



**HO-CHUNK NATION CODE (HCC)
TITLE 2 – GOVERNMENT CODE
SECTION 6 – ELECTION CODE**

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This Code supersedes the Ho-Chunk Nation Election Code enacted February 10, 1995 by the Legislature and most recently amended and restated by Ho-Chunk Nation Legislative Resolution 1/19/99A, Resolution 06/23/09C and Resolution 11-17-09 K .

This Code also supersedes the Recall Petition and Recall Meeting Procedures adopted by the Legislature on April 8, 1997.

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Appendix A (Election Board Forms)

CHAPTER I GENERAL

1. Authority.

a. Article VIII, Section 3 of the Constitution requires the Legislature to enact an Election Code governing all necessary election procedures at least one hundred and twenty (120) calendar days before the election. In *Ho-Chunk Nation Election Board, Ho-Chunk Nation v. Aurelia Lera Hopinkah* Case No. Su 98-08 (April 7, 1999), the Ho-Chunk Nation Supreme Court interpreted Article VIII, Section 3 of the Ho-Chunk Nation Constitution and whether or not it prevents amendments to the *Election Code* one hundred and twenty (120) calendar days before an election. The Supreme Court held that “[t]he Supreme Court interprets, Article VIII, Section 3, the Election Code provision to mean the original Election Code governing all necessary election procedures at least one hundred and twenty (120) days before the first election. . . Amendments to the original Election Code are not subject to one hundred and twenty (120) days as required of the first enactment.”

b. Article VIII, Section 4 of the Constitution requires the Legislature to enact a law creating an Election Board.

c. Article V, Section 6 of the Constitution requires that Members of the Legislature shall be elected by a majority vote of the eligible voters from their respective Districts.

d. Article VI, Section 5 of the Constitution requires that the President shall be elected by a majority vote of eligible voters of the Ho-Chunk Nation.

e. Article VII, Section 10 of the Constitution requires that Supreme Court Justices shall be elected by a majority vote of the eligible voters of the Ho-Chunk Nation, in accordance with General Election provisions in Article VIII, Section 1, unless otherwise provided.

2. **Purpose and Construction.** The *Election Code* (2 HCC § 6) is enacted to provide basic rules and establish election procedures to ensure that all elections are conducted in a fair and proper manner. The *Election Code* (2 HCC § 6) shall be interpreted liberally in order to accomplish this purpose. Substantial compliance shall satisfy the *Election Code* (2 HCC § 6). Technicalities shall not be used to interfere with, delay, or block elections or cause confusion or a loss of voter confidence in the election system.

3. **Definitions.** The following definitions shall be applicable with respect to the interpretation of the *Election Code* (2 HCC § 6). All other words shall have their commonly understood definition:

a. “Absentee Ballot” means a legal document utilized by a voter in order to cast a vote for a particular election from a location other than the polling location on the day of the election, usually requested in advance of the election and mailed to the appropriate

location to be received prior to or on the day of the election. The Election Board shall only utilize and a voter may only utilize an Absentee Ballot when the Election Board, pursuant to Section 14, has determined to not use Mail Balloting for the Election.

b. “Affidavit of Non-Resident Voter Form” Election Board Form Appendix A is for an Eligible Voter voting outside his or her respective District. This form is used to ensure the voter has not physically voted in his or her District. Affidavit of Non-Resident Voter Forms shall only be available during General Elections, Primary Elections, or Special Elections in which the Election Board, pursuant to Section 14, determines to not use Mail Balloting for the Election.

c. “Appeal” means a formal request to a higher authority requesting a change in or confirmation of a decision.

d. “Ballot” means a legal form or document created for the purpose of allowing a voter to cast a vote in a particular election.

e. “Calendar Days” mean the timeline consisting of all days, including holidays and weekends, with day one (1) in any time line being the first day after a particular event. For instance, a document is received on Monday with five (5) calendar days to respond, with day one (1) being Tuesday. Due dates that fall on a weekend or holiday are set to the next following working day. For purposes of the preceding sentence, a date is considered a holiday if it is recognized as such by the Nation’s employment law currently the *Employment Relations Act* (6 HCC § 5).

f. “Candidate” means somebody who is being considered for a political office or an official position.

g. “Certified Mail” means mail that must be signed for on delivery.

h. “Challenge of voter” means to call into question by proof of an Eligible Voter.

i. “Challenges to Election Results” mean to call an election result into question by demanding an explanation, justification, or proof.

j. “Code” means this *Election Code*, cited as 2 HCC § 6.

k. “Constitution” means the Constitution of the Ho-Chunk Nation which was approved on November 1, 1994.

l. “Disqualification” or “Disqualified” means a person who is or has become ineligible for elected office.

m. “District” means Legislative Districts or Areas of the Ho-Chunk Nation, currently totaling five (5) distinct Districts. The number of Districts may change as a result of a Special Election called for pursuant to Article V, Section 4 of the Constitution.

n. “Duties” mean obligations by Election Board Members to perform a task by their respective Districts.

o. “Election Board Members” mean Ho-Chunk Members appointed or otherwise chosen to serve on the Election Board, with one (1) Member and one (1) alternate from each District.

p. “Election Fraud” means unlawful or otherwise improper conduct committed in an election, including but not limited to fraudulent voting such as voting twice, voting under another’s name, or similar dishonest conduct. It also includes violations of the election process or the *Election Code* (2 HCC § 6) in order to subvert the legitimate election results.

q. “Election Procedures” mean the established or correct method of procedures for an Election.

r. “Electioneering” means to take an active part in an election campaign, especially as, or on behalf of, a candidate for political office.

s. “Eligible Voter” means any Ho-Chunk Enrolled Member the age of eighteen (18) or older on the day of or prior to the day of any particular Election, unless otherwise prohibited by other statute or law from voting.

t. “Facsimile” means an exact copy or reproduction of something such as a document; same as a “Fax”.

u. “Fines” mean monetary penalty imposed by the Election Board under the terms and conditions of the *Election Code* (2 HCC § 6).

v. “Frivolous advertisement” means a claim which has no reasonable merit or reasonable expectation of success. An advertisement in which the claimant knows there is no merit and makes the claim for the sole purpose of delay, harassment, or undue hardship upon respondent party or parties.

w. “General Election” means the final election held to choose a person to serve as an elected official that shall be held on the first (1st) Tuesday in June of odd numbered years.

x. “Incapacitated” means a person other than a minor who is temporarily or permanently impaired to the extent that the person lacks sufficient understanding to make or communicate responsible personal decisions.

y. “Location” means the Districts within the Ho-Chunk Nation. Unless changed as a result of a Special Election called for pursuant to Article V, Section 4 of the Constitution, the Districts are comprised of Black River Falls (District I); Tomah, La Crosse, Madison, and Wisconsin Dells (District 2); Wittenberg, Green Bay, and Wisconsin Rapids (District 3); Milwaukee (District 4), and Chicago and Minneapolis/St. Paul (District 5).

z. “Nomination Petition” means a written request or official document signed by ten (10) or more Tribal Members (eligible voters) supporting a candidate.

aa. “Oath” means a formal or legally binding pledge.

bb. “Oath of Office” means the Oath of Office to Swear in a newly elected official, which will be done on the fourth (4th) Wednesday following the General or a Special Election.

cc. “Official Declaration of Candidacy” means a legal document used for informing the Election Board of a candidate’s intention to run for eligible office.

dd. “Official Recall Petition” means an official form (see Election Board Form 8 at Appendix A) used by a person to initiate the recall process to remove an elected official.

ee. “Penalty” means a punishment or adverse action imposed by the Election Board for violations of election rules or the *Election Code* (2 HCC § 6). Penalties, whether monetary or other, are not exclusive to the *Election Code* (2 HCC § 6) and a person’s conduct may result in further civil or criminal charges or penalties.

ff. “Poll Watchers” mean approved person(s) authorized to observe polling sites. Poll Watchers shall only be used during General Elections, Primary Elections, or Special Elections in which the Election Board, pursuant to Section 14, determines to not use Mail Balloting for the Election.

gg. “Poll Workers” mean those individuals who are designated workers that are appointed by an Election Board Member to assist during an Election. Poll Workers shall only be used during General Elections, Primary Elections, or Special Elections in which the Election Board, pursuant to Section 14, determines to not use Mail Balloting for the Election.

hh. “Primary Elections” mean a preliminary election held prior to General Elections when three (3) or more candidates are running for the same office.

ii. “Prohibit” means to prevent something or somebody from doing something by passing a law or rule that forbids it.

jj. “Qualifications” mean skills, qualities, conditions or requirements that a person must meet to become eligible for a job or elected position.

kk. “Recount” means a second (2nd) or more tabulation of votes entered in a particular election and occurring when the margin of victory for an election is less than one percent (1%) or as otherwise set forth in the *Election Code* (2 HCC § 6).

ll. “Residency” means the permanent physical address (not a P.O. Box) stated on the periodic Address Verification Forms provided by the Nation’s Office of Tribal Enrollment with respect to per capita distributions. Except that in the case of candidates or voters in military service or full time registered students, “residency” shall be the last

permanent physical address of such person before he or she entered military service or school.

mm. “Resignation” means the act of surrendering or relinquishing an office, right, claim, or position, which may include formal notification of such relinquishment.

nn. “Secretarial Election” means an Election to amend the Constitution of the Ho-Chunk Nation, pursuant to Article XIII of the Ho-Chunk Nation Constitution.

oo. “Special Election” means an Election other than the General Election or Primary Election that is called for by the General Council, the Legislature, or by the Constitution or appropriate ordinance.

pp. “Spoiled Ballot” means a ballot reflecting a vote that cannot be counted for whatever reason, typically because of marks outside of areas designated within the ballot form, rejection by a voting machine, or physical damage to the form itself.

qq. “Term” means the length of time that something lasts, with a fixed beginning and end, often a period during which a person holds an appointment of office.

mm. “Tie Vote” means when a vote results in an exact or equal number of votes between two (2) or more alternatives.

nn. “Working Days” mean the calendar days that fall within the week; Monday through Friday excluding Holidays. For purposes of the preceding sentence, a date is considered a holiday if it is recognized as such by the Nation’s employment law currently the *Employment Relations Act* (6 HCC § 5).

oo. “Write-In” means a vote cast for an alternative not prelisted on a ballot wherein the voter physically adds the alternative of choice to the ballot. Write-in candidates are prohibited in all elections, except a Primary Election.

4. Internal Operating Rules. The Election Board shall adopt rules and regulations governing Election Board Meetings, conduct of Election Board Members, and other functions related to election activities consistent with this *Election Code* (2 HCC § 6) and Article VIII, Section 4 of the Constitution, which states in pertinent part: *At least sixty (60) days before the election, the Election Board may adopt rules and regulations governing elections.* For purposes of the preceding sentence a day shall mean a working day.

5. Elections. The Constitution prescribes two (2) types of elections: General Elections and Special Elections. When three (3) or more candidates run for a seat in a General or a Special Election, there shall be a Primary Election and, if required, a Runoff Election as described in Section 5, paragraph d., below.

a. Primary Election.

(1) Primary Elections shall be held prior to the General Election whenever there are three (3) or more candidates running for the same position in order to ensure compliance with the majority vote requirement as provided in Section 1, subparagraphs c. through e., above.

(2) If no candidate in any Primary Election receives more than fifty percent (50%) plus one (1) of the votes cast in such Election, the two (2) candidates with the highest vote totals from the Primary Election (any candidate(s) tied with the lower of such totals) shall appear on the ballot in the Runoff Election.

(3) Any candidate who receives fifty percent (50%) plus one (1) of the total votes cast shall be deemed as the winner.

(4) Primary Elections shall be conducted in the manner prescribed by the *Election Code* (2 HCC § 6) and in accordance with the timetable adopted by the Election Board.

(5) Only Primary Elections may have write-in candidates.

b. General Elections.

(1) General Elections shall be held in accordance with Article VIII, Section 1 of the Constitution, which states: *Section 1. General Elections. General Elections shall be held on the first Tuesday in June of odd numbered years. Offices of the Legislature, Executive, and Judiciary shall be filled at General Elections.*

(2) No write-ins will be allowed in General Elections.

c. Special Elections. Special Elections shall refer to all elections other than the General Election including, but not limited to Redistricting/Reapportionment Elections, Recall Elections, elections to fill vacancies in the Legislature, Judiciary, and the Office of President, and elections to decrease or increase the number of Legislators serving on the Legislature when required as a result of adoption of a District Plan as a result of a Redistricting Special Election. Special Elections shall be held in accordance with Article VIII, Section 2 of the Constitution, which states: *Section 2. Special Elections. Special Elections shall be held when called for by the General Council, the Legislature, or by this Constitution or appropriate ordinance. In all Special Elections, notice shall be provided to the voters.*

d. Runoff Elections. Runoff Elections shall be conducted in the manner prescribed by the *Election Code* (2 HCC § 6) and in accordance with the timetable adopted by the Election Board. Runoff Elections shall only occur in the following circumstances:

(1) The two (2) candidates who received the first (1st) and second (2nd) most number of votes shall participate in a runoff election if after a Primary Election no candidate receives the required fifty percent (50%) plus one (1) of the total votes cast to be deemed as the winner. The runoff shall have three (3) candidates, if the candidates

who received the second (2nd) and third (3rd) most number of votes are tied in the number of votes received by these candidates.

(2) In any election that is not a Primary Election when there is a tie amongst the candidates who received the highest number of votes. A Primary Election shall only have a runoff election pursuant to the requirements of Section 5, subparagraph d. (1).

(3) In a Special Election for Redistricting/Reapportionment when two (2) or more Redistricting Scenarios receive the highest number of votes and are tied.

e. Secretarial Elections. A Secretarial Election may be called for pursuant to Article XIII of the Ho-Chunk Nation Constitution which states: ***Section 1. Requirements.***

This Constitution may be amended by a majority vote of the qualified voters of the Ho-Chunk Nation voting at an election called for that purpose by the Secretary of the Interior, provided, that at least thirty (30) percent of those entitled to vote shall vote in such election; but no amendment shall become effective until approved by the Secretary of the Interior or until deemed approved by the Secretary by operation of law. If the voters adopt the amendment(s), the Secretary of the Interior shall approve such amendment(s) within forty-five (45) days after the election unless the amendment(s) are contrary to applicable law.

Section 2. Requests for a Secretarial Election.

It shall be the duty of the Secretary of the Interior to call and hold an election on any proposed amendment to this Constitution at the request of two thirds (2/3) of the entire Legislature, at the request of the General Council, or upon presentation of a petition signed by thirty (30) percent of the eligible voters of the Ho-Chunk Nation.

CHAPTER II – PRE-ELECTION DAY PROCEDURES

6. Election Board.

a. Appointment of Election Board. As required by Article VIII, Section 4 of the Constitution there is hereby created an Election Board. Article VIII, Section 4 of the Constitution further states: *The Election Board shall conduct all General and Special Elections. At least sixty (60) days before the election, the Election Board may adopt rules and regulations governing elections. Election Board Members shall serve for two (2) years. Election Board Members may serve more than one term. The Legislature may remove Election Board Members for good cause.*

(1) The Election Board shall consist of twelve (12) Members and an Election Board Chairperson (“Chairperson”).

(2) The Election Board shall select by vote of at least seven (7) Members the Chairperson from the Nation’s Membership to serve for a two (2) year term and until the Chairperson’s replacement is selected and commences his or her service, provided that if the Election Board shall be unable to select a Chairperson by a vote of at least seven (7)

Members within thirty (30) calendar days of the end of the term of the Chairperson or within thirty (30) calendar days after a vacancy in the office of Chairperson occurs, the Legislature shall select a Chairperson for a two (2) year term in the case of the expiration of the prior term or for the remainder of the existing term in the case of a vacancy.

(3) The Chairperson shall set a deadline for the nomination of twelve (12) additional Election Board Members and twelve (12) Alternate Election Board Members (“Alternate Members”). The Chairperson shall post the deadline for the nomination of Election Board Members and Alternate Members in each District.

(4) Unless modified as a result of a Special Election called for pursuant to Article V, Section 4 of the Constitution, the twelve (12) Election Board Members and the twelve (12) Alternate Election Board Members shall be nominated as follows:

(a) District 1 will have one (1) Member and one (1) alternate nominated from the Black River Falls District meeting.

(b) District 2 will have a total of four (4) Members and four (4) alternates with one (1) Member and one (1) alternate being nominated at the Tomah, La Crosse, Madison, and Wisconsin Dells District meetings.

(c) District 3 will have a total of four (4) Members and four (4) alternates with one (1) Member and one (1) alternate being nominated at the Wittenberg, Wisconsin Rapids, Indian Heights, and Green Bay District meetings.

(d) District 4 will have one (1) Member and one (1) alternate each nominated at the Milwaukee District meeting.

(e) District 5 will have a total of two (2) Members and two (2) alternates with one (1) Member and one (1) alternate being nominated at the Chicago and Minneapolis/St Paul District meetings.

(5) Each District shall nominate the appropriate number of Election Board Members and Alternate Election Board Members. If a District fails to nominate an Election Board Member(s) or Alternate Election Board Member(s), or if a dispute arises as to the final choice(s) made by a District, then the Legislature shall make the final selection of an Election Board Member(s) and Alternate Election Board Member(s) from the respective District.

(6) All District nominations for Election Board Members and Alternate Election Board Members shall be subject to confirmation by the Legislature.

(7) All Election Board Members shall serve terms of two (2) years or until their successors have been chosen. Election Board Members may serve more than one (1) term.

b. Duties and Obligations of Election Board.

(1) Duties. The Election Board shall:

(a) Conduct all General and Special Elections in a fair and impartial manner.

(b) Determine, pursuant to Section 14, whether or not the General or Special Election shall be conducted by Mail Balloting or be held at polling places.

(c) Ensure that all candidates meet the qualifications for office and/or verify that all documents to be true and accurate. Prior to an Election, the Election Board shall hold a meeting to certify that all candidates meet the qualifications for office and/or verify that all documents to be true and accurate. Background checks shall be done by the Ho-Chunk Nation Compliance Department or its designee. The Election Board shall determine whether each candidate for elective office meets the appropriate qualifications listed in the Constitution and any other qualifications required under the laws of the Ho-Chunk Nation, including Section 8, subparagraph d., below, and the Ho-Chunk Nation *Code of Ethics Act* (2 HCC § 1). Background checks conducted to determine if a candidate meets these qualifications for office shall be made available and seen by all Election Board Members prior to the Election Board making the determination as to whether or not the candidate meets these qualifications for office. Background checks shall all be submitted at the same time to the Election Board for review prior to certification. Unless precluded by something beyond its control, the Election Board shall make the decision regarding certification of candidates at the same time for all candidates. After the Election Board makes the determination as to whether or not the candidate meets the qualifications for office, the background check shall be immediately returned to the Election Board office. The Election Board office shall make a record of which Election Board Members viewed the background checks and when they returned it to the Election Board office. The Election Board office shall then maintain the background checks in a secure location until all potential legal challenges to the determination have been exhausted.

(d) Ensure that the election runs smoothly and that order is maintained at all times, including at Election Board Meetings and at all other Election Board activities.

(e) Ensure the safe keeping of all Official Ballots including Absentee Ballots. Except if the Election Board determines to conduct the election by Mail Balloting the Election Board will process new envelopes for Absentee Ballots for every election. After each election, the Election Board assistant will shred all unused Absentee Ballots and envelopes.

(f) Prepare and approve all Official Ballots including, if necessary, Absentee Ballots. No Ballots will be changed without approval from the Election Board.

(2) Obligations.

(a) No Election Board Member, Election Board Chairperson, or Election Board staff may actively campaign for the nomination, election, recall or removal of any elected official.

(b) No Election Board Member, Election Board Chairperson, or Election Board staff may be a candidate for elective office.

(c) The Election Board Members, Election Board Chairperson, and Election Board staff shall seek to maintain a neutral and impartial position on all election activities in order to ensure a fair and proper election.

(d) The Election Board Members, Election Board Chairperson, and Election Board staff shall uphold and adhere to the terms of the *Election Code* (2 HCC § 6).

(e) Attend Meetings. Two (2) consecutive unexcused absences from duly called Election Board Meetings shall result in an automatic vote on whether the Election Board should recommend to the Legislature to remove the Election Board Member. Prior to the Election Board voting on whether or not to recommend removal of the Election Board Member, the Election Board Member shall have the opportunity to establish, to the satisfaction of the Election Board, good cause for his or her absence. The Election Board Member's opportunity to establish good cause for his or her absence shall occur after the Election Board Member is provided written notice that the Election Board will be voting on whether or not to recommend to the Legislature to remove the Election Board Member. Even if the Election Board recommends removal, the Legislature retains the authority to determine whether or not to proceed with removal proceedings against the Election Board Member.

(f) All Election Board Members shall give Election Board reports at their respective District's monthly District Meetings.

(g) Any Election Board Member or the Election Board Chairperson shall abstain from voting during the portion of the Election Board meeting pertaining to an immediate family member's interest if an immediate family member is running for office. If an Election Board Member abstains from voting because of the requirements of the preceding sentence, the alternate Election Board Member selected from the same District meeting may vote for the Election Board Member who abstained. If the Election Board Chairperson must vote to break a tie and the matter involves an immediate family member of the Chairperson, the Vice-Chairperson shall break the tie. For purposes of the preceding sentences "immediate family member" means any of the following:

1 An individual's spouse.

2 An individual's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half (½) of his or her support from the individual.

3 Any person living in a spousal relationship with another.

4 A son or daughter (including adopted child(ren)), brother, sister, mother, father, grandmother, grandfather, grandson or granddaughter.

c. Improper Conduct by the Election Board or Election Board Chairperson. The Election Board shall strictly adhere to the duties and obligations set forth above.

(1) The Election Board Chairperson shall report to the Legislature any and all acts and circumstances, which come to the attention of the Chairperson regarding the conduct of Election Board Members that, in the Chairperson's judgment, may be reasonably construed as a violation of the *Election Code* (2 HCC § 6), whether or not the Chairperson recommends removal under Section 6, subparagraph c. (1) (a), below.

(a) If the Election Board or the Election Board Chairperson finds that an Election Board Member(s) has violated any provision of this *Election Code* (2 HCC § 6) or that an Election Board Member(s) has engaged in any activity which constitutes good cause for removal, the Election Board and/or Election Board Chairperson may recommend in writing to the Legislature that the Election Board Member(s) or Election Board Chairperson in question be removed.

(b) Subject to and consistent with the terms of the Constitution, including without limitation, Article VIII, Section 4, the Legislature may remove an Election Board Member or Election Board Chairperson for good cause.

(c) Any Election Board Member or Election Board Chairperson subject to removal shall be informed of the charges in writing at least ten (10) calendar days before the legislative hearing to consider the charges and shall be given an opportunity to respond to the charges.

(d) The Legislature may, in addition to or in lieu of removal, take such action or make such referral to any designated authority with respect to the conduct of an Election Board Member or Election Board Chairperson as may be permitted or required under the Nation's *Code of Ethics Act* (2 HCC § 1).

d. Election Board Stipends. Members of the Election Board shall be provided a stipend at a rate set forth in or controlled by the *Finance Manual* (5 HCC § 5) of the Ho-Chunk Nation.

7. Elective Offices and Terms.

a. Legislature.

(1) Legislative Districts.

(a) Unless modified as a result of a Special Election called for pursuant to Article V, Section 4 of the Constitution, the Legislature shall be composed of thirteen (13) Representatives elected from the following Districts that were established by the November 18, 2008 Special Election for Redistricting and Reapportionment:

District 1: Wisconsin Counties of Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Florence, Forest, Iron, Jackson, Langlade,

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Lincoln, Marinette, Menominee, Oconto, Oneida, Pepin, Pierce, Polk, Price, Rusk, Sawyer, St. Croix, Taylor, Trempealeau, Vilas and Washburn.

District 2: Wisconsin Counties of Crawford, Columbia, Dane, Grant, Iowa, La Crosse, Lafayette, Monroe, Richland, Sauk, and Vernon.

District 3: Wisconsin Counties of Adams, Brown, Calumet, Door, Fond du Lac, Green Lake, Juneau, Kewaunee, Manitowoc, Marathon, Marquette, Outagamie, Portage, Shawano, Sheboygan, Waupaca, Waushara, Winnebago and Wood.

District 4: Wisconsin Counties of Dodge, Green, Jefferson, Kenosha, Milwaukee, Ozaukee, Racine, Rock, Walworth, Washington, and Waukesha.

District 5: Outside the State of Wisconsin.

(b) Unless modified in accordance with Article V, Section 4 of the Constitution, the Districts shall be:

<u>District</u>	<u>Number of Legislators</u>	<u>Seat Number</u>
1	3	1, 2, 3
2	3	1, 2, 3
3	2	1, 2
4	1	1
5	4	1, 2, 3, 4

(c) If the below events occur, the Legislature shall use the Quick Passage procedures of the *Legislative Organization Act* (2 HCC § 11) to pass Legislation to Amend Section 7, subparagraphs (a) and (b) if:

1 Ho-Chunk Nation Members approve new Districts at a Special Election for Redistricting and Reapportionment pursuant to Article V, Section 4 of the Constitution; and

2 All legal challenges to the results of the Special Election have been exhausted.

(2) Legislator Terms of Office. The terms of office for Legislators shall be set forth in accordance with Article V, Section 6 of the Constitution, which states: *Section 6. Terms of Office. Members of the Legislature shall serve four (4) year terms which shall be staggered. Legislators shall represent their respective Districts until their successors have been sworn into office except if the Legislator has been successfully removed or recalled in accordance with this Constitution. Members of the Legislature shall be elected by a majority vote of the eligible voters from their respective Districts.*

b. Executive.

(1) Office of the President. The Executive power of the Ho-Chunk Nation shall be vested in the President in accordance with Article VI, Section 1(a) of the Constitution, which states: *(a) The Executive power of the Ho-Chunk Nation shall be vested in the President of the Ho-Chunk Nation.*

(2) Term of Office for President. The term of office for President shall be set in accordance with Article VI, Section 5 of the Constitution, which states: *Section 5. Term of Office. The President shall serve four (4) year terms. The President shall serve until a successor has been sworn into office. The President shall be elected by a majority vote of eligible voters of the Ho-Chunk Nation.*

c. Judiciary.

(1) Composition of the Judiciary. The Judiciary shall be composed of a Supreme Court and a Trial Court, such lower courts of special jurisdiction as deemed necessary by the Legislature, and other forums of special jurisdiction for traditional dispute resolution as deemed necessary by the Legislature in accordance with Article VII, Sections 1, 2, and 3 of the Constitution, which states: *Section 1. Composition of the Judiciary. There shall be a Supreme Court of the Ho-Chunk Nation, a Trial Court of the Ho-Chunk Nation, such lower courts of special jurisdiction as deemed necessary by the Legislature, and other forums of special jurisdiction for traditional dispute resolution as deemed necessary by the Legislature.*

Section 2. Composition of the Supreme Court. There shall be one Chief Justice and two Associate Justices of the Supreme Court.

Section 3. Composition of the Trial Court. There shall be one Chief Judge of the Trial Court and other Associate Judges as deemed necessary by the Legislature.

(2) Terms of Office for Justices and Judges. The terms of office for Justices and Judges shall be set in accordance with Article VII, Sections 9 and 10 of the Constitution, which states: *Section 9. Terms of Office. The Chief Justice of the Supreme Court shall be elected to serve for six (6) years and until such time as an election is held and a successor has been sworn into office. At the first election for positions on the Supreme Court, the candidate receiving the highest number of votes for the position of Associate Justice shall serve a four year term; the candidate receiving the second highest number of votes shall serve a two year term. Thereafter, Associate Justices shall serve for four (4) year staggered terms. A Supreme Court Justice shall serve until a successor has been sworn into office. The Chief Judge and any Associate Judge of the Trial Court shall be appointed by the Legislature to serve for three (3) year staggered terms and until their successors have been sworn into office.*

Section 10. Election of Supreme Court Justices. Supreme Court Justices shall be elected by a majority vote of the eligible voters of the Ho-Chunk Nation, in accordance with the General Election provisions of Article VIII, Section 1, unless otherwise provided.

8. **Qualifications.**

a. Qualifications of Legislators.

(1) All candidates for a position on the Legislature shall meet the qualifications listed in Article V, Section 7 of the Constitution, which states: *Section 7. Qualifications. Members of the Legislature shall be at least twenty five (25) years old and eligible to vote. No person shall become a Member of the Ho-Chunk Nation Legislature if otherwise employed by the Ho-Chunk Nation. No person convicted of a felony shall serve as a Legislator unless pardoned.*

(2) Pardon shall be made by the jurisdiction that issued the felony conviction.

(3) Residency Requirement for Legislative Candidates. A candidate for Legislature shall be eligible to run for office in the District in which the candidate has resided for at least one (1) year immediately prior to filing the petition declaring his or her candidacy.

(4) Except for as provided in Section 20 for holdover Legislators, a Legislator must maintain residency in the District that elected him or her during his or her entire term. A holdover Legislator, as defined in Section 20, must maintain residency in the geographic region that originally elected him or her to the Legislature during his or her entire term.

b. Qualifications of the President.

(1) All candidates for the position of President shall meet the qualifications listed in Article VI, Section 3 of the Constitution, which states: *Section 3. Qualifications. The President shall be at least thirty-five (35) years old and eligible to vote. No person convicted of a felony shall serve as President unless pardoned.*

(2) Pardon shall be made by the jurisdiction that issued the felony conviction.

c. Qualifications of Supreme Court Justices.

(1) All candidates for a position on the Supreme Court shall meet the qualifications listed in Article VII, Sections 8(a) and 8(b) of the Constitution, which states: *(a) The Chief Justice of the Supreme Court shall be at least forty (40) years old, an attorney admitted to practice in any State and before the Ho-Chunk courts, and shall possess all qualifications required by enactment of the Legislature. No person convicted of a felony shall serve as Chief Justice of the Supreme Court unless pardoned.*

(2) *Associate Justices of the Supreme Court shall have been admitted to practice before the Ho-Chunk courts and shall possess all qualifications required by enactment of the Legislature. No person convicted of a felony shall serve as Associate Justice of the Supreme Court unless pardoned.*

(3) Pardon shall be made by the jurisdiction that issued the felony conviction.

d. Disqualification Following Removal. Any person who has been removed from office by General Council or the Legislature under Article IX of the Constitution shall be disqualified from and ineligible to participate as a candidate in any Election, General or Special, occurring within four (4) years of the date of removal. This provision shall not limit any other action, which may be taken by General Council consistent with the Constitution with respect to any removal.

e. Certification of Qualifications.

(1) Prior to an Election, the Election Board shall hold a meeting to certify that all candidates meet the qualifications for office and/or verify that all documents to be true and accurate. Background checks shall be done by the Ho-Chunk Nation Compliance Department or its designee. The Election Board shall determine whether each candidate for elective office meets the appropriate qualifications listed in the Constitution and any other qualifications required under the laws of the Ho-Chunk Nation, including Section 8, subparagraph d., above, and the Ho-Chunk Nation *Code of Ethics Act* (2 HCC § 1). Background checks conducted to determine if a candidate meets these qualifications for office shall be made available and seen by all Election Board Members prior to the Election Board making the determination as to whether or not the candidate meets these qualifications for office. Background checks shall all be submitted at the same time to the Election Board for review prior to certification. Unless precluded by something beyond its control, the Election Board shall make the decision regarding the certification of candidates at the same time for all candidates. After the Election Board makes the determination as to whether or not the candidate meets the qualifications for office, the background check shall be immediately returned to the Election Board office. The Election Board office shall make a record of which Election Board Members viewed the background checks and when they returned it to the Election Board office. The Election Board office shall then maintain the background checks in a secure location until all potential legal challenges to the determination have been exhausted.

(2) The Election Board shall immediately notify a candidate in writing by certified mail if the candidate does not meet the qualifications of office. The candidate shall have five (5) working days from the date of receipt of notice to appeal the eligibility determination to the Election Board. The Election Board shall issue a decision within five (5) working days of receipt of the appeal. The candidate/appellant may appeal the decision of the Election Board to the Trial Court within five (5) working days of the decision only upon the grounds that it is inconsistent with the *Election Code* (2 HCC § 6) and/or the Ho-Chunk Nation Constitution.

(3) It is the candidate's responsibility to have his or her Address Verification Form updated through the Nation's Office of Tribal Enrollment.

9. Notice of Election.

a. The Election Board shall post an Official Notice of Election at the location of the twelve (12) Polling Places and any other appropriate locations at least ninety (90) calendar days before the election, except that a Notice of Special Election shall be published in the Nation's Newspaper (currently the *Hocak Worak*) as early as practicable before a Special Election. For purposes of the preceding sentence the appropriate locations shall be specified in the Election Board's internal operating rules provided for in Section 4.

b. The Election Board shall use an Official Notice of Election. The Notice shall include the following information:

(1) Type of Election (General Primary, General, or Special), and if a Special Election, the issue(s) to be decided in the Special Election.

(2) Date of Election.

(3) Candidate filing deadline.

(4) If the Election Board determines, pursuant to Section 14, to not hold the election by Mail Balloting, the locations of Polling Places. If the Election Board determines, pursuant to Section 14, to hold the election by Mail Balloting, the date Official Ballots will be mailed to Eligible Voters.

(5) Last day an Eligible Voter may request a replacement ballot, if necessary.

(6) If the Election Board determines, pursuant to Section 14, to not hold the election by Mail Balloting, the absentee voting procedures and deadlines. If the Election Board determines, pursuant to Section 14, to hold the election by Mail Balloting, the date and time that ballots must be received back by the Election Board to count in the Election.

(7) If the Election Board determines, pursuant to Section 14, to hold the election by Mail Balloting, a notice that it is the responsibility of the voter to ensure a completed Ballot is returned to the Election Board by the date and time determined by the Election Board.

(8) Other important information as determined by the Election Board consistent with the Constitution, the *Election Code* (2 HCC § 6), other applicable laws of the Nation, and Election Board's rules and regulations governing elections.

10. Nominations.

a. Official Nomination Petition. The Election Board shall provide an Official Nomination Petition Form (Election Board Form 1 at Appendix A) to any eligible person who wishes to be nominated for elective office. The candidate must make the request for the official nomination papers in writing, facsimile, mail or in person. An Official

Nomination Petition Form may be circulated by or on behalf of a candidate after the posting of the Notice of Election.

b. Candidates Limited to One Office. A candidate may not run for more than one (1) elective office or seat in any single General or Special Election.

c. Official Nomination Petition Form Signed by Eligible Voters. An Official Nomination Petition Form for a Legislator must be signed and completed by ten (10) eligible voters from the candidate's respective District who meet the residency requirement to be an eligible voter in that District. An Official Nomination Petition Form for President or Supreme Court Justice must be signed and completed by ten (10) eligible voters who may be from any District. Only Ho-Chunk Members who are age eighteen (18) years or older and who are eligible voters may sign an Official Nomination Petition Form. The eligible voter must sign and complete the Petition in his or her own handwriting. Any eligible voter may sign and complete multiple nomination forms. Any fraudulent signatures obtained by the candidate and submitted to the Election Board office will disqualify the candidate from running for office.

d. Deadline for Return of Official Nomination Petition. A candidate for elective office shall submit an Official Nomination Petition Form to the Election Board at least sixty (60) calendar days before the date of the election as noted in the Official Notice of Election. The petition needs to be submitted to the Election Board office and/or to an Election Board Member by four thirty prime meridian (4:30 p.m.) Central Time on the deadline date. The Election Board shall specify the deadline for return of the Official Nomination Petition Form.

e. Late Nomination Petition. The Election Board shall verify all Official Nomination Petition Forms. An Official Nomination Petition Form received after the deadline shall be rejected by the Election Board and no additional time for completion of the Official Nomination Petition Form shall be granted. The sole responsibility to meet the above deadlines lies with the candidate.

f. Incomplete Nomination Petition. The Election Board Chairperson shall review all Official Nomination Petition Forms. An incomplete Official Nomination Petition Form shall be rejected and returned immediately for needed information. Upon returning the rejected incomplete Official Nomination Petition Form, the Election Board Chairperson will notify the petitioner of the deadline date. It shall then be the responsibility of the petitioner to return his or her Official Nomination Petition Forms before the official deadline.

g. Official Declaration of Candidacy. A candidate for elective office shall submit an Official Declaration of Candidacy Form (Election Board Form 2 at Appendix A) to the Election Board at least sixty (60) calendar days before the date of the election except as practicable for Special Elections. A candidate shall include any applicable documentation with the Official Declaration of Candidacy Form. An Official Nomination Petition Form (Election Board Form 1 at Appendix A) shall not be valid

unless accompanied by a completed Official Declaration of Candidacy Form and a cash filing fee, which amount shall be set forth by the Election Board.

h. Final List of Candidates. The Election Board shall certify all valid Official Nomination Petition Forms and Official Declaration of Candidacy Forms. The Election Board shall post the final list of candidates for each elective office at appropriate locations at least thirty (30) calendar days before the date of the election. The Election Board shall use the Certificate of Nomination Form (Election Board Form 3 at Appendix A).

i. Candidate Responsibility. It shall be the responsibility of the Candidate(s) to return all necessary documents to the Election Board office and ensure that these documents are true and accurate.

11. Eligible Voters.

a. Age Requirement. The voting age in all elections shall be set in accordance with Article VIII, Section 5 of the Constitution, which states: *Section 5. Eligible Voters. Any Member of the Ho-Chunk Nation who is at least eighteen (18) years old and who meets all other requirements established by the Ho-Chunk Nation shall be eligible to vote.*

b. Residency Requirement for Voters. A voter shall be eligible to vote in the District in which the voter has resided for at least three (3) months prior to the General or Special Election.

c. List of Eligible Voters.

(1) The Office of Tribal Enrollment shall prepare and maintain a master list of all Tribal Members age eighteen (18) and over by District based upon the permanent physical address appearing in Enrollment Records. The Election Board shall compile a list of eligible voters from each District based upon Enrollment Records. The Enrollment Office and Election Board shall add the names of eligible persons who have reached or who will reach the age of eighteen (18) by Election Day to the list of eligible voters.

(2) The Election Board shall post the list of eligible voters at the location of the Polling Places at least thirty (30) calendar days before the election. The Election Board shall accept written challenges to the list of eligible voters until twenty (20) calendar days before the election. The Election Board shall rule on all written challenges to the list of eligible voters immediately after the close of the challenge period.

(3) The Election Board shall prepare the list of all registered voters. If, pursuant to Section 14, the Election Board determines to not hold the election by Mail Balloting, the registration may occur at the Polling Places on Election Day. Each person seeking to vote must register at the Polling Places before receiving an Official Ballot. If a person cannot write, he or she may sign his or her name with a mark before two (2) witnesses.

d. Incapacitated Tribal Member. If the Election Board determines, pursuant to Section 14, to not hold the election by Mail Balloting, the Election Board Member and poll workers will determine if a Tribal Member is incapacitated during the election process. It shall be at the discretion of the Election Board Member and poll worker to make this determination. If it is determined that a Tribal Member is incapacitated, the Election Board Member will specify the polling site at which the Ho-Chunk Member is voting. Should the Ho-Chunk Member be allowed to vote, the Election Board will be made aware at certification of any situation concerning an incapacitated Ho-Chunk Member voting during the election process.

CHAPTER III – ELECTION DAY PROCEDURES

12. Official Ballots.

a. The Election Board shall approve an Official Ballot, including an Absentee Ballot. For purposes of the preceding sentence the Election Board only needs to approve Absentee Ballots, if, pursuant to Section 14, the Election Board determines to not hold the election by Mail Balloting.

b. All Official Ballots and Absentee Ballots shall list the name(s) of the candidate(s) alphabetically by last name, and/or shall describe the issue(s) to be decided in the Election.

c. Voters shall be permitted to write-in candidates on Primary Election Ballots only including Absentee Ballots for a Primary Election. Write-in candidates shall not be allowed on any General or Runoff Election Ballot.

13. **Poll Place Voting.** Section 13 shall only be applicable when the Election Board, pursuant to Section 14, determines to not hold the election by Mail Balloting.

a. Absentee Voting Permitted. If the Election Board determines, pursuant to Section 14, to not hold the election by Mail Balloting, then absentee voting shall be permitted in all elections.

(1) Any eligible voter shall be entitled to vote by Absentee Ballot by submitting a written request to the Election Board by four prime meridian (4:00 p.m.) Central Time at least five (5) calendar days before the day of the election. Requests by facsimile (FAX) shall be allowed. The Election Board shall not accept a completed Absentee Ballot from any person who has not submitted a written request for an Absentee Ballot by the above deadline.

(2) The Election Board shall use diligent efforts to send out Absentee Ballots in a timely manner to each eligible voter who has requested an Absentee Ballot. Since the Election Board cannot control the timing of requests or the sending and receipt of Absentee Ballots, the Election Board shall not be held responsible for Absentee Ballots which are received beyond the deadline for receipt of Absentee Ballots.

(3) All Absentee Ballots must be received by the Election Board no later than the close of polls on Election Day.

b. Voting Procedures for Absentee Ballots.

(1) The Election Board shall mail out an Absentee Ballot Packet to each eligible voter who has properly requested an Absentee Ballot. The Election Board shall use an approved Absentee Ballot Packet, which shall contain the following items:

(a) An Official Absentee Ballot.

(b) An inner envelope marked "ABSENTEE BALLOT."

(c) An outer envelope addressed to the Election Board, and containing a certificate for the absentee voter to print and sign his or her name.

(d) An instruction page for completing the Absentee Ballot.

(2) The voter shall vote by marking the Absentee Ballot. The voter shall seal the ballot in the envelope marked "ABSENTEE BALLOT" which, in turn, must be sealed in the outer envelope. The voter shall print and sign the certificate on the outer envelope. The voter's signature on the outer envelope must be notarized to be valid.

(3) It is the responsibility of the voter to ensure a completed Absentee Ballot is returned to the Election Board. If mailed, the Absentee Ballot must be actually received at the Election Board office or at an official polling site no later than the close of polls on Election Day.

(4) When the Election Board office receives a completed Absentee Ballot, the Election Board shall record the name of the voter and keep the completed Absentee Ballot in a secure location.

(5) The Election Board shall keep a list of persons who have voted by Absentee Ballot to ensure that an absentee voter does not physically vote in person a second (2nd) time on Election Day.

(6) If a voter loses the Absentee Ballot, or fails to properly return an Absentee Ballot, the voter may still vote on Election Day. In such cases, the Election Board shall check the list of persons who have voted by Absentee Ballot to ensure that the person has not already voted by Absentee Ballot. The Election Board shall provide an Official Ballot in lieu of an Absentee Ballot to the voter.

(7) The Election Board shall issue another Absentee Ballot to an individual who has lost, spoiled, or mutilated his or her Absentee Ballot.

c. Polling Places.

(1) Unless modified in accordance with Article V, Section 4 of the Constitution, there shall be twelve (12) Polling Places as follows:

(a) District I shall have one (1) in Black River Falls for a total of one (1).

(b) District II shall have one (1) in Tomah, Madison, Wisconsin Dells and La Crosse for a total of four (4).

(c) District III shall have one (1) in Wisconsin Rapids, Indian Heights, Wittenberg, and Green Bay for a total of four (4).

(d) District IV shall have one (1) in Milwaukee for a total of one (1).

(e) District V shall have one (1) in Chicago and Minneapolis/St. Paul for a total of two (2).

(2) In the following circumstances, at the Discretion of the Election Board, all polling places do not have to be open on the day of an election:

(a) Pursuant to Article IX, Section 10 of the Constitution, there is a Special Election to fill a vacancy in a seat on the Legislature.

(b) Pursuant to Article IX, Section 5 or 6 of the Constitution, there is recall vote of a Legislator.

(c) Pursuant to Section 20, subparagraph c. as a result of Redistricting Special Election, there is a need for a Special Election to either increase or decrease the number of Legislators on the Legislature.

(d) The Election Board shall develop procedures to determine which polling places shall be open on the day of an election if there is a Special Election or recall vote of a Legislator pursuant to Article IX, Section 10 or Article IX, Section 5 or 6; respectively, or as a result of a Special Election necessary as a result of the District Plan adopted in a Redistricting Special Election.

d. Voting Machine Pickup. Election Board Members will be required to sign a Responsibility Form for the voting machine at the time of pickup.

e. Voting Procedures. An eligible voter may vote as follows:

(1) At the local Polling Place in the District in which he or she resides.

(2) By Absentee Ballot.

(3) Except if the Election Board determines that all polling places do not have to be open as provided for in Section 13, subparagraph c. (2) at any Polling Place provided the Affidavit of Non-Resident Voter Form (Election Board Form 4 at Appendix A) is completed by the voter at the time of voting.

f. Hours and Day of Voting.

(1) Each Polling Place that is open shall be open from eight ante meridiem (8:00 a.m.) Central Time to seven prime meridiem (7:00 p.m.) Central Time. Any voter in line at a polling place by seven prime meridiem (7:00 p.m.) Central Time shall be allowed to finish voting.

(2) Unless it would violate the Constitution, the Election Board shall attempt to hold elections on a Saturday, but the selection of the day of the election remains discretionary with the Election Board as long as the selection does not violate the Constitution, the *Election Code* (2 HCC § 6), other laws of the Nation, or the Election Board's own Internal Operating Rules.

g. Method of Voting.

(1) Each prospective voter, upon being identified as an eligible voter, shall sign the list of eligible voters and shall be handed an Official Ballot.

(2) Each voter shall vote in privacy by placing a mark in ink opposite the name of the candidate or candidates whom the voter selects or by indicating the voter's position on the issue being voted on. Upon completion, the voter shall deposit the Official Ballot in the ballot box.

(3) A voter may not cast more than one (1) vote for a single office or cast more than one (1) vote on a particular issue and may only vote for candidates for the Legislature from the District where the voter is registered to vote.

h. Poll Watchers.

(1) Each of the candidates shall be entitled one (1) poll watcher at the official polling site and at the certification meeting. Such watchers shall in no way interfere with the conduct of the election. A watcher shall not be a Member of the Election Board. All watchers shall adhere to the *Open Meetings Act* (2 HCC § 2).

(2) The following rules will apply to all Poll Watchers:

(a) Must register with Election Board and submit their name two (2) working days prior to Election Day.

(b) Must be there when the polls open.

(c) Cannot leave, if they do, they cannot return.

(d) Cannot interrupt the election.

(e) Cannot use a cell phone or a laptop.

i. Electioneering Prohibited. Electioneering shall be prohibited within fifty (50) feet of the Polling Places.

j. Challenge of Voter. If the eligibility of a voter shall be questioned by a poll worker, watcher, or an Election Board Member, the ballot of that voter shall be enclosed in an envelope which shall be endorsed with the voter's name, the reason for the challenge, and any refutation of the challenge. The Election Board shall make the final determination of the eligibility of the voter in the election and shall count the votes of those determined to be eligible to vote.

k. Spoiled Ballots. If a voter spoils an Official Ballot, the Election Board Member may issue another Official Ballot to the voter. The Election Board shall retain all spoiled ballots.

l. Counting Ballots.

(1) After the Polling Places close, poll workers shall tally the Official Ballots.

(2) The Election Board shall post the unofficial results of the election for each polling place on the Unofficial Election District Tally Sheet Form (Election Board Form 5 at Appendix A).

(3) Absentee Ballots shall be tallied by the Election Board on the day following the election.

(4) The official tallying of the votes shall be open for public observation. The public must remain quiet and in no way interfere with the orderly tallying of the ballots.

14. Mail Ballot Voting.

a. Mail Ballot Voting.

(1) Determination as to whether to conduct an Election by mail balloting.

(a) At the discretion of the Election Board, elections shall be conducted by mail ballot. The discretion of the Election Board is further limited in that it may only conduct an election by mail ballot when:

1 Pursuant to Article IX, Section 10 of the Constitution, there is a Special Election to fill a vacancy in a seat on the Legislature.

2 Pursuant to Article IX, Section 5 or 6 of the Constitution, there is recall vote of a Legislator.

3 Pursuant to Section 20, subparagraph c. as a result of Redistricting Special Election, there is a need for a Special Election to either increase or decrease the number of Legislators on the Legislature.

(b) Subject to the limitation provided in Section 14, subparagraph a. (1), the Election Board shall include within its Internal Operating Rules criteria for limiting its discretion as to when an election shall use solely the procedures for poll place voting, which are contained in Section 13, or use solely the procedures for mail balloting, which are contained in Section 14. The Internal Operating Rules shall require that an election be conducted solely using mail balloting or poll place voting.

(2) Procedures for Mail Balloting.

(a) The Election Board shall designate a Post Office Box rented by the Board as the place where Ballots shall be returned. Ballots must be received at the Post Office Box designated by the Election Board not later than the day of the Election.

(b) The Election Board shall send by United States Mail a ballot to each eligible voter or Ho-Chunk Member who will be an eligible voter by the date of the election. The Election Board shall mail ballots forty-five (45) calendar days before the date of the election; and, if said date falls on a weekend, then on the first working day thereafter.

(c) A Voter may obtain a replacement ballot from the Election Board if his or her ballot is destroyed, spoiled, lost or not received by the Voter.

(d) The Election Board shall not mail a replacement ballot later than ten (10) working days before the day of an Election. If pursuant to Section 14, subparagraph a. (3) a voter requests a replacement ballot, the Election Board shall only give a replacement ballot if the request for the replacement ballot is made fifteen (15) working days before the day of the Election.

b. Ballots. The Ballot package mailed out by the Election Board shall consist of a ballot which otherwise meets the requirements of Section 12, an outer envelope, instruction sheet, ballot secrecy envelope, and return envelope.

c. Voting Procedure. The Voter shall mark the ballot and place it in the ballot secrecy envelope and seal it. The Voter shall then place the ballot secrecy envelope inside the return envelope and seal it. The return envelope shall be signed by the Voter as his or her name appears on the return envelope and he or she shall return it by United States Mail to the location designated by the Election Board.

d. Returns. The Board shall verify that the returned envelope bears the signature of the voter. If the envelope is not signed, the ballot shall be rejected. The entire rejected ballot shall be deposited unopened in a separate, secure box for invalid ballots. If the envelope is signed, the ballot shall be deposited in the locked ballot box. For ballots placed in the locked ballot box, the Election Board shall make a notation in the poll book, next to the Voter's name, that indicates that the Voter has returned his or her ballot.

e. Multiple Ballots. If a Voter to whom a replacement ballot has been issued

pursuant to Subsection a. (2) (c) of this Section votes more than once, only the ballot with the earliest postmark shall be counted. If there are two (2) or more ballots with the same postmark date for one (1) Voter, neither ballot shall be counted.

f. Security of Ballots. Returned Ballots shall remain in the designated Post Office Box until retrieved by the Election Administrator. The Election Administrator shall retrieve returned ballots on a daily basis and the day after the Election. Upon picking up returned ballots, the Election Administrator shall place the returned ballot in the Ballot Security Box located at the Ho-Chunk Nation Election Board Office. Following the counting of ballots, the Election Board shall maintain returned ballots in a secure location.

g. Rejected Ballots.

(1) The Election Board shall count only the choice(s) which can be determined.

(2) The Election Board shall keep and retain all partially or completely rejected ballots for a period of at least three (3) years.

h. Election Results.

(1) Unofficial results will not be released.

(2) The Election Board shall determine the official results of the election and shall use the Official Ballot Accounting Form (Election Board Form 6 at Appendix A). The official tallying of the votes shall be open for public observation. The public must remain quiet and in no way interfere with the orderly tallying of the ballots.

(3) The Election Board shall post the official results on the Official Certificate of Election Results Form (Election Board Form 7 at Appendix A). The Official Certificate of Election Results Forms shall be signed by each Member of the Election Board. The Election Board shall post the Certificate at the Polling Places within three (3) calendar days after the date of election.

(4) After the Election Board has certified the official election results, the Election Board shall retain the election records. These records shall include the counted ballots, the unused ballots, and the spoiled or rejected ballots, if any. The Election Board shall retain the election records for at least three (3) years.

15. Recounts.

(a) A recount of ballots shall automatically occur whenever there is a one percent (1%) or less difference between the votes received by the candidates affecting the determination of the winner or who will proceed to the General or Runoff Election.

(b) A request for a recount from a candidate or eligible voter shall be granted upon a showing of good cause for the recount.

16. Election Fraud.

a. Violations.

(1) It shall be an offense for any person to verbally or physically threaten an Election Board Member, Election Board Chairperson, or Election Board staff or intentionally tamper with the voting process including, but not limited to: voting more than once in the same election, posing as another person for the purpose of voting at an election, altering a ballot and forging or falsifying documents relating to an election.

(2) It shall be an offense for any elected official to verbally or physically threaten an Election Board Member, Election Board Chairperson, or Election Board staff or intentionally tamper with, manipulate, or disrupt the Election Board or voting process including, but not limited to: coercing or bribing any Election board official(s), and/or the manipulation, coercion or bribing of any voter(s) prior to voting.

(3) If there is a suspected violation of this section, the Election Board shall bring a legal action in the Ho-Chunk Nation Trial Court with the burden of proof being clear and convincing evidence of a violation. An attorney within the Ho-Chunk Nation Department of Justice, or attorney selected by the Attorney General of the Ho-Chunk Nation, shall serve as counsel for the Election Board in any legal action brought as a result of this *Election Code* (2 HCC § 5).

b. Penalties.

(1) In addition to any other fine or penalty provided by the Nation's other laws, whoever violates Section 16 may be assessed any or more of the following by the Trial Court:

(a) A fine.

1 Fines for violations under Section 16, subparagraph a. (1) are not to exceed one-thousand dollars (\$1,000.00).

2 Fines for violations under Section 16, subparagraph a. (2) are assessed at fifty dollars (\$50.00) per offense.

(b) Additional costs to the Nation resulting from the violation as determined by the Court.

(2) Ballots received under violation of this section shall be declared void by the Election Board.

(3) Any person found guilty under paragraph Section 16, subparagraph a. (1) shall be disqualified from running for any elective office for a period of four (4) years. The commencement date of this period shall coincide with the date of the Trial Court's final decision.

17. **Tie Votes.** Pursuant to the requirements of Section 5, subparagraph d., a Runoff Election shall be held in the case of a tie.

18. Challenges to the Election Results.

a. The results of an election may only be challenged in accordance with Article VIII, Section 7 of the Constitution, which states: *Section 7. Challenge of Election Results. Any Member of the Ho-Chunk Nation may challenge the results of any election by filing suit in the Trial Court within ten (10) days after the Election Board certifies the election results. The Trial Court shall hear and decide a challenge to any election within twenty (20) days after the challenge is filed in the Trial Court.*

b. The person challenging the election results shall need to prove by clear and convincing evidence that the Election Board violated this *Election Code* (2 HCC § 6) or otherwise conducted an unfair election, and that the outcome of the election would have been different but for the violation. A filing fee as set forth by the Election Board shall be charged.

c. Standard and penalties the court shall use in making a determination that a challenge is frivolous and/or wholly without merit:

(1) The Court may make a finding that a challenge is frivolous and without merit if an individual or his or her attorney can present no rational argument based upon the evidence or law in support of that claim.

(2) If the Court finds the challenge is frivolous and/or wholly without merit, the party challenging shall be assessed costs of the action in an amount to equal five hundred dollars (\$500.00). The Court may also assess attorney's fees against an individual whose challenge is deemed by the court to be frivolous and/or wholly without merit. Said amount shall be considered a debt owed to the Nation.

(3) The Court may make a finding that a challenge is frivolous and without merit if an individual or his or her attorney can present no rational argument based upon the evidence or law in support of that claim.

d. If the Trial Court invalidates the election results, a new election shall be held as soon as feasible, to be in compliance with the *Election Code* (2 HCC § 6) and the Ho-Chunk Nation Constitution.

19. Prohibition on Outside Influence on Elections. It shall be unlawful for:

a. An individual who is not a Member of the Nation or any outside organization that is non-charitable or commercial in nature to make:

(1) A contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with an election;

(2) A contribution or donation to a candidate for office; or

(3) An expenditure, independent expenditure, or disbursement for an electioneering communication; or

b. A person to solicit, accept, or receive a contribution or donation described in Section 19, subparagraph (1), (2), or (3) of paragraph a. from an individual who is not a Member of the Nation or any outside organization that is non-charitable or commercial in nature. Any person found to have solicited, accepted, or received a contribution or donation described in Section 19, subparagraph (1), (2), or (3) of paragraph a. shall be disqualified from running for any elective office for a period of four (4) years. The commencement date of this period shall coincide with the date of the Trial Court's final decision.

c. The Attorney General shall be charged with enforcing the provisions of Section 19 through the Ho-Chunk Nation Court upon a determination by the Attorney General that there is reasonable suspicion that an individual who is not a member of the Nation, an outside organization, or person has violated the provisions of Section 19. Including the penalties provided in Section 19, subparagraph b. an individual found guilty of violating these provisions shall be ordered to pay up to ten thousand dollars (\$10,000.00) per violation in monetary penalties to the Nation.

20. Special Election for Redistricting/Reapportionment.

a. Definitions. For purposes of this Section only the following terms shall have the following meaning:

(1) "District Plan" means the Redistricting Scenario receiving the highest number of votes in a Redistricting Special Election, but only after all legal challenges have been exhausted.

(2) "Holdover Legislator" means a Legislator who is not facing re-election in the upcoming or next General Election after the Election Board certifies the results of a Special Election for Redistricting. The Constitution mandates that any Redistricting or reapportionment shall be completed at least six (6) months prior to the next election. A holdover Legislator is a Legislator whose term will not expire prior to the next General Election and will not be required in the next General Election to run for re-election if he or she will remain on the Legislature.

(3) "Redistricting" means the process of bringing about a realignment or change in legislative Districts brought about by changes in population and mandated by the constitutional requirement of equality of representation.

(4) "Redistricting Scenario" means a proposal or plan that outlines proposed legislative Districts for the Ho-Chunk Nation. The Legislature may submit multiple Redistricting Scenarios as part of its final proposal and the Redistricting Scenario

receiving the highest number of votes, after all legal challenges have been exhausted, shall become the District Plan of the Ho-Chunk Nation.

b. Constitutional Requirements. Article V, Section 4 of the Constitution provides:
Section 4. Redistricting or Reapportionment.

The Legislature shall have the power to Redistrict or reapportion including changing, establishing, or discontinuing Districts. The Legislature shall maintain an accurate census for the purposes of Redistricting or reapportionment. The Legislature shall Redistrict and reapportion at least once every five (5) years beginning in 1995, in pursuit of one-person/one-vote representation. The Legislature shall exercise this power only by submitting a final proposal to the vote of the People by Special Election which shall be binding and which shall not be reversible by the General Council. Any Redistricting or reapportionment shall be completed at least six (6) months prior to the next election, and notice shall be provided to the voters.

c. Redistricting procedures.

(1) Census requirements:

(a) The Ho-Chunk Nation Office of Tribal Enrollment shall keep an accurate census of all Tribal Members who are eligible to vote. If the Legislature determines to have the Election Board conduct a Special Election for Redistricting, the Legislature or its designee shall obtain from the Office of Tribal Enrollment an accurate census of all Tribal Members who are eligible to vote.

(b) For purposes of determining the numbers for Redistricting, the census shall only include Tribal Members who are age eighteen (18) or older and eligible to vote.

(c) The Legislature shall pass a Resolution determining the date that the Ho-Chunk Nation Office of Tribal Enrollment shall use for determining the census for purposes of the Special Election for Redistricting.

(2) Final Proposal:

(a) The Legislature shall submit a final proposal to the Election Board who shall conduct the Special Election for Redistricting.

(b) The final proposal submitted by the Legislature may include multiple Redistricting Scenarios.

(c) Requirements for the Redistricting Scenario(s):

1 The Legislature does not have to use the best Redistricting Scenario to promote the objective of one-person/one-vote representation, but any Redistricting Scenario that furthers that objective.

2 The Legislature cannot submit a Redistricting Scenario that calls for no action or no change in the geographic regions covered by the Legislative Districts.

3 A Redistricting Scenario may change, establish, or discontinue electoral Districts.

4 A Redistricting Scenario must propose at least two (2) electoral Districts.

(d) Each Redistricting Scenario submitted shall include at a minimum and shall be available at the Polling Place:

1 A map of the Redistricting Scenario;

2 How many Legislator(s) would be in each proposed District;

3 How many Tribal Members who are age eighteen (18) or older and eligible to vote there would be for each proposed District;

4 How many Tribal Members eligible to vote there would be per Legislator for each proposed District;

5 The percentage deviation either positive or negative each proposed District has from the ideal with respect to the Constitutional goal of the one-person/one-vote representation; and

6 An implementation plan. The implementation plan shall include at a minimum:

a The District each holdover Legislator will serve for the remainder of his or her respective term;

b In the next General Election what District(s) will have an election(s) and if a District has an Election what seat(s) within that District would be up for election.

c If as a result of Redistricting Scenario the total number of Legislators on the Legislature will decrease, whether or not there will be a Special Election to decrease the number of Legislators presently serving and, if so, which Legislators would be subject to the Special Election. Whether or not there will be a Special Election as a result of the number of Legislators decreasing on the Legislature shall be controlled by Section 18, subparagraph c. (5) (c).

d If as a result of the Redistricting Scenario the total number of Legislators on the Legislature will increase, whether or not there will be a Special Election to increase the number of Legislators presently serving and, if so, which District(s) would have a Special Election. Whether or not there will be a Special Election as a result of the number of Legislators increasing on the Legislature shall be controlled by Section 18, subparagraph c. (5) (d).

(3) Notice Requirements. Notice of the Special Election for Redistricting shall be accomplished in the following manner:

(a) All normal procedures used by the Election Board to provide notice of any Special Election;

(b) Production and distribution of a Special Edition of the Nation's newspaper (currently the *Hocak Worak*) providing at a minimum a map of the Redistricting Scenario(s) and the implementation plan for each of the Redistricting Scenario(s). The distribution of a Special Edition may be waived by the Legislature, but only if it passes a Resolution to waive production and distribution of the Special Edition; and

(c) Any other method determined appropriate by the Legislature.

(4) Special Election Requirements:

(a) The Election Board must hold the Redistricting Special Election prior to the General Election in order that it may certify the results at least six (6) months before the next General Election.

(b) All other Special Election Requirements shall be followed to conduct the Special Election on Redistricting.

(5) Committee Members and Legislators:

(a) A Tribal Member serving on a public body who no longer resides in the District that nominated him or her to the public body may continue to serve on that public body until such time as that Tribal Member's term expires. For purposes of the preceding sentence "Public Body" means any official entity in which a quorum is required to conduct public business and which performs a governmental function for the Nation and includes Commissions, Boards, or Committees (other than Legislative Committees).

(b) Holdover Legislator. Until a holdover Legislator's current term is finished, a holdover Legislator shall continue to represent the District and constituents living in the District that originally elected him or her to the Legislature and attend the same District Meeting(s) that he or she attended before the Special Election on Redistricting. The only exception to the preceding sentence is if the newly adopted District Plan results in a fewer number of Legislators in which case the holdover Legislator may be subject to a Special Election pursuant to the requirements of Section 18, subparagraph c. (5) (c) immediately below.

(c) Decrease in number of Legislators on the Legislature.

1 Article VII, Section 2 of the Constitution provides:

Special Elections shall be held when called for by the General Council, the Legislature, or by this Constitution or appropriate ordinances. In all Special Elections, notice shall

be provided to the voters.

2 The Election Board shall hold a Special Election if:

a As a result of a Special Election for Redistricting the number of Legislators who are supposed to serve on the Legislature is decreased who live in a particular District; and

b Either of the following two (2) circumstances exist:

i. There are seven (7) months or more until the next General Election when the Election Board certifies the result of the Redistricting Special Election; or

ii. The following two (2) circumstances both exist:

aa. There are less than seven (7) months until the next General Election when the Election Board certifies the results of the Redistricting Special Election, and

bb. In the next General Election for that newly created District the number of seats that are up for election is less than should be provided for by the newly certified District Plan. In this case only those Legislators whose term is not up within seven (7) months shall be in the Special Election. For example, there would be a Special Election if:

i. A previous Legislative District had four (4) legislators;

ii. The newly approved District Plan calls for that Legislative District to have two (2) Legislators;

iii. All four (4) of the Legislators live in that newly approved District;

iv. There is a General Election in six and a half (6 ½); months when the Election Board certifies the results of the Redistricting Special Election; and

v. Only one of the four (4) Legislators is up for re-election in that General Election. In this case, the three (3) other Legislators would run in the Special Election and only one (1) would remain on the Legislature for his or her respective term.

3 The Special Election shall have the following requirements:

a It shall occur within sixty (60) calendar days of when all legal challenges have been exhausted to the results of the Redistricting Special Election.

b The Special Election shall solely be between those Legislators living in that District to determine which of the Legislator(s) shall remain on the Legislature for the remainder of his or her (their) respective term(s).

c A voter shall be able to vote for only one (1) Legislator who the voter wants to remain on the Legislature.

d All other Special Election Requirements shall be followed in conducting this Special Election.

4 The Special Election shall determine which of those Legislator(s) shall remain on the Legislature for the remainder of his or her (their) respective term(s) in office. Upon the Election Board certifying the results of the Special Election and all legal challenges to the Special Election being exhausted, the Legislator(s) who received the most votes shall remain on the Legislature for the remainder of his or her (their) respective term(s) in office. The number of Legislators who shall remain shall correspond to the number of Legislators who are supposed to serve in that District pursuant to the District Plan.

(d) Increase in the number of Legislators on the Legislature.

1 The Election Board shall call for a Special Election to elect a Legislator for a particular District under the following circumstance:

a The District Plan increases the total number of Legislators on the Legislature;

b The District Plan provides for that particular District to have more Legislators than currently serving on the Legislature. In determining whether or not a particular District should have more Legislators, holdover Legislators shall be counted as representing the District; and

c There are seven (7) months or more until the next General Election when the Election Board certifies the results of the Redistricting Special Election.

2 The Legislator elected to the particular District shall serve until the next General Election and if he or she desires to continue to serve must win re-election in that General Election.

(6) The date the Election Board certifies the results of the Redistricting Special Election shall be notated in the Legislative History of this *Election Code* (2 HCC § 6) and a record of the results of the Redistricting Special Election shall be placed in the back of the Constitution.

21. **Secretarial Elections.**

a. Constitutional and other Legal Requirements.

(1) Article XIII of the Constitution provides: Section 1. Requirements. *This Constitution may be amended by a majority vote of the qualified voters of the Ho-Chunk Nation voting at an election called for that purpose by the Secretary of the Interior, provided, that at least thirty (30) percent of those entitled to vote shall vote in such election; but no amendment shall become effective until approved by the Secretary of the Interior or until deemed approved by the Secretary by operation of law. If the voters adopt the amendment(s), the Secretary of the Interior shall approve such amendment(s) within forty-five (45) days after the election unless the amendment(s) are contrary to applicable law.*

(2) The *Election Code* (2 HCC § 6); and

(3) Twenty-five Code of Federal Regulations Part 81.8, which provides the requirement for the establishment of an Election Board to conduct the Secretarial Election.

(4) Article XIII of the Constitution provides: **Section 2. Requests for a Secretarial Election.** *It shall be the duty of the Secretary of the Interior to call and hold an election on any proposed amendment to this Constitution at the request of two thirds (2/3) of the entire Legislature, at the request of the General Council, or upon presentation of a petition signed by thirty (30) percent of the eligible voters of the Ho-Chunk Nation.*

b. Code of Federal Regulations Requirements. The Secretarial Election shall be conducted pursuant to the requirements of the *Election Code* (2 HCC § 6) and 25 Code of Federal Regulations Part 81.1-81.24.

CHAPTER IV- ELECTED OFFICIALS

22. **Oath of Office.**

a. The Election Board shall administer the Oath of Office in accordance with Article VIII, Section 8 of the Constitution, which states: *Section 8. Oath of Office. The Election Board shall administer the oath for the offices of President, Legislature, and Judiciary on the 4th Wednesday following the election after the Election Board certifies the Election results.*

b. The Election Board shall administer the Oath of Office to all duly elected officials of the Ho-Chunk Nation as follows: *I, _____, do solemnly swear that I will uphold the Constitution of the Ho-Chunk Nation; that I will secure our rights, advance the general welfare, safeguard our interests, sustain our culture, promote our traditions and perpetuate our existence and secure the natural and self-evident right to govern ourselves, as I perform the duties of my office on behalf of the Ho-Chunk Nation with honor, dignity and sincerity.*

23. **Resignations of Elected Officials.**

a. All resignations from the Legislature, President, or Judiciary shall be done in writing. A voluntary resignation, once accepted, cannot be withdrawn.

b. The person resigning may remain in office until his or her successor is chosen and sworn in as provided in Article V, Section 6; Article VI, Section 5; and Article VII, Section 9 of the Constitution, or if he or she so elects may refuse to continue to serve in office and leave his or her seat vacant. Notwithstanding delivery of a resignation, a person remains subject to a hearing before a body constitutionally empowered with removal authority. The body can determine whether sufficient grounds for removal existed prior to the resignation. If the body confirms the existence of sufficient grounds for removal, the person shall be disqualified from running for other offices in accordance with the terms in Section 8, subparagraph d. of the *Election Code* (2 HCC § 6).

24. Recall Elections.

a. Constitutional Requirements.

(1) The General Council may initiate a Recall Election against Legislators, the President and Members of the Judiciary in accordance with Article IX, Section 5 of the Constitution, which states: *Section 5. Recall by General Council. The President, Legislators, and Members of the Judiciary shall be removable by recall vote at a Special Election requested by the General Council. At the request of the General Council, the Election Board shall hold a Special Election not less than thirty (30) days and not more than ninety (90) days from the date of the General Council request. If the Election Board fails to hold such Special Election within ninety (90) days, any eligible voter of the Nation may request the Trial Court to order such Special Election. In any Special Election, no more than three (3) persons shall be subject to recall vote.*

(2) An eligible voter(s) from a District may initiate a Recall Election against a Legislator(s) in accordance with Article IX, Section 6 of the Constitution, which states: *Section 6. District Recall of Legislators. A Member of the Legislature shall be removable by a recall vote called by a petition of thirty (30) percent of an [all] eligible voters of the District which elected such Member of the Legislature. A petition shall be submitted to the Election Board, which shall hold a Special Election not less than thirty (30) days and not more than ninety (90) days from the date a petition is duly submitted. If the Election Board fails to hold such Special Election within ninety (90) days, any eligible voter of the Nation may request the Trial Court to order such Special Election.*

b. Recall Election Procedures.

(1) All Recall Elections shall be administered by the Election Board.

(2) An eligible voter(s) initiating a recall shall submit a written request for Official Recall Petition Forms to the Election Board. A written request for each person to be recalled is required.

(3) A separate Official Recall Petition Form shall be circulated for each person who is subject to recall.

(4) The Election Board shall issue an Official Recall Petition Form (Election Board Form 8 at Appendix A) to the person(s) initiating the recall.

(a) The number of Official Recall Petition Forms issued will be the number requested or, at a minimum, a number sufficient to enable the petitioner to obtain the signatures of thirty percent (30%) of the eligible District voters.

(b) The Election Board Chairperson or designee shall issue the requested Official Recall Petition Forms without unreasonable delay and sign each Official Recall Petition Form on the date of issuance. The petitions shall be numbered in sequence and shall include the District number.

(c) The petitioner(s) shall have forty-five (45) calendar days from the Official Election Board Posting Notice to collect the required number of signatures.

(d) The Official Recall Petition Forms shall be submitted to the Election Board Chairperson or designee before the expiration of the forty-five (45) calendar day deadline. Forms cannot be copied; only original forms will be accepted. The Official Recall Petition Forms may be returned by certified mail, return receipt requested. Envelopes must be postmarked no later than the last day to submit the Official Recall Petition Forms. The Election Board shall provide a receipt to person(s) hand delivering Official Recall Petition Forms.

(e) The Election Board or designee will stamp and initial the Official Recall Petition Forms to verify the date of receipt.

(f) The Election Board with the assistance of the Ho-Chunk Nation Enrollment office shall verify the signatures on the Official Recall Petition Forms within ten (10) calendar days of receipt of Official Recall Petition Forms. For purposes of signature verification, the Election Board shall obtain and use a current master list of eligible voters in the District. The list shall contain the names of those voters who meet the residency requirements on the date that the Official Recall Petition Forms were issued. The Election Board will attempt to contact any voter whose signature or residency appears questionable to verify his or her signature or residency.

(g) The Election Board shall publish a Notice at prominent locations in the affected District and in the Nation's newspaper (currently the *Hocak Worak*), informing the voters whether or not an Official Recall Petition Form has been determined valid and the reasons for that decision. Eligible voters shall have five (5) working days following the posting of the Notice to challenge the decision of the Election Board to the Election Board. The Election Board shall issue a decision within five (5) working days of receipt of the appeal. The decision of the Election Board may be appealed within five (5) working days of the decision only upon the grounds that it is inconsistent with the *Election Code* (2 HCC § 6) and/or the Ho-Chunk Nation Constitution.

(h) Each eligible voter shall have the right to freely and without constraint or coercion of any kind sign an Official Recall Petition Form.

c. Conduct of Recall Elections.

(1) The Constitution requires that a Recall Election be held not less than thirty (30) calendar days and not more than ninety (90) calendar days from the date an Official Recall Petition Form is duly submitted.

(2) A Recall Election shall be conducted in accordance with the provisions of the *Election Code* (2 HCC § 6) except as provided:

(a) The Election Board Chairperson or designee shall prepare the Notice of Recall Election and ensure it is posted in prominent locations within the affected District at least forty-five (45) calendar days before the date of the election. The Notice shall inform the voters of the purpose of the election, the hours of voting, and

1 The location of the poll(s) if the Election Board, pursuant to Section 14, determines to not conduct the Recall Election by Mail Balloting, or

2 The last day to receive Mail Ballots if the Election Board, pursuant to Section 14, determines to conduct the Recall Election by Mail Balloting.

(b) The Official Recall Ballot shall ask the question whether the person subject to the recall should be removed from office.

(c) Upon certification by the Election Board, the person subject to recall shall be removed from office if the votes cast in favor of recall total fifty percent (50 %) plus one (1). In the event of a tie vote, the person subject to recall shall remain in office. There shall not be a Runoff Election.

25. Vacancies.

a. Vacancies in the Judiciary. A judicial vacancy for a Supreme Court Member shall be filled in accordance with Article IX, Section 8 of the Constitution, which states: *Section 8. Vacancies in the Judiciary. If a vacancy occurs in an office of the Supreme Court because of death, mental or physical incapacity, removal or recall vote, resignation, felony conviction, or any other reason, such vacancy shall be filled in the following manner:*

(a) *If twelve (12) months or more remain before the next General Election, the Election Board shall call a Special Election in accordance with Article VIII.*

(b) *If less than twelve (12) months remains before the next General Election, the Legislature shall fill the office by appointment.*

b. Vacancy of the office of President. A Presidential vacancy shall be filled in accordance with Article IX, Section 9 of the Constitution, which states: *Section 9. Vacancy of the Office of President. If the office of the President becomes vacant by*

reason of death, mental or physical incapacity, removal or recall vote, resignation, felony conviction, or for any other reason, such vacancy shall be filled in the following manner:

(a) If twelve (12) months or more remain before the next General Election, the Vice President shall serve as President pro tempore and the Election Board shall call a Special Election in accordance with Article VIII. Upon election of a President at a Special Election, the Vice President shall reassume his seat on the Legislature for the remainder of his term, if any.

(b) If less than twelve (12) months remain before the next General Election, the Vice President shall serve as President pro tempore. If less than twelve (12) months but more than three (3) months remain before the next General Election, the Election Board shall call a Special Election in the appropriate District within thirty (30) days to fill the seat vacated by the Vice President. Upon election of a President at the next General Election, the Vice President shall reassume his seat on the Legislature for the remainder of his term, if any. (c) If less than three (3) months remain before the next General Election, the office shall remain vacant. (d) A Vice President serving in the capacity of President pro tempore shall not vote in the Legislature except to cast the deciding vote in case of a tie.

c. Vacancies in the Legislature. A vacancy in the Legislature shall be filled in accordance with Article IX, Section 10 of the Constitution, which states: *Section 10. Vacancies in the Legislature. If a vacancy occurs in the Legislature because of death, mental or physical incapacity, removal or recall vote, resignation, felony conviction, or for any other reason, such vacancy shall be filled in the following manner: (a) If three (3) months or more remain before the next General Election, the Election Board shall call a Special Election in the appropriate District to be held within thirty (30) days. (b) If less than three (3) months remain before the next General Election, the seat shall remain vacant, except when the Vice President assumes the office of the President pursuant to Section 9(b) of this Article, an election to fill that vacancy shall be held within thirty (30) days.*

d. Terms for Vacancies. The terms for the individual selected to fill the vacancy shall be set in accordance with Article IX, Section 11 of the Constitution, which states: *Section 11. Terms for Vacancies. Persons elected or appointed to fill a vacancy in the Judiciary, the Office of the President, or the Legislature shall serve out the term of the person whom they are replacing.*

Chapter V – Election Board and Judicial Construction

26. Interpretation and Application of Code by the Election Board. The Election Board shall not possess any substantive rule making authority, but shall retain the ability to interpret and apply the *Election Code* (2 HCC § 6) unless such interpretation or application is found by the Trial Court to be contrary to the Constitution and laws of the Nation.

27. **Severability.** If any provision or provisions of this Code shall in the future be declared invalid by the Judiciary, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

28. **Sovereign Immunity.**

a. Except for the limited waiver of sovereign immunity contained within Sections 16, 18, and 19 of the *Election Code* (2 HCC § 6), nothing in this Code will be deemed to waive the sovereign immunity of the Ho-Chunk Nation or any of its enterprises, officers, agents, or employees.

b. The limited waiver of sovereign immunity contained within Sections 16, 18, and 19 shall be narrowly construed as only being applicable to individuals who violate Sections 16, 18, and 19.

Appendix A (Election Board Forms) (To Be Published by Election Board)

Election Board Form 1 (Official Nomination Petition Form)

Election Board Form 2 (Official Declaration of Candidacy Form)

Election Board Form 3 (Certificate of Nomination Form)

Election Board Form 4 (Affidavit of Non-Resident Voter Form)

Election Board Form 5 (Unofficial Election District Tally Sheet Form)

Election Board Form 6 (Official Ballot Accounting Form)

Election Board Form 7 (Official Certificate of Election Results Form)

Election Board Form 8 (Official Recall Petition Form)

Legislative History:

2/08/95 Tabled by full Legislature.

2/10/95 Adopted by Resolution 2/10/95-A.

1/13/97 Amendments referred by Administrative Rules/Elections Committee to the full Legislature.

1/14/97 Legislature adopts amendments affecting Secs 2.01(c); 5.05(a); 9.01(c) and 10.01(b).

4/08/97 Legislature adopts Recall Petition and Recall Meeting Procedures.

9/01/98 Legislature adopts by Resolution 9/01/98A the Amended and Restated Ho-Chunk Nation Election Ordinance (HCC 95-002).

01/19/99 Amended by Legislative Resolution 1/19/99A.

04/07/99 In *Ho-Chunk Nation Election Board, Ho-Chunk Nation v. Aurelia Lera Hopinkah* Case No. Su 98-08 (April 7, 1999), the Ho-Chunk Nation Supreme Court interpreted Article VIII, Section 3 of the Ho-Chunk Nation Constitution and whether or not it prevents amendments to the Election Code one hundred and twenty days before an election. Article VIII, Section 3 of the Constitution provides that the “[t]he Legislature shall enact an Election Code governing all necessary procedures at least one hundred and twenty (120) days before the election.” The Supreme Court held that “The Supreme Court interprets, Article VIII, Section 3, the Election Code provision to mean the original Election Code governing all necessary election procedures at least one hundred and twenty (120) days before the first election. . . Amendments to the original Election Code are not subject to one hundred and twenty (120) days as required of the first enactment.”

11/19/02 Enacted as 2 HCC § 6 by Legislative Resolution 11/19/02A amending language as to Districts that were established by the January 12, 2002 Special Election for ReDistricting and Reapportionment and incorporating amending language from the Recall Petition and Recall Meeting Procedures. 2/6/08 Revised by Department of Justice Attorney as approved and amended by Election Board on 1/26/08.

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9/10/08 Reviewed by Legislative Counsel's Office in preparation for Off-Site.

11/19/08 Election Board certifies result of Special Election on Redistricting after Scenario 5 receives the most votes.

11/25/08 Legislature holds Off-Site and Election Board Members participate in the Off-Site.

12/22/08 Legislature passes Resolution to place out for forty-five day public comment.

01/10/09 Election Board, during Election Board Meeting, goes over Election Code with Legislative Attorney.

01/25/09 Election Board, during Election Board Meeting, goes over implementation plan for Redistricting developed by the Legislative Counsel's Office.

06/23/09 Legislature passes Resolution on 06-23-09-C amending Election Code.

7/21/09 Legislature passes Resolution 07-21-09 H increasing the number of District meetings from eleven to twelve and then passes a motion to refer the Election Code and Code of Ethics Act to the Administration Committee to address need to amend laws to have selection of members to boards created by this law correspond to the number of District Meetings.

08/06/09 Administration Committee presented two options regarding how to address issue of increased number of District Meetings. The August 6, 2009 Administration Committee meeting minutes provide "**MOTION by Rep. Smith** to approve 'Option B' and to refer the funding portion to the Finance Committee. Second by Rep. TwoBears. 4-0-0. **MOTION CARRIED**"

08/25/09 Finance Committee passes a motion to refer this to the full Legislature.

09/09/09 Legislature via Resolution 09-09-09 B places proposed amendment to increase the number of election board members and polling sites from eleven to twelve out for forty-five day public comment.

11/17/09 Legislature passes Resolution 11-17-09 K adopting amendments to increase Election Board Members and Polling Sites from eleven to twelve.