



**HO-CHUNK NATION CODE (HCC)
TITLE 2 – GOVERNMENT CODE
SECTION 2 – OPEN MEETINGS ACT**

ENACTED BY LEGISLATURE: JUNE 22, 2004

CITE AS: 2 HCC § 2

This Act supersedes HCC 95-015, Open Meetings Act of 1996. Last Amended and Restated February 3, 2009.

1. Authority.

a. Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 3 of the Constitution requires the Legislature to adopt a Code governing Open Meetings.

2. Purpose. The purpose of this Act is to ensure that the Nation's governmental business is conducted in an open and public manner. This Act will ensure the people of the Nation remain informed on the affairs of the Nation, their elected government officials, and the governmental systems created by the people of the Nation.

3. Declaration of Policy.

a. Meetings of public bodies and District Meetings of the Nation shall be conducted openly, notices shall be provided for such meetings, and such notices include the information reasonably necessary to inform the public of the matters to be discussed or decided at the meeting. The Judiciary shall take into account this policy and shall construe and interpret any provision of this Act in favor of open and public meetings.

b. The policy of the Ho-Chunk Nation is as follows and as further specified in this Act.

(1) When the Legislature acts in its law-making function, such actions shall be taken at an open meeting.

(2) When the Legislature, Executive Branch, Judiciary, or General Council acts in an executive, administrative, or quasi-executive status, such actions shall be taken at an open meeting, except as provided for in Section 6.

c. All meetings, including District Meetings, under this Act shall be subject to zero tolerance for alcohol and drugs. This policy shall apply to the members of the public body and the attending public.

4. **Definitions.** As used in this Act, the following shall have the meaning provided here:

a. "Bylaws" mean the rules adopted by a public body for its internal governance.

b. "District Meeting" means those regular monthly and special meetings held by the Legislature pursuant to Section 8, Title V of the Constitution of the Ho-Chunk Nation.

c. "Executive Branch" means any Executive Departments created by the Legislature in accordance with Article V, Section 2(b) and Article VI, Section 1(b) of the Constitution and any boards or committees of such Departments.

d. "Executive Session" means that portion of a meeting not open to the public.

e. "General Council" means all eligible voters of the Ho-Chunk Nation and any committees or boards of the General Council.

f. "Judiciary" means the Courts of the Ho-Chunk Nation and any of its boards or committees.

g. "Meeting" means the official convening of a quorum of members of a public body for the purpose of conducting public business:

(1) "Regular Meeting" means any meeting, which is held on a regular schedule such as a regular monthly meeting.

(2) "Special Meeting" means any meeting, which is not a regular meeting, including but not limited to, any meeting, which must be called because of an emergency.

h. "Public" means enrolled members of the Ho-Chunk Nation, and other persons as authorized by the Legislature, Executive Branch, Judiciary, or General Council to attend a meeting.

i. "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. Public bodies shall include the Judiciary and the Legislature, including its Committees established and organized pursuant to the *Legislative Organization Act* (2 HCC § 11), and the following type and defined public bodies:

(1) Authority. A public agency or corporation established by the Legislature with autonomous administrative powers in a specified field.

(2) Commission. An official body established and administered by the Legislature empowered with specific regulatory powers and duties.

(3) Boards. The Ho-Chunk Nation recognizes the following types of boards:

(a) Board. A board other than a board of directors or an advisory board that is established by law and administered by the President to exercise certain authorities and have oversight or control of certain matters.

(b) Board of Directors. An official body required by the Constitution, established by the Legislature, and administered by the President to serve in an advisory capacity to the Executive Director of a Department. The Legislature shall confirm the appointment of the Directors.

(c) Advisory Board. An official representative body established by the Legislature and administered by the President to provide a department or program counseling and advice, which is neither imperative nor conclusive.

(4) Committee (Other than a Legislative Committee). A part-time body appointed by the President or a General Manager to study or oversee a specific issue or program. A committee may be organized on a temporary basis and dissolved after it accomplishes its purpose or may be a standing committee established to perform a long-term function for a specific program, i.e., Safety Committees required pursuant to the *Occupational Safety and Health Program Act* (6 HCC § 8).

(5) Work Group or Task Force. A temporary short-term ad hoc body established by a governmental entity for a focused effort on a specific issue. The body's charter may or may not require a quorum to conduct its business.

5. Open Meetings.

a. Every meeting of a public body shall be open to the public and the public shall be permitted to attend and listen to the deliberations and proceedings except when an executive session is called pursuant to Section 6 of this Act or when paragraph (c), below, applies.

b. A member of the public shall not be required to register his or her name, provide other information, or complete any form or document as a precondition to attend a meeting. A voluntary registration form or other document may be circulated to members of the public who are present at a meeting; however, completion of such form or document shall not be required in order for the public to attend a meeting. Non-members of the Nation who are authorized to attend a meeting may be required to identify themselves as non-members of the Nation.

c. Disruptive Committee or Board Member or Member of the Public.

(1) If a meeting is willfully interrupted by a person or persons and the public body cannot conduct an orderly meeting, the public body shall inform the person or persons that they will be removed from the meeting. If order cannot be restored after such warning, the public body may order that such person or persons be removed from

the meeting room and the meeting may continue. If there is further disturbance after such removal and order cannot be restored, then the meeting shall be terminated.

(2) A Tribal member(s) who is disruptive at a duly called District Meeting may be banned from attending such meetings for a period of six (6) months.

6. Executive Session. In the spirit of open meetings, public bodies shall limit their executive sessions to only those essential matters requiring confidentiality. The Legislature reserves the right to examine executive session minutes to ensure that executive sessions are only convened for appropriate matters.

a. Upon a majority vote taken in an open meeting pursuant to a motion describing the general area to be considered, a public body may conduct an executive session but only for any of the following reasons:

(1) Business Matters. Deliberations and negotiations involving the purchase of public or private properties and other matters whenever competitive or bargaining reasons require a closed session.

(2) Criminal Matter. Any matter relating to a current or future investigation or prosecution of a criminal offense, which would threaten effective law enforcement if disclosed.

(3) Inter-governmental Relations. Any matter regarding the consultation or negotiation with another government including, but not limited to, any local, city, town, county, state, federal, tribal governmental entity or any subdivision thereof.

(4) Land. Any discussion or consideration regarding any purchase or lease of real property.

(5) Law Enforcement. Any matter which may disclose the identity of a law enforcement agent or informer.

(6) Legal Advice. Any discussion or consideration of a sensitive legal advice including, but not limited to, proposed, pending or current litigation.

(7) Personnel Matters. Any matter relating to employment or appointment of an individual as a public officer including, but not limited to, the individual's employment history, medical history, financial or credit history, salary, promotion, demotion, discipline, dismissal or resignation.

(8) Public Safety or Well-being. Any matter which may imperil the public safety or well-being of the Nation if disclosed.

b. Any member of the public body and any other persons authorized by the public body shall be permitted to attend an executive session.

7. Public Notice.

a. A public body shall post notice of each regular or special meeting or hearing in a prominent, noticeable place in the Nation's Executive Office Building and at the location of the meeting, if not the Executive Office Building, no less than 48 hours prior to the meeting or hearing, unless an emergency requires shorter notice. Such notice shall include the date, time, location and proposed agenda and/or hearing purpose.

b. As a matter of record, each public body shall publish its schedule of regular meeting or hearing dates, times and locations in the Hocak Worak.

c. Meeting locations and times cannot be changed unless there is an emergency.

8. Minutes.

a. A public body shall take, or cause to be taken, minutes of a meeting. The minutes shall include, at a minimum, the following:

(1) Time meeting is called to order.

(2) Roll Call. The presence, absence, and times of departure and return (for temporary absence) of each member of the public body and whether absences were excused or unexcused. It will also be noted if an Alternate Member is attending in the place of a member.

(3) Time quorum was established.

(4) A record or summary of all motions, proposals, resolutions or other matter formally voted upon, the results of the vote and the vote of each member of the body.

(5) Times when body is recessed, if applicable.

(6) Times when body is in executive session, if applicable.

(7) The location, date and time of the body's next regular meeting or special meeting, if known.

(8) Time of adjournment.

b. A public body shall take, or cause to be taken, minutes of executive sessions, however, such minutes shall not be available for public inspection without the formal approval of the public body.

c. The minutes to a meeting of a public body, except the minutes to a meeting of an executive session, shall be made available for general distribution and published in the

Hocak Worak within twenty (20) days of the ratification of the minutes. The public may inspect and photocopy the minutes of a meeting of a public body, except executive session minutes, during normal business hours; however, photocopying of executive session minutes shall not be permitted.

d. The Legislature shall have access to all minutes of all meetings of a public body including minutes of an executive session.

9. Membership.

a. Members and Alternate Members of the Nation's public bodies shall be subject to the Nation's *Code of Ethics Act* and employment law regarding nepotism and conflicts of interest.

b. Except if a specific law of the Nation provides otherwise or as provided immediately below, the Nation shall allow immediate family or any other individual who is related to a Legislator, the President, or the appointed staff of the President to serve on public bodies. Immediate family is defined as parent, grandparent, sibling, child, step relative, spouse, or cohabitant. The only exception is if the Legislature passes a Resolution for a specific public body to prohibit immediate family members from serving on that public body:

(1) If the Legislature passes a Resolution prohibiting a certain public body from having an immediate family member serve on a public body, under the following two (2) circumstances an immediate family member may continue to serve on that public body:

(a) If the immediate family member is serving on a public body at the time of passage of the Resolution, he or she may continue to serve on that public body until such time as he or she must be re-appointed to that public body.

(b) If an immediate family member is serving on a public body and a Legislator is newly elected to the Legislature, the immediate family member may continue to serve on that public body until such time as he or she must be re-appointed to that public body.

(2) If the Legislature passes a Resolution prohibiting certain public bodies from having immediate family relatives serving on a public body, the passage of the Resolution along with the name of the public body shall be notated in the Legislative History of this *Open Meetings Act* (2 HCC § 2).

10. Enforcement.

a. Any member of the public shall have the power to enforce the requirements of paragraphs 5 through 9 by filing suit in the Nation's Trial Court. Such actions shall be filed prior to or within thirty (30) days after the violation arises. The Trial Court shall have the power, in its discretion, upon good cause shown, to issue an appropriate order,

injunction, or prohibition and to declare any action or part thereof taken in violation of this law void in whole or in part.

b. In any suit challenging the validity of an executive session, the Trial Court shall determine the matter de novo and may review in chambers the minutes of such executive session to determine whether the session complies with the requirements of Section 7. In such review, the Court shall determine whether such minutes or any part thereof shall remain in executive session.

c. A public body may ratify an action taken in violation of this law at a public meeting properly held within thirty (30) days after discovery of the violation or after such discovery should have been made using reasonable diligence. The effective date of action ratified pursuant to this Section shall be the date of the original enactment.

d. Except as otherwise specifically provided herein, nothing in this Act shall be construed as a waiver of the Nation's sovereign immunity from suit, which is expressly reserved.

e. Nothing in this Act shall be construed to grant a party any remedies other than those included in this section.

11. **Exemption.** The provisions of this Act shall apply to the following or where otherwise specifically exempted by Nation law.

a. This law shall not apply to any judicial deliberations or judicial proceedings regarding child welfare cases, provided, that judicial commissions or quasi-judicial bodies involved in setting policy and procedures of the Judiciary shall not be exempt from the provisions of this law.

b. The deliberations and proceedings of the Committee on Tribal Enrollment regarding appeals of an Office of Tribal Enrollment decision are exempt from this Act.

12. **Business/Enterprise Entities.** A Board of Directors of a corporation organized under the Ho-Chunk Nation Business Corporation Ordinance or a Board of Managers of a limited liability company organized under the Ho-Chunk Nation Limited Liability Company Act are not subject to this Act, but may adopt its provisions if desired.

13. **Severability.** If any provision or provisions of this Act 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.

Legislative History:

7/20/95 Bill HCNL.009-95 presented to Admin. Rules, Legislative Organization and Review Committee on 7/20/95.
10/11/95 Amended by Admin. Rules Comm affecting Secs 8(c), 9(a), and 10(a) after review by the areas for public comment.

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- 1/10/96 Amended by Admin. Rules Comm affecting Secs. 5(b), 5(c), 6(a)(7), 7(a), 7(b) and makes bill applicable to all branches of government. Final draft approved by Admin. Rules Comm.
- 3/05/96 Legislature returns to Admin. Rules Comm.
- 3/13/96 Amended by Admin. Rules Comm. affecting Secs. 3(b), 4(h), 6(a) (1), 7(a-c), 9, and 10.
- 3/19/96 Adopted by the Legislature.
- 11/4/02 Legislative Resolution 11/4/02E requires the Office of the President maintain an updated and accurate record of the bylaws of the Nation's boards, committees, commissions and appointments.
- 10/21/03 Legislative Resolution 10/21/03A adopts policy concerning vacancies of members and alternate members on boards and committees.
- 3/5/04 Administration Committee reviews draft and forwards to full Legislature to send out for 45-Day Public Review.
- 4/7/04 Legislature places draft act out for 45-Day Public Review.
- 6/22/04 Legislature enacts the Open Meetings Act as 2 HCC § 2 by Legislative Resolution 6/22/04B.
- 05/05/08 Attorney General provides opinion on proposed Amendment to Section 9, subparagraph b. regarding eliminating the prohibition of immediate family members from serving on public bodies.
- 10/21/08 Legislature places out proposed Amendments for forty-five day public comment.
- 01/19/09 Forty-five day public comment period ends without comment.
- 02/03/09 Legislature passes Resolution 2-03-09 F striking Section 1, subparagraph c. and amending Section 9, subparagraph b. to provide that immediate family of Legislators, the President, or appointed staff of the President may serve on public bodies except in limited circumstances.