

CHAPTER 4
TRIBAL ELECTION LAW

1.1 General Elections Biennially, on successive even-numbered years, on the 2nd Saturday in September, the Penobscot Nation shall hold its elections for the choice of Chief, Vice-Chief, members of the Tribal Council, the Census Committee, and School Board. Within 30 days prior to a General Election, the Penobscot Nation will hold a moderated Candidate Public Forum night.

1.1(a) Eligibility for Office No person shall be eligible to run for or hold an elective office of the Penobscot Nation if he or she has been convicted of a criminal offense punishable by a sentence of more than one (1) year's imprisonment within the ten (10) years preceding the election. No person currently holding an elected office is eligible to run for another elective office except as provided in this section. If a person currently holding elected office wants to run for another elected office, that person must resign their current office no later than the day of the caucus; provided, however, the person is not required to resign if the term of their current elected office will expire prior to beginning of the term of their newly elected office. No person holding a position within the Director's career field as defined by the Penobscot Nation's Wage and Salary Manual shall be allowed to serve on Tribal Council. This prohibition shall apply to those persons elected during 2002 and after.

1.1 (b) Campaigning Candidates for elective office shall be prohibited from campaigning on Election Day within fifty (50) feet of the building in which the polling place is located.

1.1 (c) Petitions Any person shall be prohibited on Election Day from collecting signatures or soliciting support for any petition within 50 feet of the building in which the polling place is located

1.2 Biennial Caucus On the last Tuesday of June, on successive, even-numbered years, the Penobscot Nation shall hold a caucus to nominate candidates for the general election. Such caucus shall have the right to establish by majority vote, rules of conduct, including without limitation rules governing absentee voting, which will be applicable to the general elections and any referendum held before the next biennial caucus. In the event of a special election, that nomination caucus shall have the

right to establish, by majority vote, rules of conduct which will be applicable to only that special election and preceding primary election, if any. Provided, that such rules reasonably conform to the election laws of this chapter; and, further, that such rules do not violate the duly recognized and guaranteed rights of any tribal member as affirmed by the laws of Penobscot Nation.

The caucus shall be called to order and chaired by the Chief; however, whenever the Chief is seeking re-election, the Chief, by majority vote of the Caucus, shall appoint an individual to moderate the nomination of Chief candidates.

2.1 Notices Within seven (7) days immediately following any tribal caucus, the Tribal Clerk shall forward by mail to the eligible voting members of the Penobscot Nation a copy of the tribal caucus minutes. Such minutes shall include, but not be limited to, the Rules of Conduct adopted by the biennial caucus and a complete listing of candidates nominated for elective office.

Candidates nominated at the caucus shall have the right to withdraw their candidacy and the listing of their name on the election ballot or the voting machine by notifying the Tribal clerk, in person, within twenty-four (24) hours immediately following the caucus. After this twenty-four (24) hour period, the names listed on the election ballot and voting machine will not be removed. The Tribal Clerk shall post a Sample Ballot (7) days before Election Day at one or more conspicuous public places, including the Tribal Clerk's office. Further, by 12:00 noon on the day following the election, the Tribal Clerk shall post a public notice of election results on a sample ballot. Tally sheet or any document that indicated the total number of voters cast for each and every candidate of choice.

Potential members of the Election Appeals commission, as listed at Section 3.4, will be notified within ten (10) days of the tribal caucus by the Tribal Clerk of the scheduled election and the approximate dates of possible service. Each individual will be asked to return a written statement of their agreement to serve on the Commission. Upon receipt of this written statement the Tribal Clerk shall post notice of such individual acceptance at the Tribal Clerk's office.

2.2 Eligible Voters Only members of the Penobscot Nation who are eighteen (18) years of age or older, have an acknowledged, exclusive right to participate and vote in any caucus and election held by the Penobscot Nation.

When the ballot box tenders or the Tribal Clerk does not know a person during the voting process, he or she shall be required to present proof of identification.

The Tribal Clerk shall, with the assistance of ballot box tenders, receive, sort and count the votes given in during tribal elections, in the presence of members of the Penobscot Nation. It is the Tribal Clerk's responsibility to receive, sort and count all election ballots, and the Tribal Clerk has the authority to oversee that process, including requiring tribal members to keep a reasonable distance from the ballot counters so as not to impede the process. On Election Day, the voters will have the option of indicating their choice for elective office through the use of an electronic voting machine or by the marking of an election ballot.

2.3 Absentee Voting The rules governing absentee voting shall be determined at caucus as provided in Section 1.2 of this law; provided, however, that all requests for absentee ballots must be received by the Tribal Clerk prior to close the business day immediately before Election Day. Once an absentee ballot has been requested by a tribal member and mailed to the specified address, that tribal member will not be provided another ballot for that specific election.

2.4 Recount Any candidate for the elective office whose vote total is five (5) or less votes than the vote total of the candidate-elect, shall have the right to request a recount of ballots. Such candidates must submit in writing to the Tribal Clerk a request for a recount, such written request to be presented in person or through legal counsel or agent by close of business on the next business day after the day of the election. If the Tribal Clerk does not receive such notice within the aforementioned time frame, the public notice of election results shall be considered complete without further recourse; a recount conducted for any specific office shall not affect the election results of any other office.

Upon receipt of a valid recount notice, the Tribal Clerk shall immediately forward a notice through the mail to the candidates for the office in question, stating the date, time and location and method of the recount. The recount of ballots will be conducted and supervised by the Tribal clerk and shall be held on the seventh (7th) day following tribal elections.

Immediately following completion of such recount, the Tribal Clerk shall post an Amended Public Notice of Election Results by indicating the elective office for which a recount has been conducted and resultant total number of votes cast for each and every candidate or choice. Unless otherwise indicated by the election law provisions of Section 3.1, et seq., the posted Amended Public Notice of Election Results will be considered as final and conclusive on the tenth (10) day following tribal elections.

2.5 Primary

2.5 (a) In the event there are more than two (2) candidates for each of the offices of Chief, Vice-Chief in a general election or special election, there shall be a primary election held in accordance with the rules of conduct established by the nomination caucus, and in compliance with the applicable election laws of this chapter. The two (2) top candidates receiving the most vote shall be the candidates for Chief, Vice-Chief in the subsequent general or special election. The primary election for the purposes of general election shall be held on the 2nd Tuesday in August. The primary election for purposes of any special election shall be held at least four (4) weeks prior to such special election.

2.5 (b) In the event there are more than two candidates for each available seat either on the Tribal Council, Census Committee, or School Board, there shall be a primary election held as prescribed in 2.5 (a). The candidates who receive the most votes in the primary election shall be the candidates for each respective seat in the subsequent general or special election, provided that no more than two (2) candidates for each available seat appear on the election ballot.

2.5 (c) Write-In Candidates shall be valid only in a primary and only for those seats appearing on the primary ballot, it being specifically provided that write-in candidates shall not be valid in any general or special election.

2.6 Drug Testing All elected officials shall be subject to the same drug testing procedures as tribal employees as set forth in applicable tribal policy. Any elected official testing positive for drugs or failing to complete the drug testing within the time frame provided within this section may be subject to removal from office by a majority vote of the Tribal Council; provided, however, if a Tribal Council member tests positive or fails to complete the drug testing within the time frame provided within this section, a majority of the remaining members of the Tribal Council may remove them. Upon removal as provided herein, a special election shall be held to fill the vacancy. All elected officials shall complete the drug testing required by this section within two (2) business days of being elected and otherwise as provided in the tribal Personnel Policies and Procedures for reasonable suspicion testing.

2.7 Deaths Tribal custom and tradition provide that upon the passing of a tribal member, public meetings and celebrations are postponed. Elections are time consuming and costly yet necessary for tribal government to function properly. As such, an election will not be considered a public meeting or celebration and will not be postponed in the event of the passing of a tribal member

unless a tribal member's funeral is scheduled for the same day as the election.

3.1 Appeals Whenever the voting results or any tribal election are found to be in dispute following a recount, any candidate for the elective office in question shall have the right to submit a written appeal for review by the Election Appeals Commission. Within twenty-four (24) hours of such recount, the candidate must notify the Tribal clerk in person or through legal counsel or agent by the presentation of a written appeal. If the written appeal is not received by the Tribal Clerk within the aforementioned twenty-four (24) hours, the Amended Public Notice of Election Results shall be considered final and without further recourse. Any written appeal for consideration by the Election Appeals Commission must provide detailed information which clearly states a factual account of any circumstance or set of events supportive of a substantive contention of votes not being properly counted or otherwise not attributed to the respective candidate of choice. An appeals process regarding a specific office shall not affect the election results of any other office.

3.2 Procedure Upon receipt of a written appeal, the Tribal Clerk shall immediately forward copies to the Chief and council, the candidate-elect and other candidates for the elective office in question, and notify the potential members of the Election Appeals Commission, as listed at Section 3.3. It shall be the responsibility of the Tribal Clerk to set the initial meeting date for the Election Appeals Commission, which date will be set to meet the requirements of this law. The Tribal Clerk shall convene this initial meeting of the Election Appeal Commission, and the Commission shall immediately upon being convened choose a chairperson from its membership to chair the hearings and related procedures provided herein. The Election Appeals Commission shall be comprised of those individuals agreeing to serve as provided in Section 2.1 hereof. If for any reason any of those individuals cannot serve, the Tribal Clerk shall fill their positions pursuant to the requirements of Section 3.3.

The hearing and related procedures for the investigation, findings of fact and opinion, and final determination of a written appeal shall be conducted by the Election Appeals Commission without a three (3) day period and completed, as follows: by September 30th during the General Election; or, within twenty-four (24) days of any Special Election. The Commissions shall grant or deny the appeal by a majority vote and shall present a written decision of their findings and conclusions.

3.3 Election Appeals Commission The Election Appeals Commission will be comprised by three (3) tribal members of the

Penobscot Nation selected from the following categories, listed in order of priority:

- A. Practicing attorneys who are members of the American Bar Association or the Bar Association in the state of their residence; or,
- B. Tribal Council members who did not participate in the tribal elections under dispute as a candidate for office; and, who are not related to the parties involved in the appeals process within the 1st and 2nd degree of kinship, as defined by the Land Residency Laws of the Penobscot Nation.

A council member from Category B, nominated and approved by majority vote of the Council, will select individuals to serve on the Appeals Commission, as noted in Section 2.1, at a special, emergency meeting of the Chief and Council. The meeting will be called to order within forty-eight (48) hours subsequent to the notification by Tribal Clerk of a request for an appeal.

Failure to select and election Appeals Commission for any reason will automatically constitute a default wherein the Election Appeals Commission will be comprised by members of the Tribal Court, as follows: The Chief Judge who shall preside over the proceedings will not vote unless a majority decision cannot otherwise be attained; and three (3) members of the Appellate Court, randomly selected according to established Tribal Court procedures. In the event of a default, the Clerk of Court and other Tribal Court personnel will serve under the authority and supervision of the Election Appeals Commission, at its discretion, during the proceedings.

To accomplish the purposes of the act, the Election Appeals Commission shall possess all powers necessary to carry out the full scope of duties and responsibilities related to the investigation, findings of fact and opinion, and final determination of tribal election results. Those powers shall include, but not be limited to, the collection of any information, documentation, or testimony regarding the conduct of tribal documents; and the examination of such witnesses or verification of such documents as may be required.

4.1 Special Elections For the purpose of filling vacancies and to ensure the continuance of an effective functional government, the Chief, or acting Chief, shall, with the approval of the Tribal Council by majority vote, call a nomination caucus and special election to be held within (90) days whenever any of the following conditions occur:

- (1) Vacancy in the Office of Chief;

(2) Vacancy in the Office of Vice-Chief:

(3) Vacancy on the Tribal Council;

(4) Vacancy on the Tribal School Board or Census Committee, including any such vacancy due to the expiration of term; or,

(5) If any elected tribal official is for any reason unable to fulfill the duties of their office for more than a three (3) month period, and the Chief and Council by majority vote declare a vacancy;

Provided, however, that the completion of any unexpired term of any such vacated office cannot be less than a period of six (6) months.

Should there be a vacancy in the Office of the Chief; the Vice-Chief shall serve as Acting Chief. Further, in the event that there is a vacancy in the Office of Chief and Vice-Chief at the same time, a member of Tribal Council, nominated and approved by majority vote of the Council, shall serve as Acting Chief.

If the Chief and Council determines by majority vote of Council that an elected tribal official is unable to fulfill the duties of their office, then the Chief can appoint, with the advice and consent of Council, a temporary replacement to serve until the elected official returns to duty or is replaced as provided above. The appointed temporary replacement must otherwise be eligible to hold tribal office and shall possess all authorities and responsibilities of the elected office during the term of their appointment.

Any elected official who is recalled, removed or resigned from his/her office shall be prohibited from being nominated or running for any elected office for a period of four (4) years, commencing from the effective date of such recall, removal, or resignation, unless the person resigns in order to run for another elected office.

4.2 Procedure Special elections will be held in accordance with the rules of conduct established, by majority vote, at the nomination caucus called for that special election. Further, such elections shall be in compliance with the applicable election laws of this chapter, excepting those, which regulate the General Elections.

5.1 Recall Any elected official of the Penobscot Nation may be recalled from office by the eligible voters of the Penobscot Nation in accordance with the procedures set forth in this section.

5.2 Recall Petition

- (1) A separate petition for recall shall be drawn for each official to be considered for recall.
- (2) The recall petition must contain on each page the name and office of the official sought to be recalled, the statement of reason or reasons for recall, places for signatures, addresses, and tribal census numbers of petitioners.
- (3) Each petitioner's signature will be witnessed by a tribal member, except those witnessed and attested by a notary public.
- (4) The recall petition shall be presented to the Tribal Clerk who shall acknowledge receipt of the petition and must provide reference to the number of signatures and pages submitted. The Tribal Clerk shall certify within five (5) days of receipt whether the recall petition contains the required number of valid signatures and shall affix the tribal seal to each certified page.
- (5) The Tribal Clerk shall retain the certified petition in his/her custody until presented to the Chief and Council at a meeting called specifically for the purpose of acting on the petition. If the Chief fails to call and hold a meeting for this purpose within fifteen (15) days of notification by the Tribal Clerk of a valid petition, the Vice-Chief shall have the authority to call and hold such meeting within fifteen (15) days. Further, if both Chief and Vice-Chief fail to call such meeting, the Tribal Council Chairperson shall call the meeting to act upon the recall petition.

5.3 Recall Procedures

- (1) The Tribal Chief and/or Council shall, upon receipt of a valid petition signed by a number of eligible voters equal to at least a majority of the number of votes cast for the person petitioned for recall, direct the Tribal Clerk to conduct a recall referendum within forty-five (45) days from the date the Chief and Council received the petition. In the event the Tribal Chief and Council fails to act on the petition within fifteen (15) days of receiving the petition, the Tribal Clerk shall call and hold the recall referendum within forty-five (45) days thereafter.
- (2) Each official to be considered for recall may request a public hearing be held within thirty (30) days of the Tribal Council meeting at which the petition was presented.

5.4 Recall Referendum

(1) The ballot for the recall referendum shall, for each official sought to be recalled set forth the following question: "Shall (name of official sought to be recalled) be recalled from the office of (title of office)?" Following such a question shall be two choices of words, "yes" or "no", on separate lines in which the voter shall indicate his/her vote for or against recall.

(2) The affirmative vote of a majority of those voting at the recall referendum shall be sufficient to affect a recall of the official from office. In the event the official is recalled, the office shall be deemed vacant. The vacancy shall be filled in accordance with Section 4.1. Special Election.