



huu ay aht

ANCIENT SPIRIT, MODERN MIND

**ELECTION ACT
AMENDMENT ACT, 2023**

*The Huu-ay-aht Legislature enacts this law
to amend the Election Act.*

REGISTRY OF LAWS CERTIFICATION

I certify that the *Election Act Amendment Act, 2023* was passed by Executive Council on:

March 30,2023



Chief Councillor, Robert Dennis

I certify that the *Election Act Amendment Act, 2023* is enacted as law on:

March 30,2023



Ta'yii Hawilth, Derek Peters

I certify that the *Election Act Amendment Act, 2023* came into force on:

March 30,2023



Law Clerk, Coraleah Bauer

*Election Act Amendment Act, 2023**Contents*

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The Legislature enacts as follows:

Amendments

- 1 The *Election Act*, HFNA 6/2011 is amended as follows:
 - (a) *in section 2, by:*
 - (i) *replacing the definition of “by-election” with:*
“by-election” means an election under section 12;
 - (ii) *replacing the definition of “commissioner” with:*
“commissioner” and “Election Commissioner” mean the individual appointed under section 15 unless the context requires otherwise;
 - (iii) *replacing the definition of “Councillor” with:*
“Councillor” means an elected Councillor unless the context requires otherwise;
 - (iv) *replacing the definition of “election period” with:*
“election period” means, in relation to an election, the period between the appointment of an Election Commissioner under section 15 and the completion of the commissioner’s duties and responsibilities under this Act in relation to that election;
 - (v) *replacing the definition of “eligible voter” with:*
“eligible voter” means an individual who is eligible to vote in an election under section 3;
 - (vi) *in the definition of “Law Clerk”, by adding “the” between the words “means” and “Law Clerk”;*
 - (vii) *in the definition of “tie vote”, by adding “cast in favour of two (2) or more candidates” after the word “votes”;*
 - (b) *by repealing section 7 and replacing it with the following:*
Huu-ay-aht employees as candidates
 - 7 (1) In this section, “employee candidacy period” means, in relation to a Huu-ay-aht employee, the period that begins on the first day of the campaign period, and ends, as applicable, if the employee

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- (a) is not nominated before the end of the nomination period, on the day after the end of that period,
 - (b) withdraws as a candidate in the election, on the day after the withdrawal,
 - (c) is declared elected, on the day the employee resigns in accordance with subsection (1) or on the last day for taking office before the employee is deemed to have resigned for a failure to make the oath of office within the time specified under section 21 of the *Government Act*,
 - (d) is not declared elected and an application for a recount is not made to the tribunal, on the last day on which an application for a recount may be made, or
 - (e) is not declared elected and an application for recount is made, on the date when the results of the election are determined by or following the recount.
- (2) A Huu-ay-aht employee who is otherwise qualified to be nominated as a candidate under section 5 must comply with the requirements of this section to be eligible as a candidate in an election.
 - (3) Before consenting to nomination for an elected office, a Huu-ay-aht employee must give notice in writing to his or her employer of
 - (a) the employee's intention to consent to nomination, and
 - (b) whether the employee intends to take a leave of absence under subsection (5).
 - (4) The employer of a Huu-ay-aht employee who has given notice under subsection (2)(a) and indicated an intention to not take a leave of absence under subsection (2)(b) must determine, before the campaign period, whether the powers, duties and functions of the employee may give rise to an actual or apparent advantage for that employee in the election process.
 - (5) If the employer identifies any powers, duties or functions of a Huu-ay-aht employee that may give rise to an actual or apparent advantage in the election process, the employer must amend that employee's job description to remove those powers, duties or functions during the employee candidacy period.
 - (6) After giving notice under subsection (3), a Huu-ay-aht employee is entitled to, a leave of absence without pay from his or her position for the employee candidacy period.
 - (7) After being elected as Chief Councillor or Councillor and before making the oath of office under section 21 of the *Government Act*, a Huu-ay-aht employee on a leave of absence under this section must resign from his or her position.

(c) *by repealing section 8 and replacing it with the following:***Council members in by-elections**

- 8** (1) A Councillor may not consent to nomination in a by-election for Chief Councillor unless the Councillor resigns from office within 7 days of the appointment of a commissioner for the by-election.
- (2) The office of a Councillor who has resigned under subsection (1) is deemed to have been declared vacant, and the notice period for resignation from elected office under section 24 of the *Government Act* does not apply, so that the by-election may proceed for the vacant offices of Chief Councillor and Councillor.
- (3) The Law Clerk must notify Executive Council and the Ha’wiih Council and give public notice of a vacancy under subsection (2).
- (4) A Chief Councillor may not resign and be nominated in a by-election for Councillor.

(d) *in section 12 (5), by adding “from” after the word “resigns”;*(e) *in section 12 (6), by adding “section 42 of” after the word “under”;*(f) *in section 12 (7) (b), by adding “within the time specified” after the word “office”;*(g) *in section 12 (7) (d), by adding “within the time specified” after the words “oath of office”;*(h) *in section 13, by changing the subsection numbers “(1)” and “(2)” to subsection “(2)” and “(3)” and replacing subsection (1) with the following:*

- (1) If a vacancy in an elected office occurs during the 12-month period following a general election a by-election must be held only if the Law Clerk is unable to fill the seat in accordance with section 13.1.

(i) *in section 13 (2), by striking out “after January 1 in a general election year” and replacing it with “during the 12-month period leading up to a general election”;*(j) *in section 13 (2) (b), by striking out “the” before the word “Ha’wiih”;*(k) *in section 13 (3) by striking out “(1)” and replacing it with “(2)” and by striking out “of this section”;*(l) *by inserting the following in between sections 13 and 14:***Vacancy within 12 months following general election**

- 13.1** (1) In the case of a vacancy under section 13 (1) the individual who is recorded in the official election record compiled under section as receiving the next highest number of votes after the individual who was elected to that office with the least number of votes, will become eligible to be deemed elected to the vacant office.
- (2) As soon as practicable after declaring the vacancy, the Law Clerk must notify the individual identified under subsection (1) in writing that he or she is eligible to be deemed elected to the vacant office.

- (3) An individual who receives notice under subsection (2) or 4 (b) and wishes to fill the vacant seat must notify the Law Clerk in writing within 72 hours.
 - (4) If the Law Clerk has provided notice under subsection (2) or 4 (b) and the eligible individual does not provide notice under subsection (3) within 72 hours, the Law Clerk must
 - (a) declare the individual who was given notice ineligible to be deemed elected to the vacant office, and
 - (b) notify the individual who received the next highest number of votes after the individual who was previously notified under this section that he or she is eligible to be deemed elected to the vacant office.
 - (5) As soon as practicable after receiving notice under subsection 3, the Law Clerk must declare and give public notice that the vacant seat has been filled.
- (m) *by repealing section 14;*
- (n) *in section 15 (1) (a) by striking out “70” and replacing it with “71”;*
- (o) *by repealing section 17 and replacing it with the following:*

Role of commissioner

- 17 (1) The commissioner is responsible for the fair, efficient, accessible, and transparent conduct of elections under this Act.
- (2) For greater certainty,
 - (a) there is no reporting relationship between the commissioner and Executive Council, and
 - (b) the commissioner will not communicate directly with any Council member except in his or her capacity as a candidate and then only to the same extent as with any other candidate.

- (p) *in section 20 (4), by striking out “(c),” and replacing it with “(c)”;*
- (q) *in section 20 (5) (c), by striking out “employment” and replacing it with “appointment”;*
- (r) *in section 21 (6), by striking out “appointed under this Act”;*
- (s) *by inserting the following in between sections 21 and 22:*

Definitions

21.1 In this division,

- (1) “**voters list**” means the list prepared under section 23 (3),
- (2) “**public voters list**” means the list prepared under section 24,
- (3) “**official voters list**” means the list prepared under section 27 (1), and
- (4) “**candidate voters list**” means the list prepared under section 29.

- (t) *in section 22 (1), by striking out “64” and replacing it with “68”;*
- (u) *by repealing section 23;*
- (v) *in section 24, by striking out “list provided under section 22” and replacing it with “voters list”;*
- (w) *by repealing section 25 and replacing it with the following:*

Posting of public voters list

- 25 (1)** At least 61 days before voting day, the commissioner must give public notice that
- (a) the public voters list and any other information specified by the commissioner will be available for public inspection from the date specified in the notice until the close of voting, and
 - (b) eligible voters may request corrections to the voters list in accordance with the process set out in section 26.
- (2) At least 61 days before voting day, the commissioner must make the public voters list available for public inspection at the Huu-ay-aht government offices and other prescribed locations.
- (3) Before inspecting the public voters list, a person must agree in writing that the person will not use or disclose the information on that list except for the purposes of and in accordance with this Act.

- (x) *by repealing section 26 and replacing it with the following:*

Correction to voters list

- 26 (1)** Subject to this Act, the commissioner may do any of the following to maintain the accuracy of the voters list:
- (a) correct the name, date of birth or contact information of an eligible voter;
 - (b) add an eligible voter;
 - (c) remove an individual who is not an eligible voter.
- (2) The Registrar or an individual may request a correction to the voters list by delivering a request in the prescribed form to the commissioner at least 36 days before voting day.
- (3) As soon as practicable after receiving a request under subsection (2), the commissioner must
- (a) if the requester is the Registrar, make the requested correction,
 - (b) if the requester is an individual other than the Registrar,
 - (i) decide whether the request is approved or denied,
 - (ii) give written notice of the decision to the requester, the affected individual, and the Registrar, and

- (iii) make any changes to the voters list required to give effect to that decision as soon as practicable.
- (4) The requester, the affected individual or the Registrar may appeal the decision of the commissioner under subsection (3)(b)(i) to the tribunal under Part 3 of the *Tribunal Act* no later than 25 days before voting day.
- (5) The tribunal must decide the appeal under subsection (4) and provide notice of its decision to the appellant, the Registrar and the commissioner no later than 24 days before voting day.
- (6) The commissioner must, as soon as practicable, make any changes to the voters lists ordered by the tribunal under subsection (5).
- (y) ***by repealing section 27 and replacing it with the following:***
Official voters list
- 27** (1) From the voters list, the commissioner must prepare an official voters list at least 30 days before voting day
- (a) containing the names and addresses of eligible voters, and
- (b) incorporating any corrections to the voters list under section 26.
- (2) Unless ordered by the tribunal, the official voters list must not be altered.
- (3) The commissioner must maintain the confidentiality of the official voters list.
- (4) Only individuals whose names are on the official voters list may vote in an election.
- (z) ***by repealing section 28 and replacing it with the following:***
Revised public voters list
- 28** If the commissioner makes any corrections to the public voters list, the commissioner must, as soon as practicable
- (a) make the revised public voters list available for public inspection at the Huu-ay-aht government offices and other prescribed locations, and
- (b) give public notice that a copy of the revised public voters list is available for public inspection until the close of voting.
- (aa) ***in section 29 (1), by striking out “28” and replacing it with “29”;***
- (bb) ***in section 30, by:***
- (i) ***striking out “57” and replacing it with “61”;***
- (ii) ***adding “the call for” after the first instance of the word “of”;***
- (cc) ***by repealing section 32 and replacing it with the following:***
Nomination form
- 32** The nomination of a candidate for elected office must be made in the prescribed form and include all of the following:

- (a) the elected office for which the individual is nominated;
- (b) the full name of, photograph of, and contact information for, the nominated individual;
- (c) a statement signed by the nominated individual consenting to the nomination;
- (d) the full names, contact information and signatures of at least ten (10) eligible voters making the nomination;
- (e) a statement signed by each of the individuals under paragraph (d) that
 - (i) to the best of their knowledge the nominated individual is qualified to be a candidate under section 5, and
 - (ii) they are qualified as eligible voters to nominate a candidate;
- (f) a certified copy of a criminal record check for the nominated individual obtained within six (6) months of voting day;
- (g) a solemn declaration of the nominated individual declaring that
 - (i) he or she is qualified to be nominated, and
 - (ii) to the best of his or her knowledge, the information provided in the nomination form is true.
- (dd) ***In the heading to section 33, by striking out "Delivering" and replacing it with "Submitting";***
- (ee) ***in section 33(1), by striking out "delivered" and replacing it with "submitted";***
- (ff) ***by striking out section 33(3);***
- (gg) ***in section 34, by:***
 - (i) ***striking out "completed" and replacing it with the word "complete";***
 - (ii) ***adding the words "as soon as practicable" after "inspection";***
- (hh) ***by repealing section 35 and replacing it with the following:***

Declaring candidates

35 (1) Subject to subsection (2), at least 36 days before voting day, the commissioner must declare as candidates for elected office all the individuals who have met the nomination requirements and give public notice of the candidates.

(2) If there are no candidates for the office of Chief Councillor or fewer candidates are nominated for the office of Councillor than there are elected offices for Councillor, the commissioner must

 - (a) extend the period for nominations until noon of the 32nd day before voting day,
 - (b) give public notice of the extended nomination period as soon as practicable, and

- (c) at least 31 days before voting day, declare as candidates for elected office all the individuals who have met the nomination requirements and give public notice of the candidates.

(ii) **by repealing section 36 and replacing it with the following:**

Challenging nomination

- 36** (1) In this section, “**nominee**” means an individual nominated under this Division whose nomination is challenged.
- (2) Subject to this section, an eligible voter may challenge a nomination by applying to the tribunal under section 17 (1) (c) of the *Tribunal Act*.
 - (3) Despite any earlier acknowledgement by the commissioner under section 33 (2) (a), the commissioner must immediately challenge a nomination by applying to the tribunal under section 17 (1) (c) of the *Tribunal Act* if it appears to the commissioner that an individual is disqualified from nomination.
 - (4) An application under subsection (2) or (3) must be
 - (a) submitted no later than 20 days before voting day,
 - (b) made on one or more of the following grounds:
 - (i) the nominee is not qualified to be nominated under section 5;
 - (ii) the nomination was not made in accordance with sections 31 to 33, and
 - (c) supported by the applicant’s solemn declaration as to the matters in the application.
 - (4.1) Before submitting an application under subsection (2) or (3), the applicant must
 - (a) deliver a copy of the application to the commissioner, and
 - (b) make every reasonable effort to provide a copy of the application to the nominee using the nominee’s contact information provided on the nomination form.
 - (5) An application under subsection (2) or (3) must set out all of the following:
 - (a) the nominee’s full name;
 - (b) the full name and contact information of the applicant;
 - (c) the grounds upon which the challenge is brought and the facts that support those grounds;
 - (d) notice to the nominee of the requirement set out at subsection (7);
 - (e) any other requirements Executive Council considers advisable.
 - (6) The commissioner must provide the tribunal with a copy of the nominee’s completed nomination form
 - (a) upon making an application under subsection (3), or

- (b) as soon as practicable after receiving a copy of an application under subsection (4.1).
 - (7) Within 2 days of receiving a copy of an application under subsection (4.1), a nominee must inform the tribunal whether the nominee will be making submissions to the tribunal in respect of the application.
 - (8) Within 3 days of receiving an application under subsection (2) or (3), the tribunal must:
 - (a) decide whether the application will be determined by oral or written submissions,
 - (b) give notice to participating parties of its decision under paragraph (a), and
 - (c) give any procedural directions necessary for determining the application.
 - (9) Within 10 days of receiving an application under subsection (2) or (3), the tribunal must determine the matter and issue an order with written reasons, either
 - (a) confirming the nominee is qualified to be nominated, or
 - (b) declaring the nominee is disqualified from nomination.
 - (10) The onus is on the applicant to establish that a nominee is not qualified to be nominated.
 - (11) If the tribunal finds that the evidence supports 2 or more different findings and that evidence is evenly weighted, the tribunal must resolve the matter in a manner that favours the nominee.
 - (12) Until the tribunal determines otherwise, a nominee is qualified for nomination or a candidate in the election, as applicable.
- (jj) *by repealing section 37 and replacing it with the following:*

Withdrawal of nomination

- 37 (1)** A nominated individual or a candidate may withdraw from the election by submitting written notice to the commissioner
- (a) before noon no later than 28 days before voting day, or
 - (b) if the nomination is subject to a challenge under section 36, at any time prior to a decision of the tribunal in respect of the challenge.
- (2) The commissioner must accept the withdrawal and remove the individual's nomination form from public inspection.
- (3) If a candidate dies, is disqualified or otherwise withdraws, the commissioner must
- (a) give public notice of the candidate's withdrawal,
 - (b) if reasonably possible, remove the candidate's name from ballots or post notice of the candidate's withdrawal at the voting places, and

- (c) if, as a result of the withdrawal, only one candidate remains for an elected office to be filled, declare the candidate elected by acclamation.

(kk) *by repealing section 41 and replacing it with the following:*

Campaign period

- 41** The campaign period begins when the commissioner gives public notice of the individuals nominated for elected office under section 35 and ends when the commissioner declares the election will be by acclamation or at the close of voting on voting day.

(ll) *by repealing section 42 and replacing it with the following:*

Campaign code of conduct

- 42 (1)** A candidate, and any person campaigning for a candidate, must not do any of the following:
- (a) campaign at or within 50 meters of an office of a Huu-ay-aht body;
 - (b) require a public officer to provide services or resources to a candidate either directly or indirectly;
 - (c) use a Huu-ay-aht body's resources for their campaign.
- (2) A public officer must not use the resources of a Huu-ay-aht body to assist a candidate either directly or indirectly.
- (3) During the campaign period for a general election, members of Executive Council must not engage in, or travel on, government business.
- (3.1) Despite subsection (3), in an emergency or special circumstances where, in the view of the Chief Councillor or three members of Executive Council, a delay of consideration of a matter is not in the best interests of the Huu-ay-aht, the Chief Councillor or three members of Executive Council may direct the Law Clerk to call a special meeting of Executive Council during the campaign period.
- (3.2) At a meeting convened under subsection (3.1), Executive Council may act insofar as is necessary to address the emergency or special circumstances giving rise to the meeting.
- (3.3) Despite subsection (3), a member of Executive Council may engage in, or travel on, government business if authorized to do so by Executive Council on the basis of an emergency or special circumstances.
- (3.4) During the campaign period, unless authorized to do so by Executive Council, the Executive Director must not
- (a) make distributions to citizens,
 - (b) implement new projects or programs,
 - (c) implement material changes to existing projects or programs, or
 - (d) make public statements about matters described in paragraphs (a) – (c).

- (3.5) Executive Council may authorize the Executive Director to take an action set out in subsection (3.4) during the campaign period in an emergency or special circumstances where a delay is not in the best interests of the Huu-ay-aht.
- (3.6) Despite section 12 (3), subsection (3) does not apply to a by-election.
- (3.7) During the campaign period for a by-election, unless authorized to do so under section (3.8), Executive Council and members of Executive Council must not
- (a) make distributions to citizens,
 - (b) implement new projects or programs,
 - (c) implement material changes to existing projects or programs, or
 - (d) make public statements about matters described in paragraphs (a) – (c).
- (3.8) Executive Council may take or authorize an action set out in subsection (3.7) during the campaign period for a by-election in an emergency or special circumstances where a delay is not in the best interests of the Huu-ay-aht.
- (4) A candidate, and any person campaigning for a candidate, must not campaign other than during the campaign period.
- (5) On voting day, a candidate, or a person campaigning on behalf of a candidate, must not
- (a) campaign within 100 meters of a voting place,
 - (b) display election campaign information within 100 meters of a voting place, or
 - (c) publish campaign advertising including advertising in a newspaper or magazine, or on the radio, television or internet.
- (6) A candidate, and any person campaigning for a candidate, must comply with the campaign code of conduct and any modifications or additions to the campaign code of conduct prescribed under section 85.

(mm) in section 43 (1), by:

- (i) **striking out** “Candidates” **and replacing it with the words** “Up to 25 days before voting day, candidates”;
- (ii) **striking out** "up to 22 days before voting day";

(nn) in section 43 (2), by striking out “21” and replacing it with “22”;

(oo) by repealing section 43 (3) and replacing it with the following:

- (3) The commissioner may mail campaign information under subsection (2) together with any other materials from the commissioner’s office.

(pp) in section 43 (4) (a), by striking out “22” and replacing it with “25”;

(qq) **by repealing section 44 (1) and replacing it with the following:**

44 (1) In this section, “community” refers to a geographic area defined by the commissioner.

(rr) **by adding the following between sections 44 (1) and 44 (2):**

(1.1) If the commissioner declares an election to be by voting, a meeting of all candidates for Councillor and a meeting of all candidates for Chief Councillor must each be held at least once

- (a) in every other community that has 50 or more eligible voters, during the campaign period, prior to the meeting in Port Alberni and Anacla,
- (b) in Port Alberni, at least seven (7) and nor more than 15 days before voting day,
- (c) in Anacla, at least seven (7) and no more than 15 days before voting day.

(1.2) At least one of the meetings of all candidates for Councillor and of the meetings of all candidates for Chief Councillor held between seven (7) and 15 days before voting day must allow for electronic viewing and participation by citizens.

(ss) **by repealing section 44 (2) and replacing it with the following:**

(2) Each candidate must make every reasonable effort to attend every meeting of all candidates for the applicable elected office.

(tt) **in section 48 (1), by:**

- (i) **striking out** “The” **and replacing it with the words** “At least 29 days before voting day, the”;
- (ii) **striking out the words** “at least 28 days before voting day”;

(uu) **in section 48 (2), by striking out “21” and substituting “22”;**

(vv) **by adding the following after section 48 (5):**

(6) Candidates and individuals who have campaigned for candidates are not permitted to deliver mail-in ballots for eligible voters other than themselves and their immediate families.

(ww) **In the heading to section 49, by striking out “Electronic voting” and replacing it with “Alternate voting methods”;**

(xx) **in section 49(1), by:**

- (i) **striking out** “, after consulting with the commissioner,”;
- (ii) **striking out** “means” **and replacing it with** “methods”;

(yy) **in section 50 (2) (a), by striking out** “instructions as to”;

(zz) **in section 50 (2) (c), by striking out** “colour”;

(aaa) **in section 52 (1), by striking out** “Ballot boxes” **and replacing it with** “A ballot box”;

(bbb) **between sections 54 (1) and 54 (2), by inserting the following:**

(1.1) For certainty, subsection (1) does not prohibit the provision of assistance to eligible voters under section 51(4).

(ccc) **in section 73 (2), by adding “, within fourteen days after the election is finally decided,” after the word “must”;**

(ddd) **in section 85 (2) (a) (iii), by striking out “lists” and substituting “list”;**

(eee) **in section 85 (e), by striking out “run off” and substituting “run-off”.**

Commencement

2 This Act comes into force on the date of its enactment by the Legislature.

Consolidation

3 The Law Clerk is directed to consolidate the *Election Act*, HFNA 6/2011 to include the amendments contained in this Act.