATIVE DEVELOPMENT

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- 4 **A.** The Election Law was adopted by General Tribal Council (GTC) in accordance with Article III, Section  
5 5 of the Constitution. The Election law governs the procedures for the conduct of orderly elections of  
6 the Nation. The Election Law was most recently amended by GTC on April 23, 2017 to incorporate  
7 Constitutional Amendments into the law, including lowering the age of qualified voters from twenty-  
8 one (21) to eighteen (18).
- 9 **B.** On November 12, 2017, GTC passed a motion to “accept the information presented and for the Oneida  
10 Business Committee to take this information and the discussion to identify amendments to the Election  
11 Law for presentation to and action by the General Tribal Council during calendar year 2018.” The  
12 meeting materials and discussion from this meeting included concerns regarding Election Board,  
13 recount process, recusal process and security of ballots and ballot machines. In addition to the  
14 discussion from this meeting, other potential revisions to the law have been identified by the Election  
15 Board, Trust Enrollment Department, and a review of relevant Judiciary decisions.
- 16 **C.** As a result of this review, the following amendments to this law have been proposed by the Legislative  
17 Operating Committee (LOC). The amendments will update the Nation’s election process to require the  
18 Election Board to ensure election polling equipment and ballots are secured and locked; clarify when a  
19 member of the Election Board must recuse themselves from election activities, remove term limits for  
20 members of the Election Board; clarify the process for submitting referendum questions; shorten the  
21 timeframe for holding an election; eliminate provisional ballots for voters who do not show a photo ID  
22 or are ruled ineligible to vote; clarify candidate eligibility in regard to positions on the Oneida Business  
23 Committee and Judiciary; transfer hearing authority from Election Board to the Judiciary; update the  
24 process for conducting a caucus; require notice of election and election results to be posted on the  
25 Nation’s website; shorten the voter registration form; require a public test of the ballot machines prior  
26 to an election; to require separation of ballots between each polling place; update the process for  
27 handling spoiled ballots; to reduce the number of Election Board members required to be at each polling  
28 site; to update the process for conducting a recount; and clarify and update language throughout the  
29 law.  
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## SECTION 3. CONSULTATION AND OUTREACH

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- 32 **A.** The Legislative Operating Committee (LOC) held a work meeting with the Election Board on January  
33 25, 2018 to discuss the board’s ideas for potential amendments. In addition, the LOC reviewed  
34 suggested amendments submitted by the Trust Enrollment Department.
- 35 **B.** The following documents were reviewed in the drafting of this analysis: The Nation’s Constitution, the  
36 Election Board’s bylaws and standard operating procedures, Election Board Final Election Reports,  
37 relevant Oneida Judiciary decisions, and the November 12, 2017 GTC Meeting minutes and materials.
- 38 **C.** The following laws were reviewed in the drafting of this analysis: Zoning and Shoreland Protection  
39 Law, Open Records and Open Meetings Law, and Boards, Committees and Commissions Law. In  
40 addition, the following Election Laws from other tribes were reviewed: Ho Chunk Election Code,  
41 Menominee Nation Election Code, Forest County Potawatomi Election Code, and Stockbridge Munsee  
42 Election Ordinance.  
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## SECTION 4. PROCESS

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

- 52       ▪ March 23, 2018: LOC Work Meeting
- 53       ▪ March 29, 2018: LOC Work Meeting
- 54       ▪ April 2, 2018: LOC Work Meeting
- 55       ▪ April 19, 2018: LOC Work Meeting
- 56       ▪ May 2, 2018: LOC Work Meeting
- 57       ▪ June 20, 2018: LOC Work Meeting
- 58       ▪ July 12, 2018: LOC Work Meeting
- 59       ▪ August 6, 2018: LOC Work Meeting
- 60       ▪ August 28, 2018: LOC Work Meeting
- 61       ▪ September 5, 2018: LOC Work Meeting
- 62       ▪ October 8, 2018: LOC Work Meeting
- 63       ▪ October 17, 2018: LOC Work Meeting
- 64       ▪ November 16, 2018: LOC Work Meeting

## 66       **SECTION 5. CONTENTS OF THE LEGISLATION**

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

- 71       ▪ **Term Limits.** This law eliminates term limits for members of the Election Board. Election  
72       Board members are elected by the membership. Currently, Election Board members are  
73       limited to two consecutive three-year terms. After serving two terms, Board members must sit  
74       out a term before they can run again [*see Election Law, 1 O.C. 102.4-2*]. Now, Election Board  
75       members may run for as many terms as they wish.
- 76       ○ **Comparison to other Oneida Boards, Committees and Commissions.** Most other entities  
77       of the Nation do not have term limits. For example, other elected entities such as Land  
78       Commission, Land Claims Commission, Gaming Commission and Trust Enrollment  
79       Committee do not have term limits. Currently, the only other elected board of the Nation  
80       with term limits is Oneida Nation Commission on Aging (ONCOA). The Police  
81       Commission, an appointed board, has term limit of no more than three consecutive five-  
82       year terms.
- 83       ○ **Comparison to Election Boards of other tribal nations:** Menominee Nation, Potawatomi  
84       Nation, Ho Chunk Nation and Stockbridge Munsee have appointed Election Boards which  
85       do not have term limits. However, the appointing body has control over who is appointed  
86       and for how long.
- 87       ○ **Advantages and Disadvantages of Term Limits:** Potential advantages of term limits are  
88       that they may bring new ideas and fresh perspectives to an elected body and give more  
89       individuals an opportunity to participate in public service. Potential disadvantages of term  
90       limits are that they deprive voters of the ability to elect the candidate of their choice and  
91       that the elected body loses experienced members and institutional knowledge.
- 92       ▪ **Recusal.** Election Board members must recuse themselves from any pre-election, election day  
93       and post-election activities if he or she is a petitioner, applicant or candidate in any election,  
94       or if there is otherwise a conflict of interest [*see 102.4-3*].
- 95       ○ **Immediate Family:** A new provision has been added clarifying that Election Board  
96       members must recuse themselves if an immediate family member is a petitioner, applicant  
97       or candidate. This requirement was previously located in the Election Board's bylaws, but  
98       has been added directly into the law to strengthen and clarify this requirement [*see 102.4-*  
99       3(b)].
- 100       ○ **Definition of Immediate Family Members.** An immediate family member is defined as:  
101       an individual's father, mother, grandparent, sister, brother, wife, husband, daughter, son,

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

- 105 ○ **Recusal for Judiciary.** Recusal provisions for members of the Nation’s Judiciary are  
106 located in the Oneida Tribal Judiciary Canons of Judicial Conduct. The canons state that a  
107 judge shall withdraw from any matter where the judge has or could be perceived to have a  
108 conflict of interest. The canons go on to state that this includes personal, professional, or  
109 fiduciary relationships between the Judge or an immediate family member of the Judge  
110 [see Oneida Tribal Judiciary Canons of Judicial Conduct 8 O.C. 802, Section 2.2].

- 111 ■ **Securing Ballots and Voting Equipment.** A new provision has been added that requires the  
112 Election Board to ensure that election polling equipment and ballots are maintained in a locked  
113 and secured area when they are not being used for an Election. This is added to clarify that it  
114 is Election Board’s responsibility to secure the equipment, and that failure to do so is a  
115 violation of this law [see 102.4-8(a)].

- 116 ■ **Standard Operating Procedures.** The Election Board will be required to develop and follow  
117 standard operating procedures (SOPs) regarding election activities and responsibilities. Any  
118 updates to their standard operating procedures must be presented to the Business Committee  
119 as information. For more information regarding the Election Board’s current SOPs, see  
120 Section 9 “Other Considerations” in this analysis. [see 102.4-8(b)].

- 121 ■ **Enforcement and Removal.** A new provision has been added regarding Enforcement, which  
122 replaces the previous “Removal” section [see 102.4-12]. Election Board members who violate  
123 the Election Law may be subject to:

- 124 ○ **Removal:** Election Board members who violate the Election Law may be removed in  
125 accordance with the Removal Law. A member who is removed from the Election Board  
126 will be prohibited from serving on the Election Board for three (3) years.
- 127 ○ **Termination of Appointed Members.** Election Board members who were appointed to fill  
128 vacancies on the board may have their appointments terminated by the Oneida Business  
129 Committee in accordance with the Boards, Committees and Commissions Law.
- 130 ○ **Sanctions and Penalties.** Election Board members may be subject to sanctions and  
131 penalties in accordance with laws of the Nation regarding sanctions and penalties. The  
132 Legislative Operating Committee (LOC) is currently drafting a Sanctions and Penalties  
133 Law to increase accountability among elected and appointed officials of the Nation, which  
134 will include members of the Election Board. At the time this analysis was drafted, the LOC  
135 intends to present a Sanctions and Penalties Law to GTC for consideration once the draft  
136 is complete and all legislative requirements are met.

- 137 **B. Referendums.** This section describes the process for referendums. Referendum questions may be  
138 submitted by qualified voters at a caucus prior to an election. The following revisions have been  
139 made to the referendum process to ensure a streamlined process: [see 102.7]

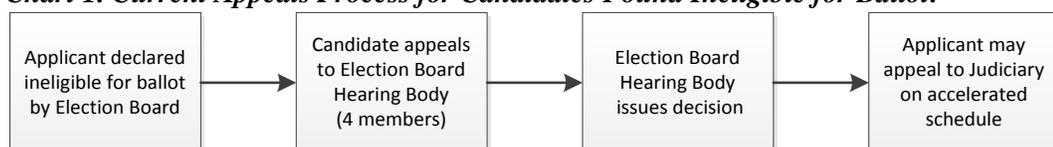
- 140 ■ **Standard Form.** A provision has been added requiring the Secretary to provide a standard form  
141 to submit referendum questions.
- 142 ■ **Yes or No Questions.** In addition, referendum questions must be written in the form of a “yes  
143 or no” question. The intent is to ensure that the questions are written clearly for the voter to  
144 answer.

- 145 **C. Candidate Eligibility.** This section describes the requirements to be a candidate. The following  
146 revisions have been made to this section [see 102.9]:

- 147 ■ **Applications.** This provision clarifies that all candidates, including those nominated at caucus,  
148 must fill out and turn in a completed application packet. Packets will be available in the BC  
149 Support Office. In addition, the Election Board’s current practice is to provide application  
150 packets at the caucus for those that have been nominated. The purpose of requiring the

- 151 application form is to ensure that candidates meet the eligibility requirements for the office  
152 they are seeking [see 102.9-4].
- 153 ■ **Proof of Minimum Eligibility Requirements.** Applicants will now be required to attach proof  
154 that they meet the requirements for the position they are running for. The Election Board must  
155 include a list of the required documents on the application so that applicants are aware of what  
156 they need to submit. If an applicant does not submit the required documentation or does not  
157 completely fill out the application form, they will be disqualified by the Election Board [see  
158 102.9-4(e)]. If an applicant feels they were unfairly disqualified, they can appeal to the  
159 Judiciary.
    - 160 ○ *Example:* An example of required documentation is proof of residency for positions that  
161 require members to reside in Brown or Outagamie County or copies of degrees and  
162 transcripts for positions that require a degree.
  - 163 ■ **Applying for More than One BC or Judiciary Position.** Under the current law, applicants  
164 cannot run for more than one Business Committee or Judicial position. For example, an  
165 applicant cannot file to run for both BC Chairperson and Councilperson in the same election.  
166 However, the current law doesn't state how the Election Board should handle this situation  
167 when it occurs. This has led to cases in the Oneida Judiciary, where the Judiciary noted: "the  
168 statute is silent as to whether a person has the opportunity to cure any defects and, if so, how  
169 much time is afforded to cure such defects. Furthermore, the statute says nothing about  
170 disqualifying a candidate from the election entirely who runs for more than one elective office"  
171 [see *Metoxen v. Election Board 17-AV-007*]. Therefore, the following new provisions have  
172 been added [see 102.9-5]:
    - 173 ○ **Include Restriction in Application Packet & Announce at Caucus.** The restriction on  
174 running for multiple BC or Judicial offices will be included in the application packet and  
175 read aloud at the caucus, to ensure that all potential candidates are aware before applying  
176 [see 102.9-5(a)].
    - 177 ○ **Process If an Applicant Applies For More Than One BC or Judiciary Position:** If an  
178 individual applies to run for more than one BC or Judiciary office, the Election Board will  
179 only accept the first application that the individual submitted. Any additional applications  
180 from that individual for other BC or Judicial offices will be rejected. The BC Support  
181 Office will be required to timestamp all applications in the order they are received, and the  
182 time stamp will be used to determine which application the individual filed first.
    - 183 ○ Currently, the Election Board reports that they attempt to contact the applicant to determine  
184 which office they want to run for. However, the Election Board has not always been able  
185 to reach applicants in time for the deadline. The purpose of this new process is to provide  
186 clear guidelines to applicants, the Election Board, and the Judiciary. It places responsibility  
187 on applicants to follow the law while ensuring that applicants are not disqualified from the  
188 ballot entirely.
  - 189 ■ **Transfer of Hearing Authority to Judiciary.** This law removes the Election Board's hearing  
190 body authority and transfers it to the Judiciary. In the current law, when an applicant is found  
191 ineligible to be on the ballot by the Election Board, they can appeal that decision to a hearing  
192 body made up of four (4) members of the Election Board. Instead, applicants will now appeal  
193 directly to the Judiciary on an accelerated schedule [see 102.9-8].

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



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



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- *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.

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**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].

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- **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.

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- **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]

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- **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].

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**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].

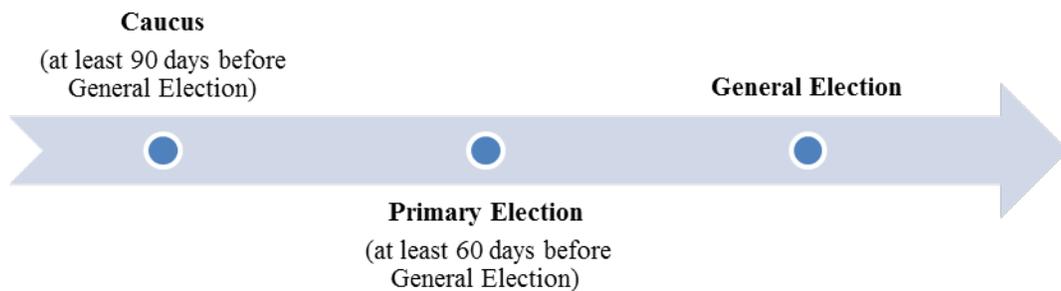
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- **Declining Office After Winning Election.** A provision has been added clarifying that if a candidate declines an office after winning an election and after taking the oath of office, it will be treated as a resignation. If a candidate declines 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].

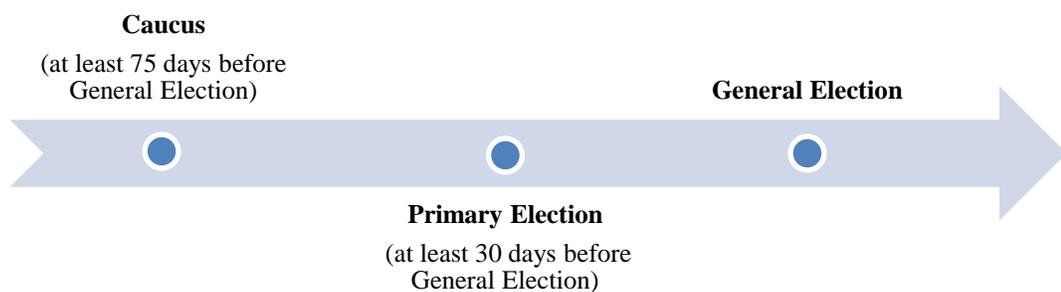
244 **F. Shortening Caucus and Primary Election Timeline.** Changes have been made to the election  
245 timelines to potentially shorten the length of the election season:

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

262 **Chart 3. Current Election Timeline:**



**Chart 4. Proposed Election Timeline:**



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

- 272     ▪ *Nominating Candidates by Motion.* More detail has been added to the law to reflect the current  
273 caucus process. The law clarifies that each position will be opened and closed for nomination  
274 by motion during the caucus: [see 102.13-2]
  - 275     ○ *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

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

328 **M. Voter Assistance.** The Election Law has been clarified to state that a voter with a disability or other  
329 impairment can request assistance from a member of the Election Board or any other qualified voter  
330 of their choosing. A qualified voter is an enrolled member of the Oneida Nation aged 18 or older.  
331 For example, a voter can request assistance from a family member or friend, as long as that person  
332 is a qualified voter. The purpose of this revision is to clarify that voters may be assisted by any  
333 qualified voter of their choosing, whether they are a member of the Election Board or not [see  
334 102.16-4].

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

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

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

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

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

358 

- **Extension of Deadline for Recount Requests.** A provision has been added regarding deadlines  
359 for a candidate to request a recount. Currently, candidates have five (5) business days after an  
360 election to request a recount. If a recount reverses the result of an election, the candidate who  
361 lost as a result of the recount will now have one (1) additional business day to request their  
362 own recount. This ensures that a candidate impacted by a recount will still have the opportunity  
363 to request their own recount [see 102.18-2(a)].

364 

- **Require Election Board to Complete Recounts within Two (2) Business Days.** Upon  
365 receiving a recount request from the Nation’s Secretary, the Election Board will now have two  
366 (2) business days to complete a recount instead of five (5) days. The purpose of shortening the  
367 deadline is to get recount results out sooner, especially if the recount changes the result of the  
368 election and the losing candidate wishes to request their own recount [see 102.18-4].

369 

- **Recounts Conducted by Hand and by Machine.** Currently, there is a discrepancy in the  
370 Election Law regarding whether the Election Board must conduct recounts by hand or by  
371 machine. A change has been made that will now require the Election Board to both hand count  
372 and machine count the ballots during a recount. The intent of this change is to increase voter  
373 confidence in the process and ensure an accurate count [see 102.18-7].

374 

- **Posting Recount Results.** The Election Board will now be required to post the tentative  
375 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

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

- 432 ■ **Conclusion:** The LOC should be aware that removing provisional voting eliminates an existing  
433 right of voters of the Nation. Whether to allow provisional voting is a policy decision.  
434

## 435 **SECTION 8. ENFORCEMENT AND ACCOUNTABILITY**

- 436 **A. Challenging an Election.** Any qualified voter may challenge the results of an election by filing a  
437 complaint with the Judiciary within ten (10) calendar days after the election [see *102.19-1*].
- 438 **B. Challenging Election Board Decision Regarding Candidate Eligibility.** An applicant found to be  
439 ineligible for a nominated or petitioned for position shall have two (2) business days to request a  
440 hearing with the Judiciary to review the eligibility status of the applicant [see *102.9-8*].
- 441 **C. Enforcement and Removal.** Election Board members who violate the Election Law may be subject  
442 to removal in accordance with the Removal Law, termination of appointment if appointed to fill a  
443 vacancy, or sanctions and penalties in accordance with laws of the Nation [see *102.4-12*].
- 444 **D. Final Report.** The Election Board is required to forward a Final Report to the Nation’s Secretary  
445 after time has lapsed for recount requests, or challenges or after all recounts or challenges have  
446 been completed. The Final Report must include the following information: Total number of persons  
447 voting; total votes cast for each candidate by subsection of the ballot; list of any ties and final results  
448 of those ties, including the method of resolution; list of candidates elected and position elected to;  
449 number of spoiled ballots; and cost of the election, including compensation paid to each Election  
450 Board member [see *102.19-2*].  
451

## 452 **SECTION 9. OTHER CONSIDERATIONS**

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

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

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

485 **E. New Forms or Procedures:**

486 ■ *Updated Application:* The Election Board will be required to update the application form to  
487 include:

- 488 ○ A list of required documents that applicants must submit to meet minimum eligibility  
489 requirements.
- 490 ○ A statement that applicants cannot apply to run for more than one Business Committee or  
491 Judiciary position.

492 ■ *Updated Election Board SOPs:* The Election Board will need to update their SOPs to comply with  
493 all amendments to this law.

494 ■ *New Referendum Form:* The Nation’s Secretary will be required to provide a standard referendum  
495 form at the caucus.

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

497 ■ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except  
498 emergency legislation [see *Legislative Procedures Act 1 O.C. 109.6-1*].

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

505  
506