

**Oneida Tribe of Indians of Wisconsin
Legislative Reference Office**

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Memorandum

TO: Legislative Operating Committee (LOC)
FROM: Krystal L. John, Staff Attorney
DATE: February 3, 2016
RE: Administrative Rulemaking Law: Public Meeting Comment Review

On January 7, 2016, a public meeting was held regarding the development of the Administrative Rulemaking (Law). This is a new Law that:

- Allows Authorized Agencies to prepare their own Rules, conducting the required public meetings; receiving comments during the public comment periods, and reviewing/considering all comments received. [17.4 and 17.6]
- A Rule officially goes into effect after the LOC certifies that it was promulgated in accordance with this Law – it does not have to be adopted by OBC/GTC resolution [17.7], except that the OBC is still responsible for adopting emergency Rules before they go into effect. [17.9]
- The OBC reviews a Rule once it has been certified by the LOC. This Law sets out a detailed process for the OBC to repeal/change a Rule within a certain period of time. [17.7]
- Has standards of review – i.e. identifying when a person can appeal actions taken pursuant to a Rule, and when the Judge can reverse or modify an action taken. [17.11 and 17.12]
- Identifies requirements for seeking Judicial Review of a Rule (i.e. seeking to have the Judiciary determine whether a Rule is valid) – and enabling the Judiciary to strike down part or all of a Rule if it violates the Tribal Constitution or is otherwise unlawful, or if it exceeds the Authorized Agency’s Rulemaking authority.)

This memorandum is submitted as a review of the oral comments received during the public meeting process; no written comments were received within the public comment period. The public meeting draft with oral comments is attached for your review.

Comment 1. Financial Analysis Required by Tribal Entity

Excerpt from analysis:

When a Rule is presented for public comment, LOC certification or OBC review, it is required to be accompanied by supporting materials, which are combined into one summary report, which must provide an overview of the Rule, [17.5-2] and include:

...

A **financial analysis** – this is prepared by the Authorized Agency, and must include a report from every entity that may be financially affected by the Rule. [17.3-1(c)] If an entity does not provide the requested information within 10 business days the financial analysis may still be submitted, noting which entities were non-responsive to their request. [17.5-2(e)(1)]

...

Rae Skenandore: Umm, it also states that when a new Rule is brought forward that there would be a financial analysis, now there is a financial analysis that is done with the law, so this financial analysis, if I am understanding correctly is required by the agency that is developing the Rule, is that correct?

Brandon Stevens: Yea, yep.

Jennifer Webster: Where are you?

Rae Skenandore: I am on 54 of Rulemaking, in the, I am in the, um actually the analysis, not the actual law, apologize, so...

Krystal John: Line 328 gives the definition of financial analysis.

Rae Skenandore: I am just wondering if you have the internal expertise within all of these agencies to bring forward their own analysis.

Brandon Stevens: I would think so...they are dealing with the Rule, so if it's a fee schedule or whatnot, I think they would just know the change of what that would do. So, I don't think it's anything like anything that you guys really do as far as being broader, they are more central as far as what goes on, it's almost like budgeting.

Rae Skenandore: But the Land Commission is the authorized agency and the Division of Land Management would be your subject matter experts, so who is responsible for preparing and submitting the analysis, the Commission?

Brandon Stevens: The Commission would be, it would seem like Land Management would be because they're the ones who process it.

Krystal John: It depends on who is named as the authorized agency in the law, if it's Land Management's rules, then Land Management would do it; if it's the Land Commission's rules, the Commission would do it.

Brandon Stevens: Okay.

Rae Skenandore: But would the Commission be the authorizing agency over all of the laws?

Krystal John: It depends on how the law is written. If the law gives the authority to the Land Commission, then the Land Commission becomes the authorized agency.

Rae Skenandore: Okay, I guess we will see as we move forward. Thank you.

Brandon Stevens: Yep.

Response.

This was a policy consideration made by the LOC during the development of the Administrative Rulemaking Law. At that time it was considered whether the LOC wanted the Entities to be required to work with the Finance Department to prepare a fiscal impact statement regarding the proposed Rules prior to sending the Rules to the LOC for a certification of procedural compliance. It was decided that such a requirement would be unduly burdensome and was not necessary for a Rule having a more defined impact than a Law and also because other Entities could submit their own information on how proposed Rules may affect their Entity's budget. For this reason, we chose to call the requirement a financial analysis so that it would not have the same official title as the fiscal impact statement required for laws under the Legislative Procedures Act. It is within the LOC's discretion to revise this policy determination.

Comment 2. Public Meeting Materials Question

Matt Denny: I have a question, um, is the date on here correct, does the date follow the same date as the other two for the public comment period?

Brandon Stevens: Oh, you are talking about the 3rd, December 3rd is on the top?

Krystal John: Oh...I printed the wrong packet for this one.

Brandon Stevens: Ok, yea you still have the five days, is it five days?

Krystal John: You have until the 14th.

Brandon Stevens: Yea so five days or no until the 14th. Ok yea, good catch. I did see it to, I just...
Ok yea so, APA.

Response.

The information provided at the public meeting was correct; the public comment period expired on January 14, 2016. I did verify that the public meeting packet posted online and in the newspaper contained the correct information. The wrong packet was printed for physical distribution at the meeting, which does not impact the requirements of the Legislative Procedures Act. I apologize for any confusion.

Comment 3. Authorized Agencies and General Rulemaking Procedure

17.4-1. *Administrative Rulemaking.* Only Authorized Agencies may promulgate Rules; this Law does not confer Rulemaking Authority. Authorized Agencies shall adhere to the Rulemaking procedures as provided in this Law. Authorized Agencies may promulgate Rules interpreting the provisions of any law enforced or administered by it; provided that, a Rule may not exceed the Rulemaking Authority granted under the law for which the Rule is being promulgated.

(a) This Law does not apply to standard operating procedures, which for the purposes of this section are statements, interpretations, decisions, rules, regulations, policies, procedures or other matters concerning internal management of an agency, which do not affect the private rights or interests of individuals outside of the agency.

(b) Rules developed pursuant to this Law have the same force and effect as the law which delegated the Authorized Agency Rulemaking Authority and must be followed by both the general public and the Authorized Agency promulgating the Rule.

Rae Skenandore: So as the Mortgage Law, the Leasing Law, the Foreclosure Law and the Landlord-Tenant Law move forward and are approved, then you need the rules under all of those laws prior to the hearing being transferred over to the Judiciary? Is that correct?

Brandon Stevens: I would assume yea, it's kind of like a parallel thing, so it's we'll probably be in communication with those moving forward, yea.

Rae Skenandore: So once Rulemaking is approved we need to take all the laws that we are actually working on and, in conjunction with that, develop the Rules? Okay.

Review

The hearing body authority would transfer to the Judiciary upon the effective date of the law. As we develop new laws the goal should be to have the Rules ready to adopt along with the law, but that is not a requirement of this law. A new law could provide in the adopting resolution that it is effective upon adoption of the Rules if the Law could not exist without the Rules.