

# HUU-AY-AHT FIRST NATIONS



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## REFERENDUM AND RECALL ACT

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*The HUU-ay-aht Legislature enacts this law to establish a fair system for conducting a referendum, recalling a Council member and petitioning for an amendment to the Constitution.*



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## REGISTRY OF LAWS CERTIFICATION

I certify that the *Referendum and Recall Act* passed Third Reading in the Legislature on:


April 1, 2011

  
\_\_\_\_\_  
Chief Councillor Robert Dennis Sr.

Certified True Copy

I certify that the *Referendum and Recall Act* is enacted as law on:

April 1, 2011

  
\_\_\_\_\_  
Ta'yii Hawilth Derek Peters

I certify that the *Referendum and Recall Act* came into force on:

April 1, 2011

  
\_\_\_\_\_  
Law Clerk Connie Waddell



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# REFERENDUM AND RECALL ACT

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**Note to Reader**

The *Referendum and Recall Act* sets out three processes:

- conducting a referendum of Huu-ay-aht citizens,
- removing a Huu-ay-aht Council member by recall petition, and
- petitioning for a change to the *Constitution* .

A referendum may be held on any matter Executive Council decides, or on a matter at the request of the People’s Assembly. A referendum must be held to change the *Constitution*. The People’s Assembly reviews referendum questions at least 30 days before referendum voting day and may make recommendations. The referendum question on a ballot must be clear, concise and capable of being answered by a vote of “yes” or “no”.

The Huu-ay-aht Tribunal may issue a recall petition to remove a Huu-ay-aht Council member based on an application of at least 10 eligible Huu-ay-aht voters. If the petition is issued, canvassers have 60 days to gather the signatures of voters who support the recall petition. If a majority sign the petition, the recalled Chief Councillor or Councillor is out of office and the position is declared vacant. A Huu-ay-aht Council member must have served at least 1 year on Council before being subject to recall.

A petition to change the *Constitution* follows the process for a recall petition except that a successful petition requires the support of at least 25% of Huu-ay-aht voters. If a petition is successful, Executive Council must hold a referendum on the proposed amendment to the *Constitution* .

The Legislature enacts as follows:

## PART 1 – PURPOSES AND DEFINITIONS

### Purposes

- 1 The purposes of this Act are to
  - (a) establish a fair, efficient, accessible and transparent system for conducting the following:
    - (i) a referendum;
    - (ii) a recall petition for a Council member;
    - (iii) a petition for an amendment to the *Constitution*, and
  - (b) encourage the participation of eligible voters in these fundamental democratic processes.

### Definitions

- 2 (1) In this Act:
  - “**commissioner**” means the Election Commissioner appointed under section 8;
  - “**contact information**” means contact information as defined in the *Citizenship and Treaty Enrolment Act*;
  - “**Council member**” means a Council member as defined in the *Government Act*;
  - “**elected office**” means elected office as defined in the *Election Act*;
  - “**election**” means an election as defined in the *Election Act*;
  - “**eligible voter**” means an eligible voter as defined in the *Election Act*, except that the date for determining eligibility is as set out in subsection (2) of this section;
  - “**Law Clerk**” means Law Clerk as defined in the *Government Act*;
  - “**recall petition**” means a petition issued by the tribunal under section 26;
  - “**registry**” means the Registry of Laws and Official Records established under the *Government Act*;
  - “**tribunal**” means the Huu-ay-aht Tribunal;
  - “**voting day**” means voting day for a referendum unless the context requires otherwise.
- (2) For the purposes of this Act, the date for determining whether a Huu-ay-aht citizen is an eligible voter, is, in the case of
  - (a) a referendum, voting day for the referendum,
  - (b) a recall petition, voting day in the election of the Council member who is the subject of the recall petition, or
  - (c) a petition to amend the *Constitution*, the date the petition is issued by the tribunal under section 34.

## PART 2 – REFERENDUM

### Referendum must be held

- 3** Executive Council must hold a referendum as soon as practicable in any of the following circumstances:
- (a) at least 25% of eligible voters sign a petition proposing an amendment to the *Constitution*;
  - (b) the People’s Assembly, by resolution, requires Executive Council to hold a referendum on a specified issue;
  - (c) an amendment to a Huu-ay-aht Act is passed by the Legislature and the amendment requires ratification by referendum before it comes into force;
  - (d) the Treaty, the *Constitution* or a Huu-ay-aht Act requires a referendum to be held on a matter.

### Executive Council may hold referendum

- 4** Executive Council may hold a referendum to determine the opinion of Huu-ay-aht citizens on any matter.

### Referendum resolution

- 5** A resolution of Executive Council for a referendum under section 3 or 4 must include
- (a) in the case of a proposed amendment to the *Constitution*, the wording of the constitutional amendment,
  - (b) in the case of a proposed amendment to a Huu-ay-aht Act where the Act requires a referendum, the wording of the proposed amendment,
  - (c) in any other case, the reason for the referendum in clear, concise and impartial wording, and
  - (d) in all cases, a clear, concise, and impartial question for the referendum, to which the only possible answer is “Yes” or “No”.

### Law Clerk review

- 6** Before Executive Council passes a resolution under section 5, the Law Clerk must review the proposed resolution and
- (a) advise Executive Council
    - (i) if the resolution complies with section 5, and
    - (ii) on the legality and enforceability of any amendment or other action sought in the referendum,
  - (b) propose any changes to the resolution that the Law Clerk considers advisable, and
  - (c) provide any other recommendations on the referendum.

### Voting day

- 7** (1) The resolution under section 5 must set a voting day on a Saturday between 70 and 90 days after the date of that resolution.



- (2) The voting day under subsection (1) may be the same day as the voting day in an election.

**Election Commissioner**

- 8** (1) As soon as practicable after passing the resolution under section 5, Executive Council must appoint an Election Commissioner to conduct the referendum.
- (2) A referendum may be conducted at the same time as an election under the *Election Act*, and the commissioner appointed for the referendum may be the same commissioner appointed to conduct the election.
- (3) The commissioner is responsible for the fair, efficient, accessible and transparent conduct of a referendum.
- (4) The provisions for appointment, remuneration and termination of a commissioner under the *Election Act* apply, with the necessary changes, to a commissioner appointed under this Act.
- (5) All of the powers, duties and functions of a commissioner under the *Election Act* apply to a commissioner appointed under this Act.

### PART 3 – REFERENDUM PROCESS

#### Referendum timetable

- 9** The following timetable sets out the tasks that must be completed by voting day in a referendum:

MINIMUM DAYS BEFORE REFERENDUM VOTING DAY	ACTIVITY
70 days	Executive Council resolution for referendum setting out voting day; Executive Council appoints commissioner to oversee referendum; Executive Council approves and carries out referendum communications plan, and consults with Ha'wiih Council
64 days	Registrar provides commissioner with list of Huu-ay-aht citizens who are at least 18 on voting day
57 days	Commissioner announces posting of public voters list
50 days	Executive Council gives notice of session of People's Assembly to present referendum question Commissioner posts public voters list
36 days	Last opportunity to notify commissioner of <ul style="list-style-type: none"> <li>• changes to voters list</li> <li>• challenges to individuals on voters list</li> </ul>
30 days	People's Assembly considers referendum question Changes to voters list complete
29 days	Commissioner posts revised public voters list
28 days	Commissioner notifies eligible voters of opportunity to vote by mail-in ballot, voting in person at specified locations, or other voting Executive Council gives public notice of any changes to referendum question
15 days	Commissioner mails a mail-in ballot package to eligible voters
Voting day	Mail-in ballots received by noon are counted Eligible voters mark ballots at voting places

#### Referendum communications plan

- 10** After passing a resolution under section 5, Executive Council must approve and carry out a referendum communications plan to do the following:

- (a) provide full information on the proposed referendum by way of written and other forms of publication to all Huu-ay-aht citizens;
- (b) provide Huu-ay-aht citizens with at least 20 days notice of a session of People's Assembly under section 11 to present the referendum question or questions and include the following information in the notice:
  - (i) the date, time and location of the session of the People's Assembly;
  - (ii) the resolution of Executive Council under section 5;
  - (iii) any other summary information that Executive Council considers advisable;
- (c) seek the advice of Ha'wiih Council.

### **People's Assembly**

- 11**
- (1) Executive Council or the Chief Councillor must call a session of the People's Assembly to present a referendum question or questions.
  - (2) The session called under subsection (1) must be held at least 30 days before voting day.
  - (3) Except for the notice requirements under section 10 (b), the session of the People's Assembly must be held in accordance with Part 8 of the *Government Act*.
  - (4) Following the People's Assembly, Executive Council may, up to 28 days before voting day,
    - (a) amend the resolution made under section 5, or
    - (b) pass a new resolution to cancel the referendum if permitted to do so by law.
  - (5) The Law Clerk must review any resolutions made or amended under subsection (4) in accordance with section 6.
  - (6) Executive Council must give public notice as soon as practicable of any amendment to the resolution, including any amendment to the wording of the referendum question, or the cancellation of that referendum.

### **Application of *Election Act***

- 12**
- (1) Sections 3, 15 (1) (a) and (d), 16, 18 to 22, 23 (1) (a) and (b), 23 (2), 24 to 28, 45, 47 to 49, 51 (1) and (2) (a), (b) and (d) and (5), 56 (1), (3) and (4), 57 to 64, 67 (1) (b) and (c), 67(2), (4), and (5), 68 to 72, 74(1) (a), (b), (c), (g), and (h), 75, 80, and 83 of the *Election Act* are adopted and apply, with the necessary changes, to a referendum as if it were an election for a candidate in a general election.
  - (2) For the ballot account under section 63 (3) of the *Election Act* as it applies to this Act,
    - (a) in paragraph (a) a reference to "elected office to be filled" is to be read as a reference to "referendum question", and
    - (b) in paragraph (b) a reference to "for each candidate" is to be read as a reference to "for each 'yes' and 'no'".
  - (3) No other sections of the *Election Act* are adopted or apply to a referendum under this Act.

- (4) For the purpose of applying provisions of the *Election Act* to a referendum, a reference to a word or phrase in that Act listed in Column 1 of the following table is to be read as a reference to the word or phrase listed opposite in Column 2:

Column 1	Column 2
candidate [section 56]	referendum question
campaign period	referendum period
election	referendum

#### Ballot form

- 13** A ballot for a referendum must be in the prescribed form and contain
- the wording under section 5 (a), (b) or (c), or if the wording is amended under section 11 (4), the amended wording,
  - the question under section 5 (d), or if that question is amended under section 11 (4), the amended question, and
  - spaces or boxes for an eligible voter to mark the ballot either “Yes” or “No”.

#### Voting limitation

- 14** In a referendum, an eligible voter may vote
- on each question included in the referendum, and
  - only once for each question.

#### Extraordinary powers

- 15**
- If a matter arises in the conduct of a referendum that
    - is not covered by this Act or the *Election Act* by reference,
    - is not provided for, or is inadequately provided for, in the regulations, or
    - in the opinion of the commissioner results from special circumstances,
 the commissioner may make an order or decision the commissioner considers appropriate to achieve the purposes of this Act.
  - An order or decision by the commissioner under subsection (1) must be consistent with generally accepted standards for the conduct of referendums in British Columbia.
  - Without limiting subsection (1), the commissioner may make an order or decision extending a time period or setting a new date in place of a date established under this Act.
  - The commissioner must not make an order or decision that is an exception to section 3 of the *Election Act*.
  - The commissioner may not delegate any powers under this section.

**Duties of eligible voters**

- 16** Eligible voters must
- (a) ensure their names and contact information on the voters list are correct,
  - (b) inform themselves about a referendum, and
  - (c) vote in a referendum.

**PART 4 – WHEN A REFERENDUM RESULT IS BINDING****Referendum result**

- 17** The commissioner must give public notice of the result of a referendum including the number of “Yes” and “No” votes on the referendum question as soon as practicable after the votes are counted.

**Constitutional amendment**

- 18** (1) Subject to subsection (2), an amendment to the *Constitution* set out in the referendum ballot is approved in the following circumstances:
- (a) if voting day is on or after April 1, 2011 but before April 1, 2021 and at least 40% of eligible voters vote to approve the amendment to the *Constitution*;
  - (b) if voting day is on or after April 1, 2021 but before April 1, 2031 and at least 50% of eligible voters vote to approve the amendment to the *Constitution*;
  - (c) if voting day is on or after April 1, 2031 and at least 60% of eligible voters vote to approve the amendment to the *Constitution*.
- (2) Section 4.6 of the *Constitution* may only be amended as set out in the referendum ballot if at least 60% of eligible voters vote to approve the amendment to the *Constitution*.
- (3) The *Constitution* is deemed to have been amended and comes into force as of the date of the certification by the commissioner of the required level of approval under subsection (1) or (2).
- (4) If a proposed amendment is approved under this section, Executive Council and the Legislature must take the steps necessary and within their competence to amend the *Constitution* as soon as practicable to incorporate the amendment certified under subsection (3).

**Boundary alteration**

- 19** If at least 60% of eligible voters vote in a referendum to approve a proposed boundary alteration under section 4.6 of the *Constitution*, the boundary alteration is approved and Executive Council must take the steps required to implement the alteration of the boundary as soon as practicable after the commissioner gives public notice of the referendum result.

**Proposed Huu-ay-aht Act amendment**

- 20** (1) A referendum on a proposed amendment to a Huu-ay-aht Act is approved if a majority of eligible voters who vote, vote to approve the amendment.

- (2) If an amendment is approved under subsection (1), Executive Council and the Legislature must take the steps necessary and within their competence to amend the *Huu-ay-aht Act* as soon as practicable to incorporate that amendment.

#### **Huu-ay-aht Act amendment ratification**

- 21** (1) A referendum to ratify an amendment to a *Huu-ay-aht Act* is approved if a majority of eligible voters who vote, vote to ratify the amendment.
- (2) If an amendment is ratified under subsection (1), Executive Council and the Legislature must take the steps necessary and within their competence to amend the *Huu-ay-aht Act* as soon as practicable to incorporate that amendment.

#### **Binding results**

- 22** A referendum, other than a referendum under section 18, 19, 20 or 21, is only binding if a *Huu-ay-aht Act* makes the referendum result binding and
- (a) more than 50% of eligible voters who vote, or
  - (b) more than another specified percentage of eligible voters who vote as required under the *Huu-ay-aht Act*,
- vote “Yes” or “No”.

#### **Duty if referendum result is binding**

- 23** (1) If the result of a referendum is binding under section 22, Executive Council must, as soon as practicable take the steps necessary and within its competence to implement the result of the referendum including any of the following:
- (a) changing programs, services or policies, or introducing new programs, services or policies, that are administered by or through government;
  - (b) enacting, amending or repealing regulations;
  - (c) preparing a *Huu-ay-aht Act* for introduction at the first session of the Legislature after the commissioner certifies the referendum result;
  - (d) taking any other actions Executive Council considers advisable to implement the result of the referendum.
- (2) Executive Council and the Legislature must take the steps necessary and within their competence to implement the *Huu-ay-aht Act* or amendment to a *Huu-ay-aht Act* under subsection (1) (c) in accordance with the *Government Act*.

## **PART 5 – RECALLING A COUNCIL MEMBER**

#### **Recall limitation**

- 24** (1) A Council member may only be recalled under this Act.
- (2) An application for a recall petition must not be made within 12 months of the date on which the Council member begins his or her term of office.

#### **Recall petition application**

- 25** (1) Ten or more eligible voters may apply to the tribunal under section 17 (1) (c) of the *Tribunal Act* for a petition to collect signatures to recall a Council member.

- (2) The application under subsection (1) must be in the prescribed form and include the following:
- (a) the full name of the Council member to be recalled;
  - (b) the full names and contact information of the applicants;
  - (c) a statement not exceeding 200 words, signed by all applicants, setting out the reasons the applicants seek the recall of the Council member under paragraph (a);
  - (d) a solemn declaration by each applicant that he or she is not disqualified under *Huu-ay-aht* law from making the application;
  - (e) any other information prescribed by Executive Council.

### Issuing recall petition

- 26** (1) Within 10 days of receiving an application for a recall petition, the tribunal must decide whether the application meets the requirements of this Act.
- (2) If the tribunal determines under subsection (1) that the requirements of this Act have been met, the tribunal must do the following:
- (a) in addition to its obligations under section 52 of the *Administrative Tribunals Act* (British Columbia), inform Executive Council that the application has been approved;
  - (b) despite section 36 of the *Tribunal Act*, file a certified true copy of its decision and any written reasons in the registry on the same day that notice is provided under paragraph (a);
  - (c) issue the recall petition in the prescribed form within 7 days of the notification under paragraph (a);
  - (d) subject to subsection (3), direct the Law Clerk to provide the applicants with a copy of the most recent candidate voters list as soon as each of the applicants has made the solemn declaration required under the *Election Act* for access to the list.
- (3) Before receiving a copy or having access to the candidate voters list, each applicant must make a solemn declaration in the prescribed form that the individual will only use the list for the purpose of contacting eligible voters to canvass for signatures on the recall petition.
- (4) If the tribunal determines under subsection (1) that the requirements of this Act have not been met, the tribunal must provide the applicants with written reasons for its decision.

### Who may canvass

- 27** In addition to the applicants under section 25, an eligible voter who has
- (a) registered with the tribunal in the prescribed form, and
  - (b) made the solemn declaration required under section 26 (2) (d) for access to the candidates voters list for recall
- may receive a copy of the candidates voters list from the applicants, and canvass for signatures for the recall petition.

**Who may sign**

- 28** (1) Only eligible voters may sign a recall petition.
- (2) An eligible voter may only sign a recall petition once.
- (3) An eligible voter who signs a recall petition must provide his or her full name and contact information.
- (4) An applicant, a canvasser and anyone who has access to a recall petition must maintain the confidentiality of that part of the recall petition showing the name and contact information of any eligible voter who requests that their contact information be kept confidential for privacy or safety reasons.

**PART 6 – RECALL PROCESS****Timetable for a recall petition**

- 29** The following table sets out the tasks that must be completed for recalling a Council member:

<b>TIME</b>	<b>ACTIVITY</b>
	Application to tribunal for recall petition
Within next 10 days	Tribunal decides whether to approve the application for recall petition If tribunal decides to approve the application, tribunal notifies applicants and Executive Council of its decision
Within next 7 days	Tribunal issues recall petition and provides candidate voters lists to applicants after they have made the required solemn declaration
Within next 60 days	Applicants, and any others registered with the tribunal, collect signatures of eligible voters on the petition and submit it to tribunal
Within next 10 days	Tribunal determines whether a majority of eligible voters has signed the petition and gives public notice of its determination If the tribunal finds a majority of eligible voters has signed the petition, the Council member is recalled and the position on Huu-ay-aht Council is vacant on the date public notice is given

**Application of *Election Act***

- 30** (1) Sections 3, 74 (1) (c), (g) and (h), (2) and (3) of the *Election Act* and no other sections are adopted and apply, with the necessary changes, to a recall petition as if it were an election for a candidate in a general election.
- (2) For the purpose of applying provisions of the *Election Act* to a recall petition, a reference to a word or phrase in that Act listed in Column 1 of the following table is to be read as a reference to the word or phrase listed opposite in Column 2:



Column 1	Column 2
campaign period	recall period
campaigning	canvassing
vote in an election [section 3]	sign a recall petition
election	recall petition
section 19	section 15 of this Act
commissioner	tribunal

#### Petition delivery time limit

- 31** In order to be considered by the tribunal under section 32, a recall petition must be returned to the tribunal no later than 60 days after the date the petition was issued under section 26 (2) (c).

#### Petition review and result

- 32** (1) Within 10 days of receiving the recall petition under section 31, the tribunal must
- (a) determine if the petition is signed by a majority of the eligible voters listed on the official voters list used in the election of the Council member who is the subject of the recall petition,
  - (b) provide notice of its decision in accordance with section 52 of the *Administrative Tribunals Act* (British Columbia) and section 36 of the *Tribunal Act*, and
  - (c) notify Executive Council, the Ha'wiih Council and the People's Assembly of its determination under paragraph (a).
- (2) If the tribunal finds that a majority of eligible voters has signed a recall petition to recall a Council member that Council member ceases to hold elected office on the date the tribunal gives notice of its decision under subsection (1) (b).
- (3) The Council member's office under subsection (2) is declared vacant and must be filled in accordance with the *Government Act* and the *Election Act*.
- (4) If the tribunal finds that less than a majority of eligible voters has signed a recall petition,
- (a) the Council member continues holding his or her office, and
  - (b) the tribunal must reject any application for recall of the same Council member until after the next general election.

## PART 7 – PETITIONING FOR CHANGE TO *CONSTITUTION*

### Application for petition

- 33** (1) Ten or more eligible voters may apply to the tribunal under section 17 (1) (c) of the *Tribunal Act* for a petition to collect signatures to amend the Constitution.
- (2) The application under subsection (1) must be in the prescribed form and include the following:
- (a) the full names and contact information of the applicants;
  - (b) the wording of the amendment that the applicants seek to the *Constitution*;
  - (c) a statement not exceeding 200 words, signed by all applicants, setting out the reasons the applicants seek the amendment under paragraph (b);
  - (d) a solemn declaration by each applicant that he or she is not disqualified under Huu-ay-aht law from making the application;
  - (e) any other information prescribed by Executive Council.

### Issuing a petition

- 34** (1) Within 10 days of receiving an application under section 33, the tribunal must decide whether
- (a) the application meets the requirements under this Act for a petition to amend the *Constitution*, and
  - (b) the proposed amendment to the *Constitution* is lawful.
- (2) For the purpose of making a determination under subsection (1) (b) the tribunal may, with notice to the applicants, extend the time period in subsection (1).
- (3) In addition to the advice of tribunal counsel under section 13 of the *Tribunal Act*, the tribunal may seek the advice of the Law Clerk on the lawfulness of the proposed amendment sought in the petition.
- (4) If the tribunal determines under subsection (1) that the requirements have been met, the tribunal must do the following:
- (a) in addition to its obligations under section 52 of the *Administrative Tribunals Act* (British Columbia), inform Executive Council that the application has been approved;
  - (b) despite section 36 of the *Tribunal Act*, file a certified true copy of its decision and any written reasons in the registry on the same day that notice is provided under paragraph (a);
  - (c) issue the petition to amend the *Constitution* in the prescribed form within 7 days of approving the notification under paragraph (a);
  - (d) direct the Law Clerk to provide the applicants with a copy of the candidate voters list from the most recent election as soon as each of the applicants has made the solemn declarations required under the *Election Act* for access to the list.
- (5) If the tribunal determines that the requirements under this Act have not been met, the tribunal must provide the applicants with written reasons for its decision.

**Who may canvass**

- 35** In addition to the applicants under section 33, an eligible voter who has
- (a) registered with the tribunal in the prescribed form, and
  - (b) made the solemn declaration required under section 34 (4) (d) for access to the candidates voters list
- may receive a copy of the candidates voters list from the applicants and canvass for signatures for the petition to amend the Constitution.

**Who may sign**

- 36** (1) An eligible voter may sign a petition to amend the *Constitution*.
- (2) An eligible voter may only sign once on the same petition for an amendment to the *Constitution*.
- (3) An eligible voter who signs the petition must provide his or her full name and contact information.
- (4) An applicant, a canvasser and anyone who has access to a petition for constitutional amendment must maintain the confidentiality of that part of the recall petition showing the name and contact information of any eligible voter who requests that their contact information be kept confidential for privacy or safety reasons.

**PART 8 – PETITION PROCESS**

**Timetable for petition to amend Constitution**

**37** The following timetable sets out the tasks that must be completed for a petition to amend the *Constitution*:

<b>TIME</b>	<b>ACTIVITY</b>
	Application to tribunal for petition
Within next 10 days	Tribunal decides whether to issue petition If tribunal decides to issue petition, tribunal notifies applicants and Executive Council of its decision
Within next 7 days	Tribunal issues petition and provides candidates voters lists to the applicants who make the required solemn declaration
Within next 60 days	The applicants, and any others registered with the tribunal, collect signatures of eligible voters on petition and submit it to tribunal
Within next 10 days	Tribunal determines whether 25% of eligible voters have signed the petition and gives public notice of its determination  If the tribunal finds 25% of eligible voters have signed the petition, Executive Council takes the steps necessary to hold a referendum on the proposed amendment to the <i>Constitution</i> .

**Application of *Election Act***

- 38** (1) Sections 3, 74 (1) (c), (g) and (h), (2) and (3) of the *Election Act* and no other sections are adopted and apply, with the necessary changes, to a petition to amend the *Constitution* as if it were an election for a candidate in a general election.
- (2) For the purpose of applying provisions of the *Election Act* to a petition to amend the Constitution, a reference to a word or phrase in that Act listed in Column 1 of the following table is to be read as a reference to the word or phrase listed opposite in Column 2:

<b>Column 1</b>	<b>Column 2</b>
campaign period	petition period
campaigning	canvassing
vote in an election [section 3]	sign a petition
election	petition to amend the Constitution
section 19	section 15 of this Act
commissioner	tribunal

**Petition delivery time limit**

- 39** In order to be considered by the tribunal under section 40, a petition to amend the *Constitution* must be returned to the tribunal no later than 60 days after the date the petition was issued under section 34 (4) (c).

**Petition review and result**

- 40** (1) Within 10 days of receiving the petition under section 39, the tribunal must
- (a) determine if the petition is signed by at least 25% of the eligible voters listed on the official voters list as of the date the petition was issued,
  - (b) provide notice of its decision in accordance with section 52 of the *Administrative Tribunals Act* (British Columbia) and section 36 of the *Tribunal Act*, and
  - (c) notify Executive Council, the Ha'wiih Council and the People's Assembly of its determination under paragraph (a).
- (2) If the tribunal finds that at least 25% of eligible voters have signed the petition, Executive Council must hold a referendum on the proposed amendment to the *Constitution* in accordance with this Act as soon as practicable after notice of the tribunal's decision has been issued under subsection (1) (b).
- (3) The referendum under subsection (2) must include the wording of the proposed amendment to the *Constitution* as set out in the petition.

**PART 9 – OFFENCES AND PENALTIES****Definition**

- 41** In this Part, “**petition**” means a recall petition or a petition to amend the *Constitution*.

**Vote buying**

- 42** (1) In this section, “**inducement**” includes money, gift, valuable consideration, refreshment, entertainment, office, placement, employment and any other benefit of any kind.
- (2) Except as offered by the Executive Director in accordance with section 53 of the *Election Act* as it applies to this Act, a person must not pay, give, lend or procure inducement for any of the following purposes:
- (a) to persuade a person to vote or not vote in a referendum or sign or not sign a petition;
  - (b) to persuade a person to vote or not vote for or against a referendum;
  - (c) to reward a person for having voted, not voted, signed or not signed, as described in paragraph (a) or (b);
  - (d) to procure, or induce a person to attempt to procure, the result in a referendum or petition;
  - (e) to procure, or induce a person to attempt to procure, the vote of a voter or the failure of a voter to vote in a referendum or of a person to sign or not sign a petition.

- (3) Except as offered by the Executive Director in accordance with section 53 of the *Election Act* as it applies to this Act, a person must not accept any inducement
  - (a) to vote or not vote in a referendum,
  - (b) to sign or not sign a petition, or
  - (c) as a reward for having voted or not voted, or signed or not signed, as described in paragraph (a) or (b).
- (4) A person must not advance, pay or otherwise provide inducement, or cause inducement to be provided, knowing or with the intent that it is to be used for anything prohibited by this section.
- (5) A person must not offer, agree or promise to do anything otherwise prohibited by this section.
- (6) A person prohibited by this section from doing something must not do the prohibited act directly, indirectly or by another person on his or her behalf.

#### **Intimidation or interference**

- 43**
- (1) In this section, “**intimidate**” means to do or threaten to do any of the following:
    - (a) use force, violence or restraint against a person;
    - (b) inflict injury, harm, damage or loss on a person or property;
    - (c) take reprisal including causing the delay or denial of a benefit, service or program;
    - (c) otherwise threaten a person.
  - (2) A person must not intimidate another person for any of the following purposes:
    - (a) to persuade or compel a person to vote or not vote in a referendum or sign or not sign a petition;
    - (b) to punish a person for having voted or not voted or signed or not signed as described in paragraph (a).
  - (3) A person must not, by abduction, duress or fraudulent means, do any of the following:
    - (a) impede, prevent, or otherwise interfere with a person’s right to vote in a referendum or the person’s right to sign a petition;
    - (b) compel, persuade or otherwise cause a person to vote or not vote in a referendum or sign or not sign a petition.
  - (4) A person prohibited from doing something by this section must not do the prohibited act directly, indirectly or by another person acting on his or her behalf.

#### **Canvassing offence**

- 44**
- (1) A canvasser for a petition must not do any of the following:
    - (a) canvass at or within 50 meters of a Huu-ay-aht body;
    - (b) require a public officer to directly or indirectly provide services or resources to a canvasser;
    - (c) use a Huu-ay-aht body’s resources for canvassing for a petition.

- (2) A public officer must not directly or indirectly use the resources of a Huu-ay-aht body to assist a canvasser for a petition.

**General referendum offence**

- 45** It is an offence subject to proceedings under Division 4 of Part 3 of the *Offence and Law Enforcement Act* for any person to contravene any provision of this Act with the intention of affecting the result or validity of a referendum or petition under this Act.

**Other canvassing offences**

- 46** A person must not do any of the following:
- (a) sign a petition when not entitled to do so;
  - (b) sign a petition in the name of another person, whether the name is of a living, dead or fictitious person;
  - (c) violate the confidentiality of a voter under section 28 (4) or 36 (4);
  - (d) provide false or misleading information when required or authorized under this Act to provide information;
  - (e) make a false or misleading statement or declaration when required under this Act to make a statement or declaration;
  - (f) inspect the candidate voters list or use or disclose the information from it, except for the purposes of this Act;
  - (g) impede or obstruct a canvasser lawfully collecting signatures on a petition.

**Penalties**

- 47** (1) A person who contravenes any of sections 42 to 46 is guilty of an offence subject to proceedings under Division 4 of Part 3 of the *Offence and Law Enforcement Act* and is liable to one or more of the following penalties:
- (a) a fine of not more than \$10 000;
  - (b) imprisonment for a term of not longer than 2 years;
  - (c) a prohibition for a period of not longer than 8 years from holding an elected Huu-ay-aht office;
  - (d) a prohibition for a period of not longer than 8 years from voting in Huu-ay-aht elections.
- (2) Any penalty under this section is in addition to and not in place of any other penalty provided under this Act or otherwise by law.

**Eligible voter penalty**

- 48** Executive Council may, by regulation, make the eligibility of a Huu-ay-aht citizen for specified government programs, services or benefits conditional on whether a Huu-ay-aht citizen complies with section 16 (a) or (c).

## PART 10 – GENERAL

### Election commissioner report

- 49** (1) After a referendum is finally decided, the commissioner must prepare a report in the prescribed form of the results, together with a summary of powers invoked under section 15 and any recommendations for improving the conduct of future referendums.
- (2) The commissioner must
- (a) deliver the report to Executive Council, and
  - (b) deposit a copy of the report in the registry.

### Statutory spending authority

- 50** (1) Statutory spending authority is established for all spending by the commissioner for a referendum, including the commissioner's remuneration and expenses.
- (2) Statutory spending authority is established for all spending by the tribunal associated with a recall petition and a petition to amend the *Constitution*.
- (3) Statutory spending authority is established for all spending approved by Executive Council under section 10.
- (4) For greater certainty, statutory spending authority under this section does not include the payment of expenses incurred
- (a) campaigning in a referendum,
  - (b) canvassing for or against a recall petition, or
  - (c) canvassing for or against a petition for constitutional change.
- (5) Subsection (4) does not apply to the referendum communications plan approved by Executive Council under section 10.

### Power to make regulations

- 51** (1) Executive Council may make regulations referred to under section 39 of the *Interpretation Act*, including regulations it considers necessary and advisable for any matter for which regulations are contemplated under this Act.
- (2) Without limiting subsection (1), Executive Council may make regulations as follows:
- (a) prescribing forms for the purposes of this Act and the information that may be included in or requested on them including
    - (i) solemn declarations,
    - (ii) acceptance forms for the commissioner, acting commissioner and referendum officials,
    - (iii) request forms for corrections to voters lists,
    - (iv) ballots,
    - (v) application forms for challenging the results of a referendum;
    - (vi) commissioner reports,



- (vii) witness forms for the disposal of referendum materials,
  - (viii) application forms for recalling Council members,
  - (ix) recall petitions,
  - (x) registration forms under sections 27 and 35,
  - (xi) application forms for petitions to amend the *Constitution*, and
  - (xii) petitions to amend the *Constitution*;
- (b) prescribing additional duties and powers of the commissioner for conducting a referendum;
  - (c) establishing an electronic voting regulation that applies to eligible voters in some communities and not in others;
  - (d) prescribing a Huu-ay-aht citizen's conditions of eligibility for specified government programs;
  - (e) for any other purpose for which regulations are contemplated by this Act.

**No further effect**

- 52** Unless otherwise specified in the Treaty or a Huu-ay-aht Act, all motions, resolutions, bylaws, directives, policies, guidelines or other forms of decision that directly or indirectly affect the subject matter of this Act which were approved or passed before Effective Date by the band council of the Huu-ay-aht under the *Indian Act* or the membership of the Huu-ay-aht Indian Band have no further effect after the date on which this Act comes into force.

**Amendments to this Act**

- 53** An amendment or repeal of this Act must be approved by the People's Assembly before that amendment or repeal is brought into force.

**Commencement**

- 54** This Act comes into force on the date of its enactment by the Legislature.

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