

# ELECTION LAW AMENDMENTS FAQs

The Legislative Operating Committee (LOC) developed frequently asked questions (FAQs) to serve as a tool and resource for anyone interested in learning more about the proposed Election Law amendments. This document provides responses to questions the LOC anticipates members of the community may have regarding this proposed legislation.

<b>1. Why are term limits removed for the Election Board?</b>	<b>1</b>
<b>2. When do officials need to recuse themselves? What constitutes a conflict of interest under this law?</b>	<b>2</b>
<b>3. How do these amendments ensure that the voting machines are working properly?</b>	<b>3</b>
<b>4. What changes have been made to Photo ID requirements and provisional ballots?</b>	<b>3</b>
<b>5. Who is allowed to assist voters with their ballots?</b>	<b>3</b>
<b>6. Why reduce the number of Election Board members at polling sites?</b>	<b>4</b>
<b>7. Will ballots between Oneida &amp; Milwaukee polling sites be kept separate?</b>	<b>4</b>
<b>8. What are the changes to the Spoiled Ballot process?</b>	<b>4</b>
<b>9. How can a candidate request a Recount? What are the changes to the Recount Process?</b>	<b>5</b>
<b>10. What are the changes to the Referendum process?</b>	<b>5</b>
<b>11. What are the changes to the registration form at the polling site?</b>	<b>5</b>
<b>12. What is the process for a voter to challenge the results of an election due to a violation of the law?</b>	<b>6</b>
<b>13. Where can I find Election Board Standard Operating Procedures (SOPs)?</b>	<b>6</b>
<b>14. What is in the Election Board Final Report?</b>	<b>6</b>
<b>15. What stipends to Election Board members receive for service provided at GTC meetings?</b>	<b>7</b>
<b>16. When did Election Board start attending GTC meetings to count votes?</b>	<b>7</b>
<b>17. Has GTC previously discussed “double dipping”?</b>	<b>7</b>
<b>18. How can Election Board stipends be changed?</b>	<b>8</b>
<b>19. Does adopting the Election Law amendments prevent GTC from changing Election Board stipends in the future?</b>	<b>9</b>

## 1. Why are term limits removed for Election Board?

*[See page 35, line 107 of the redline draft]*

This law eliminates term limits for members of the Election Board. Election Board members are currently limited to two (2) consecutive three (3) year terms. After serving two (2) terms, Election

Board members must sit out a term before they can run again. The LOC is proposing to remove the term limit.

This law does not address term limits for any other board – only Election Board. Most other elected boards of the Nation do not have term limits, with the exception of the Oneida Nation Commission on Aging (ONCOA). The Oneida Police Commission and Oneida Arts Board, which are appointed, also have term limits. The intent is to make the term limits consistent with most other boards of the Nation.

## 2. When do officials need to recuse themselves from election activities? What constitutes a conflict of interest under this law?

### **Election Board Members:**

*[See page 23 of the packet, line 92 of the analysis]*

- Election Board members must recuse themselves from any pre-election, election, 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. *[1 O.C. 102.4-3]*.
- 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 is located in the Election Board's bylaws, but has been added directly into the law to strengthen and clarify this requirement. *[1 O.C. 102.4-3(b)]*.
  - o 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 other these relations obtained through legal adoption *[1 O.C. 102.3(n)]*.

### **Judiciary:**

*[See page 24 of the packet, line 105 of the analysis.]*

- Recusal requirements for members of the Judiciary are located in the Oneida Judiciary Canons of Judicial Conduct Law. Since this is already covered in another law, it was not necessary to include in the Election Law. *[8 O.C. 802, 2.2]*
  - o 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.

### **Police Officers:**

- The LOC did not to add recusal requirements for Police Officers. The limited role of the police officers during an election is to provide security at the polling sites, to witness hand counts, and to transport the sealed ballots.

### 3. How do these amendments ensure that the voting machines are working properly?

*[See page 65 of the packet, line 483 of the clean draft]*

The Election Board will now be required to hold a public test of the voting machines no more than ten (10) days prior to election day. The public test will be noticed in the Nation's newspaper and website. The test will be performed by running a group of pre-audited, marked ballots through the machine to ensure the machine records the correct, predetermined number. The intent of the public test is to increase voter confidence in the voting equipment. The public test is modeled after tests performed by other area municipalities. *[1 O.C. 102.16-1]*.

In addition, on Election day, the law states that the Election Board will only open the polls "after four (4) members of the Nation verify, through signature on the tape, the ballot box is empty and the ballot counting machine printer tape has a zero (0) total count" *[1 O.C. 102.16-3(a)]*.

### 4. What changes have been made to Photo ID requirements and provisional ballots?

*[See page 28 of the packet, line 308 of the analysis]*

The current Election Law requires voters to show a photo ID. However, if a voter is deemed ineligible to vote on election day (for example – for not showing Photo ID), he or she may still fill out a ballot. That ballot is placed in a sealed envelope and signed by two Election Board members. The voter then has two (2) business days to mail a written appeal to Election Board. The Election Board then issues a final decision on the voter's eligibility and will only count the ballot if it is determined that the voter was, in fact, eligible to vote. This is sometimes known as "provisional voting." *[1 O.C. 102.15-5]*.

In the proposed amendments, if a voter does not show a photo ID or is ineligible to vote, they will not receive a ballot. They must come back to the polling site with a photo ID in order to vote. The intent is to make the election process more efficient.

Acceptable Photo IDs include Oneida Tribal IDs, Drivers Licenses, or "any other identification with a name and Photo." *[1 O.C. 102.15-2]*.

### 5. Who is allowed to assist voters with their ballots?

*[See page 66 of the packet, line 501 of the draft]*

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 eighteen (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 the person of their choosing, whether they are a member of the Election Board or not [1 O.C. 102.16-4].

## **6. Why reduce the number of Election Board members at polling sites?**

*[See page 66 of the packet, line 515 of the draft]*

The Election Board reported that with the purchase of the new voting machines, fewer board members are needed to open and close each polling site. They also reported that this may reduce the need for alternates. The number of Election Board members required to sign the election totals at each of the polling sites has been reduced from six (6) members to four (4) members. Keep in mind that this is the minimum number – the Election Board may have more members at the polling site if needed [1 O.C. 102.16-12].

## **7. Will ballots between Oneida & Milwaukee polling sites be kept separate?**

*[See page 66 of the packet, line 516 of the draft]*

Yes. 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 through the election process, it will be easier to determine if there were irregularities at either of the polling sites. [1 O.C. 102.16-9(a)].

## **8. What are the changes to the Spoiled Ballot process?**

*[See page 29 of the packet, line 345 of the analysis]*

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 [1 O.C. 102.16-10].

## 9. How can a candidate request a Recount? What are the changes to the Recount Process?

*[See page 29 of the packet, line 357 of the analysis]*

A candidate may request the Election Board to complete a recount, provided the margin is within two percent (2%) or twenty (20) votes, whichever is greater. Changes to the recount process include:

- Requiring the Election Board to conduct recounts within two (2) business days instead of five days; *[1 O.C. 102.18-4]*.
- Requiring recounts to be conducted both by hand and by machine to ensure an accurate count; *[1 O.C. 102.18-7]*.
- Requiring tentative recount results to be posted to the prominent locations and the Nation's media outlets within twenty-four (24) hours; *[1 O.C. 102.18-9]*.
- Allow candidates who lose as a result of a recount to have one additional business day to request their own recount. This ensures that a candidate impacted by a recount will still have an opportunity to request their own recount. *[1 O.C. 102.18-2(b)]*.

## 10. What are the changes to the Referendum process?

*[See page 24 of the packet, line 137 of the analysis]*

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:

- *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. *[1 O.C. 102.7]*

## 11. What are the changes to the registration form at the polling site?

*[See page 28 of the packet, line 302 of the analysis]*

When voters sign-in at the polls on election day, they must sign in on the voter registration form. This form has been shortened to only require name, date of birth and enrollment number. The requirement that voters write down their maiden name and current address has been removed. The intent of shortening this form is to speed up the line for voters on Election Day. The Election Board reports that name, date of birth and enrollment number are enough information to identify voters *[1 O.C. 102.15-1]*.

## 12. What is the process for a voter to challenge the results of an election due to a violation of the law?

*[See page 50 of the packet, line 792 of the redline draft]*

A process for challenging elections is included in the Election Law. No changes have been made to this 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.
- The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed.
- Appeals can be filed to the Judiciary Court of Appeals.
- The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.
- If the Judiciary invalidates the election results, a special election shall be ordered by the Judiciary for the office(s) affected to be held on a date set by the Judiciary for as soon as this law allows for a special election. *[1 O.C. 102.19]*.

## 13. Where can I find Election Board Standard Operating Procedures (SOPs)?

*[See page 31 of the packet, line 461 of the analysis]*

The Election Board's standard operating procedures are located on the Election Board's webpage on the Oneida Nation website at <https://oneida-nsn.gov/government/boards-committees-and-commissions/elected/>. The direct link to the webpage is also located in your packet on page 31.

## 14. What is in the Election Board Final Report?

*[See page 51 of the packet, line 804 of the redline draft]*

The law requires the Election Board to forward a Final Report to the Nation's Secretary after the time has elapsed for recount requests, challenges, or after all challenges have been completed.

The Final Report must include the following information:

- Total number of persons voting;
- Total number of votes cast for each candidate by subsection of the ballot;
- List of any ties and final results of those ties, including 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]*

## **15. What stipends do Election Board members receive for service provided at GTC meetings?**

*[See memo on page 5 of the packet]*

In addition to the one hundred dollar (\$100) GTC meeting stipend as provided by the General Tribal Council Meeting Stipend Payment Policy, members of the Election Board currently receive an additional stipend of one hundred dollars (\$100) for attending GTC meetings and conducting all counting of votes by the GTC during that meeting.

Stipend amounts for Election Board are set by Business Committee resolution BC-05-08-19-B in accordance with the Boards, Committees and Commissions law. This resolution can be found on the Nation's website on the "Code of Laws" page.

## **16. When did Election Board start attending GTC meetings to count votes?**

*[See memo on page 5 of the packet]*

Since at least the year 2000, at the request of the Nation's Chairperson, the Election Board began attending GTC meetings to take over the responsibility of counting votes during meetings. Due to the fact that the Election Board was required to attend the GTC meetings and perform an official duty it was determined the Election Board may be paid a stipend equal to the regular meeting stipend, which was fifty dollars (\$50) at the time.

The GTC adopted resolution GTC-09-13-03-B which adopted the Fiscal Year 2004 budget. The Fiscal Year 2004 budget included an increase of the Election Board's stipend from fifty dollars (\$50) to one hundred dollars (\$100). Stipend amounts are currently set by Business Committee resolution BC-05-08-19-B in accordance with the Boards, Committees and Commissions law.

## **17. Has GTC previously discussed "double dipping"?**

*[See memo on page 6 of the packet]*

Yes. Although the GTC has not considered the issue of "double dipping" as it relates specifically to members of the Election Board, the GTC has previously considered the issue of "double dipping" as it relates to employees of the Nation.

In this case, "double dipping" refers to an employee of the Nation who is required to be at the GTC meeting in the capacity of his or her employment and therefore collects his or her wage for that time while also collecting the GTC meeting stipend. An employee collecting a wage for providing a service during a GTC meeting in addition to the GTC meeting stipend is similar to an Election Board member collecting a stipend for providing the service of counting votes during a GTC meeting in addition to the GTC meeting stipend.

On August 11, 2007, the GTC adopted a directive that a stipend of one hundred dollars (\$100) be paid to any member of the Nation who attends a GTC meeting, is eligible to vote, and stays until the end of the meeting effective in calendar year 2008 and for all time.

Since then, the GTC has considered whether an individual should be able to collect more than that GTC meeting stipend during a GTC meeting.

At the July 2, 2012, semi-annual GTC meeting the GTC discussed the 2011 referendum question, “*Should the Oneida Business Committee disallow employees of the tribe, who are required to be at the GTC in the capacity of their job, from the [GTC Meeting] stipend?*” A motion was made during this meeting to revise the General Tribal Council Meeting Stipend Payment Policy to “*disallow employees of the Tribe, who are required to be at the GTC in the capacity of their job, from the stipend.*” The GTC rejected this motion and decided that employees of the Nation should be allowed to still receive a GTC meeting stipend if required to be at the GTC meeting in the capacity of his or her employment.

## **18. How can Election Board stipends be changed?**

*[See memo on page 7 of the packet]*

The Boards, Committees, and Commissions law provides for stipends for the Election Board. The Boards, Committees, and Commissions law requires that the Oneida Business Committee set stipend amounts by resolution. *[1 O.C. 105.13-2]*. Members of a board, committee, or commission of the Nation are eligible to receive a stipend for various activities including any miscellaneous action deemed appropriate by the Oneida Business Committee and included in the resolution which sets stipend amounts. *[1 O.C. 105.13-7]*.

The Oneida Business Committee set forth specific stipend amounts that a member of a board, committee, or commission of the Nation are eligible to receive through the adoption of BC-09-26-18-D, which was amended through BC-05-08-19-B. Resolution BC-05-08-19-B provides that members of the Election Board are eligible to receive a miscellaneous stipend of one hundred dollars (\$100) for attendance and service provided at a GTC meeting.

The Oneida Business Committee is required to periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending the stipend resolution. *[1 O.C. 105.13-2]*.

GTC may direct the BC to amend resolution BC-05-08-19-B to change or eliminate the Election Board’s stipend for service provided at GTC meetings.



## **19. Does adopting the Election Law amendments prevent GTC from changing Election Board stipends in the future?**

*[See memo on page 7 of the packet]*

No, adopting the Election Law amendments does not prevent GTC or the BC from discussing and/or changing stipends for Election Board members in the future.

The proposed amendments to the Election law do not address the stipend a member of the Election Board is eligible to receive for attending a GTC meeting and providing the service of counting votes. Oneida Business Committee resolution BC-05-08-19-B is the document which provides that a member of the Election Board may receive a stipend of one hundred dollars (\$100) for attendance and service provided at a GTC meeting of the Nation.

Due to the fact that the adoption of the proposed Election law amendments is a separate issue than Election Board member stipends, the Legislative Operating Committee encourages the GTC to consider the adoption of the Election law amendments today, so that any adopted changes could be implemented for the 2020 General Election.