



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA - REVISED

Business Committee Conference Room-2nd Floor Norbert Hill Center

July 19, 2017 9:00 a.m.

I. Call to Order and Approval of the Agenda

II. Minutes to be approved

1. June 21, 2017 LOC Meeting Minutes

III. Current Business

1. Cemetery Law Amendments
2. Hunting, Fishing and Trapping Law Amendments
3. All-Terrain Vehicle Law Amendments
4. Public Use of Tribal Land Law Amendments
5. On-Site Waste Disposal Law Amendments
6. Tribal Environmental Response Law Amendments
7. Well Abandonment Law Amendments
8. Water Resources Ordinance Amendments
9. Business Committee Meetings Law
10. Petition: Child Care Department Consumer Complaint Policy
11. Administrative Rulemaking Amendments
12. Sanctions and Penalties Law
13. Comprehensive Policy Governing Boards, Committees and Commissions Amendments
14. Children's Code
15. Audit Law Amendments

IV. New Submissions

V. Additions

1. Landlord-Tenant Emergency Amendments Extension

VI. Administrative Updates

1. LOC Quarterly Report
2. Legal Resource Center Public Meeting Packet E-Poll

VII. Executive Session

VIII. Recess/Adjourn



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2nd Floor Norbert Hill Center

June 21, 2017

9:00 a.m.

Present: Brandon Stevens, Fawn Billie, David P. Jordan

Excused: Tehassi Hill and Jennifer Webster

Others Present: Candice Skenandore, Maureen Perkins, Clorissa Santiago, Tani Thurner, JoAnne House, Krystal John, Robert J. Collins II, Bonnie Pigman, Mike Debraska, Dakota Oskey, Ed Delgado

I. Call to Order and Approval of the Agenda

Brandon Stevens called the June 21, 2017 Legislative Operating Committee meeting to order at 9:04 a.m.

Motion by Fawn Billie to adopt the agenda with the addition of the Legislative Reference Office SOP, seconded by David P. Jordan. Motion carried unanimously.

II. Minutes to be approved

1. June 7, 2017 LOC Meeting Minutes

Motion by David P. Jordan to approve the June 7, 2017 LOC meeting minutes; seconded by Fawn Billie. Motion carried unanimously.

III. Current Business

1. Domestic Animals (Tribal Regulation of) Amendments (01:20-02:51)

Motion by Fawn Billie to accept the public meeting comments and forward the Domestic Animals Amendments adoption packet to the Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.

2. Vehicle Driver Certification and Fleet Management (02:55-3:51)

Motion by David P. Jordan to accept the public meeting comments and forward the Vehicle Driver Certification and Fleet Management adoption packet to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.

3. Professional Conduct for Attorneys and Advocates (3:54-5:20)

Motion by David P. Jordan to approve the public meeting packet and forward the Professional Conduct for Attorneys and Advocates law to a public meeting to be held on Thursday, July 20, 2017; seconded by Fawn Billie. Motion carried unanimously.

4. Legal Resource Center (5:27-12:33)

Motion by Fawn Billie to approve the public meeting packet and forward the Legal Resource Center law to a public meeting to be held on Thursday, July 20, 2017; seconded by David P. Jordan. Motion carried unanimously.

5. Landlord-Tenant Amendments (12:34-16:15)

Motion by David P. Jordan to accept the public meeting comments and memorandum and forward the Landlord-Tenant amendments adoption packet to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.

6. Conflict of Interest Amendments (16:34-33:52)

Motion by Fawn Billie to accept the public meeting comments and forward the Conflict of Interest amendments adoption packet to the Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.

7. Audit Law Amendments (33:55-40:07)

Motion by David P. Jordan to direct the Legislative Reference Office to schedule a work meeting with Internal Audit, Law Office, HRD, and Finance; seconded by Fawn Billie. Motion carried unanimously.

8. Business Committee Meetings Law (40:10-56:46)

Motion by Fawn Billie to accept the public meeting comment response memorandum and updated draft and direct the Legislative Reference Office to update the legislative analysis and prepare an adoption packet; seconded by David P. Jordan. Motion carried unanimously.

9. Workplace Violence (56:53-57:30)

Motion by David P. Jordan to accept the public meeting comment response memorandum and draft and forward the Workplace Violence law adoption packet to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.

IV. New Submissions

V. Additions

1. Legislative Reference Office Public Meeting SOP (57:38-58:29)

Motion by David P. Jordan to defer the revised LRO Public Meeting SOP to a work meeting with the Legislative Reference Office; seconded by Fawn Billie. Motion carried unanimously.

VI. Administrative Updates

1. Second Extension of the Effective Date of the Community Support Fund Law (58:34-1:04:17)

Motion by David P. Jordan to accept the Resolution: Second Extension of the Effective Date of the Community Support Fund Law and forward to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.

2. Petition: Delgado Trust Land Distribution (01:04:23-01:05:29)

Motion by David P. Jordan to Add Petition: Delgado Trust Land Distribution to the active files list with Brandon Stevens sponsor and accept the statement of effect

regarding Petition: Delgado- Trust Land Distribution and forward to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.

3. **Health Board Memorandum** (01:05:33-01:06:42)

Motion by David P. Jordan to approve the Health Board Memorandum and forward to the Oneida Business Committee; seconded by Fawn Billie. Motion carried unanimously.

VII. Executive Session

VIII. Adjourn

Motion by David P. Jordan to adjourn the June 21, 2017 Legislative Operating Committee meeting at 10:11 a.m.; seconded by Fawn Billie. Motion carried unanimously.



Legislative Operating Committee
July 19, 2017

Cemetery Law Amendments

Submission Date: 8/5/15	Public Meeting: 3/30/17
LOC Sponsor: David P. Jordan	Emergency Enacted: n/a Expires: n/a

Summary: *This request for amendments was brought to the LOC by the Oneida Law Office. Amendments were requested to correct the name of the Cemetery, which was changed by resolution of the Oneida Land Commission on May 11, 2015. Additional revisions may also be necessary to change who is responsible for the cemetery's maintenance.*

8/5/15 LOC: Motion by David P. Jordan to add the Cemetery Law Amendments to the active files list with himself as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

8/12/15 OBC: Determine responsible area for cemetery maintenance. Item sent to a Business Committee special meeting agenda at the adjournment of the meeting.

8/17/15 OBC: Motion by David Jordan to defer this issue to the September 23, 2015, regular Business Committee meeting and direct the Tribal Secretary to schedule the special Business Committee work meeting and that an invitation be extended to all interested parties, including departments and families impacted, seconded by Jennifer Webster. Motion carried unanimously

9/2/15: OBC work meeting. Attendees include Brandon Stevens, Tehassi Hill, Fawn Billie, Jennifer Webster, Michelle Mays, Douglass McIntyre, various departments and family members of those buried in the cemetery.

9/23/15 OBC: Motion by Lisa Summers to place an indefinite land use moratorium on area designation # 18 'Where the Water Birds Nest', identified in the Public Use of Land Law, and to defer the cemetery issues identified today to the Business Committee Officers for follow-up with a final action plan to be brought by the November 11, 2015, regular Business Committee meeting, seconded by David Jordan. Motion carried unanimously.

Motion by Lisa Summers to direct the Chairwoman's Office to send out communications, regarding the indefinite land use moratorium directive, to the Business Committee's Direct Reports, appropriate Boards, Committees, and

Commissions, and affected parties, including sweat lodge users and families impacted, seconded by David Jordan. Motion carried unanimously.

Amendment to the second motion by Melinda J. Danforth to inform users of the sweat lodge and families of the cemetery. Motion fails for lack of support.

10/7/15 LOC: Motion by Jennifer Webster to accept the memorandum update and defer the Cemetery Law Amendments back to the Legislative Operating Committee and bring back when ready. Noting that the Legislative Operating Committee is waiting on the four Oneida Business Committee Officers to make a decision regarding cemetery maintenance; seconded by David P. Jordan. Motion carried unanimously.

11/10/15 OBC: Motion by Tehassi Hill to accept and approve the recommendations provided in the Business Committee Officers' memorandum dated November 5, 2015, seconded by Jennifer Webster. Motion carried unanimously.

Motion by Jennifer Webster to request the Trust and Enrollment Committee to send out updated communications to the families of the cemetery, seconded by David Jordan. Motion carried unanimously.

12/16/15 LOC: Motion by Jennifer Webster to accept the Cemetery Law Amendments memorandum B and to include language which requires communication pertaining to the history of the land and possible issues that may result if encasements are not used; seconded by David P. Jordan. Motion carried unanimously.

12/23/15 OBC: Motion by Lisa Summers to accept the Cemetery Action Plan update dated December 3, 2015, and to request the Legislative Operating Committee revisit this item once the study is completed, seconded by Brandon Stevens. Motion carried unanimously.

1/6/16 LOC: Motion by Jennifer Webster to defer the draft Cemetery Law Amendments to the Legislative Reference Office for legislative analysis and to the Finance Department for a fiscal impact statement; seconded by David P. Jordan. Motion carried unanimously.

2/17/16 LOC: Motion by Jennifer Webster to accept the legislative analysis for the Cemetery Law Amendments and defer to the sponsor pending the results of the hydrogeology study; seconded by Fawn Billie. Motion carried unanimously.

3/9/16 OBC: Motion by Tehassi Hill to accept the presentation regarding the Oneida Sacred Burial Grounds per GTC Directive, seconded by Trish King. Motion carried unanimously.

Amendment to the main motion by Tehassi Hill to request an update at the first regular Business Committee meeting in June regarding potential locations of the cemetery, seconded by Trish King. Motion carried unanimously.

5/4/16 LOC: Motion by Fawn Billie to defer the Cemetery Law Amendments to the sponsor's office and bring back when ready; seconded by David P. Jordan. Motion carried unanimously.

6/8/16 OBC: Motion by Lisa Summers to accept the information in the memorandum from the Trust Department dated May 31, 2016, as information, noting there have been two (2) identified alternative sites for a cemetery should the need arise and to send this item to the next available Officers' meeting for continued follow-up with the overall cemetery work plan, seconded by Tehassi Hill. Motion carried unanimously.

8/29/16 OBC: Motion by Lisa Summers to table this item until after the September 28, 2016, regular Business Committee meeting so that we have more information before us, seconded by Brandon Stevens. Motion carried unanimously:

10/13/16: *Quarterly Sponsor Update Meeting held.* Present: David Jordan, Krystal John, Leyne Orosco, Tani Thurner, Maureen Perkins, Clorissa Santiago. Work meeting coming up with Trust Enrollments Committee. The group will decide who will administer the contract for management of the cemetery grounds.

11/4/16: *Work Meeting held.* Present: Fawn Billie, Susan White, Pat Pelky, Maureen Perkins, Kelly McAndrews, David Jordan, Bonnie Pigman, Tehassi Hill, Jenny Webster. Another work meeting will be scheduled after Thanksgiving- to look at an updated draft- reflecting this meeting.

11/30/16: *Work Meeting held.* Present: Pat Pelky, Bonnie Pigman, Susan White, Sheila Huff, Fawn Billie, Tehassi Hill, Jennifer Webster, David Jordan, Cathy Bachhuber, Maureen Perkins

3/1/17 LOC: Motion by Fawn Billie to approve the Public Meeting packet and forward the Cemetery Law amendments to a Public Meeting on March 30, 2017, with the noted change; seconded by Tehassi Hill. Motion carried unanimously.

Note: The noted change is to change "Wednesday" to "Thursday" on the Public Meeting notice.

3/30/17: *Public Meeting held.*


6/7/17 LOC: Motion by David P. Jordan to approve the public meeting memorandum and make the changes discussed today; seconded by Fawn Billie. Motion carried unanimously.

Motion by David P. Jordan to direct the Legislative Reference Office to prepare an adoption packet; second by Tehassi Hill. Motion carried unanimously.

Next Steps:

- Approve the adoption packet for the Cemetery Law amendments and forward to the Oneida Business Committee for consideration.



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson 
DATE: July 26, 2017
RE: Cemetery Law Amendments

Please find the following attached backup documentation for your consideration of the Cemetery Law Amendments:

1. Resolution: Cemetery Law Amendments
2. Statement of Effect: Cemetery Law Amendments
3. Cemetery Law Amendments- Legislative Analysis
4. Cemetery Law Amendments- Clean Draft
5. Cemetery Law Amendments- Redline to Current Draft
6. Cemetery Law Amendments- Fiscal Impact Statement

Overview

This resolution adopts amendments to the Cemetery Law as follows:

- To correct the name of the Cemetery, which was changed by resolution of the Oneida Land Commission on May 11, 2015 [*see also* 127.4-1]
- Designate Land Management with administrative and maintenance oversight [*see* 127.4-3 and 127.4-4];
- Clarify eligibility for interment and the process for disinterment; [*see* 127.4-3, 127.5 and 127.7];
- In accordance with existing law, delegate the Community Public Health Officer authority over situations involving decedents who have died of communicable diseases [*see* 127.4-5 and 127.6-1];
- Grant rulemaking authority to Land Management, the Environmental Resource Board, and the Community Public Health Officer [*see above and* 127.8]; and
- Update the complaint process regarding the implementation and enforcement of the Law [*see* 127.9].

On March 30, 2017, in accordance with the Legislative Procedures Act, a public meeting was held regarding this Law. The written comment period closed on April 6, 2017. Since verbal and written comments were provided, a responsive Public Meeting Comment Review memo (“memo”) was provided for the June 7, 2017 LOC meeting. On June 7, 2017 the LOC accepted the memo and directed minor changes to the draft. Subsequently, these changes were made (and are attached). This Law will become effective ten business days after the date of adoption of the resolution as identified in section 109.9-3 of the Legislative Procedures Act. The anticipated effective date will be Wednesday, August 9, 2017.

Requested Action

Approve the Resolution: Cemetery Law Amendments

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____ Cemetery Law Amendments

WHEREAS, the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and

WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

WHEREAS, the Oneida Business Committee originally adopted the Cemetery Law through resolution BC-09-02-88-A; and

WHEREAS, the Amendments to the Law:

- Acknowledge the Oneida Sacred Burial Grounds, also known as Tsi' Tyeya' Tat'alih, in accordance with the May 11, 2015 resolution of the Oneida Land Commission;
- Delegate Land Management with administrative and maintenance oversight;
- Clarify eligibility for interment and the process for disinterment;
- Delegate the Community Public Health Officer authority over situations involving decedents who have died of communicable diseases, consistent with existing laws;
- Grant rulemaking authority to Land Management, the Environmental Resource Board, and the Community Public Health Officer; and
- Update the complaint process for this Law.

WHEREAS, a public meeting on the proposed Amendments was held on March 30, 2017 in accordance with the Legislative Procedures Act; and the written comment period closed on April 6, 2017. A responsive Public Meeting Comment Review memo was provided for the June 7, 2017 LOC meeting and the LOC accepted the memo and directed minor changes to the draft, which were made.

NOW THEREFORE BE IT RESOLVED, that the Cemetery Law Amendments are hereby adopted. This Law will become effective Wednesday, August 9, 2017.



Statement of Effect

Cemetery Law Amendments

Summary

This Resolution adopts Amendments to the Cemetery Law (“Amendments” or “Law”) which:

1. Corrects the name of the Cemetery in accordance with the May 11, 2015 resolution of the Oneida Land Commission.
2. Delegates Land Management with administrative and maintenance oversight.
3. Clarifies eligibility for interment and the process for disinterment.
4. Delegates the Community Public Health Officer authority over situations involving decedents who have died of communicable diseases, consistent with existing laws.
5. Grants rulemaking authority to Land Management, the Environmental Resource Board, and the Community Public Health Officer.
6. Updates the complaint process for this law.

Submitted by: Kelly M. McAndrews, Staff Attorney, Oneida Law Office

Analysis by the Legislative Reference Office

This Law was originally adopted by Resolution BC-09-02-88-A. The actual revisions contained in these Amendments are listed above.

In accordance with the Legislative Procedures Act, a public meeting was held for these Amendments on March 30, 2017 and the public comment period expired on April 6, 2017. Oral and written comments were submitted and were addressed in a Public Meeting Comment Review memo (“memo”) submitted to the LOC for its June 7, 2017 meeting. At that meeting the LOC accepted the memo and directed minor changes to the Law, which were subsequently made.

The Nation does not currently have any other laws or resolutions that govern the Nation’s cemetery, but it does have the Emergency Management and Homeland Security law which delegates broad authority to the Public Health Officer to help prevent public health emergencies and limit the spread of communicable diseases. *See* Ch. 302. The above Amendments do not conflict with the Emergency Management and Homeland Security law, and better define the Public Health Officer’s responsibility for decedents being buried in the cemetery who died of certain communicable diseases and when a state of emergency related to public health is proclaimed. These changes are consistent with state and federal emergency preparedness laws and make clear the Nation retains its own authority over decedents buried in its cemetery. As to these Amendments, there is no applicable state or federal law that precludes the Nation from exercising its authority to manage its cemetery and those buried in it.

Conclusion

Adoption of this Resolution does not conflict with the Nation’s laws.



Cemetery Law Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: Oneida Law Office/ OBC	SPONSOR: David P. Jordan	DRAFTER: Kelly McAndrews	ANALYST: Maureen Perkins
Intent of the Amendments	Current amendments were brought forward to recognize the name of the Sacred Burial Grounds (Tsi' Tyeya'Tat'alih) and establish maintenance responsibilities.		
Purpose	Establish administrative authority for Oneida Nation cemeteries, establish maintenance responsibilities, govern the sale, transfer and recordkeeping of plots, establish eligibility criteria, establish a process for disinterment, and delegate authority pursuant to Oneida laws.		
Affected Entities	Trust Enrollment Department, Land Management, Oneida Land Commission, Environmental Resource Board, Community Public Health Officer, Oneida Police Department, Oneida Conservation Department, enrolled Tribal members, their families (including step children) and descendants who are or may be interred at an Oneida Nation cemetery		
Affected Legislation	Administrative Rulemaking, Public Use of Tribal Land, Emergency Management and Homeland Security		
Enforcement/Due Process	<p>The Environmental Resource Board shall promulgate rules concerning prohibited uses of Oneida Nation cemetery grounds <i>[see 127.8-2]</i>. The Oneida Police Department or Oneida Conservation Department may issue citations for violation of this law or the cemetery rules in accordance with applicable Oneida law <i>[see 127.8-2(a)]</i>. Criminal or any other unlawful activity occurring at an Oneida Nation cemetery shall be handled in accordance with applicable law <i>[see 127.8-2(b)]</i>.</p> <p>Any Individual may file a complaint with Land Management regarding the implementation and enforcement of this law <i>[see 127.9-1]</i>. Land Management shall respond to the complaint with a remedy within 5 business days of the receipt of the complaint to the individual filing the complaint, the Oneida Land Commission and the Environmental Resource Board <i>[see 127.9-2]</i>.</p>		
Public Meeting	A public meeting was held March 30, 2017. The LOC considered all comments on June 7, 2017 and made minor changes to the draft based upon public comments received.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The Legislative Operating Committee is considering the proposed amendments to establish maintenance responsibilities with the appropriate department and also to recognize the Oneida name of the existing cemetery. Additional amendments have evolved through the consultation process with affected entities.
- B. The Oneida Nation Cemetery is non-denominational and benefits the Oneida community by providing a resting place for all Oneida members and their families.

SECTION 3. CONSULTATION

- 10 A. The Oneida Law Office staff consulted with the Community Public Health Officer and area coroner's
11 offices to include applicable sections of the amendments. Additionally, Land Management and the
12 Trust Enrollment Department were consulted to identify the appropriate entity to manage the Nation's
13 cemetery.
14

15 SECTION 4. PROCESS

- 16 A. The appropriate legislative process has been followed to create the amendments.
17 B. The current amendments were added to the Active Files List on August 5, 2015. Since that time
18 multiple work meetings have occurred. A public meeting was held March 30, 2017.
19

20 SECTION 5. CONTENTS OF THE AMENDMENTS

- 21 A. The law has been amended as follows:

22 Definitions:

- 23 • The purpose section was updated to include administrative authority for Oneida Nation
24 cemeteries on the Oneida Reservation, maintenance responsibility, govern the transfer and
25 recordkeeping of plots, establish a process for disinterment and delegate authority pursuant to
26 Oneida laws [see 127.1-1].
27 • Several definitions were added [see 127.3-1]:
28 ○ Decedent means a person who has died.
29 ○ Disinterment permit means the form established by Land Management to authorize
30 removal of a human corpse from a grave or tomb.
31 ○ Judiciary means the judicial system that was established by Oneida General Tribal
32 Council to administer the judicial authorities and responsibilities of the Oneida Nation.
33 ○ Remains means the body of a deceased person, regardless of its state, and includes
34 cremated remains. "Remains" is synonymous and may be used interchangeably with
35 "decedent" and "corpse".
36 ○ Reservation means all the lands and waters within the exterior boundaries of the
37 Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida
38 7 Stat. 566, and any lands added thereto pursuant to federal law.
39 ○ Rule means a set of requirements, including citation fees and penalty schedules, in
40 accordance with the Administrative Rulemaking law based on authority delegated in this
41 law in order to implement, interpret and/or enforce this law.
42 • The definition for family was expanded to include additional relationships beyond an Oneida
43 Nation member's parent, spouse and children:
44 ○ Family means husband, wife, mother, father, son, daughter, brother, sister, grandparent,
45 grandchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law, daughter-in-law,
46 son-in-law, brother-in-law, sister-in-law, step-parent and step-children as established
47 through a certified copy of the original marriage license, foster children, adopted
48 children, kinship and fictive kinship relationships and/or a person who accepts legal
49 responsibility for the decedent [see 127.3-1(e)].
50 • The following definitions were removed:

- Days was removed because the standard definition was used in the current law and it is not necessary to define a word used in the everyday sense *[see 127.3-1(a) of current law]*.
- Tribe or Tribal *[see 127.3-1(g) of current law]* was removed and replaced with Nation *[see 127.3-1(h)]* to refer to the Oneida Nation in alignment with the amended Oneida Nation Constitution.

Administration and Authority

- Oneida Sacred Burials Grounds, also known as Tsi? Tyeya?Tat'alih, was recognized *[see 127.4-1]*.
- Administrative authority changed from the Trust Enrollment Department to Land Management *[see 127.4-3]*. Additional administrative duties for Land Management include:
 - Issuing disinterment permits *[see 127.4-3(a)]*.
 - Maintaining records concerning all plots *[see 127.4-3(e)]*.
 - Requesting additional portions of land to be designated for use as an Oneida Nation cemetery *[see 127.4-3(f)]*.
- Land Management has been designated to maintain Oneida Nation cemeteries *[see 127.4-4]*. Additional maintenance responsibilities include:
 - ensuring appearance is kept in accordance with established rules *[see 127.4-4(b)]* which they shall create *[see 127.8-1]*,
 - entering into agreements to meet maintenance responsibilities *[see 127.4-4(c)]*, and
 - oversight of any position created to care for the cemeteries *[see 127.4-4(d)]*.
- A public health emergency and communicable diseases section was added to the law which gives the Community Public Health Officer authority over situations that arise involving a person who have died of communicable diseases *[see 127.4-5]*.
 - The Community Public Health Officer shall determine conditions of disposal of a decedent with a communicable disease dangerous to public health *[see 127.4-5(a)]*. A corresponding list of communicable diseases shall be maintained and provided to affected departments *[see 127.4-5(a)(1)]*.
 - Require labeling of remains of a decedent with a communicable disease *[see 127.4-5(b)]*.
 - Maintain or require the maintenance of a written or electronic record of all remains and if unknown may request a local coroner or medical examiner to obtain any fingerprints, photographs, or identifying dental information and / or collect a DNA sample from the remains and transmit this information to any interested public health authority *[see 127.4-5(c)]*.
- Repatriated remains were added to the list of eligibility for interment in an Oneida Nation cemetery *[see 127.5-1(b)(2)]*.
- The requirement that the Enrollment Department is present at each disinterment and reinterment and restrictions for who may be present during disinterment or reinterment have been removed *[see 127.6-7(g) of current law]*.
- Vendors performing opening and closing are now required to have the qualifications and experience to perform openings for the burial of caskets *[see 127.6-3(c)(1)]*.
- Land Management is now responsible to provide information concerning the potential effects if a burial container is not used *[see 127.6-4]*.

- The requirements for disinterment have been amended and disinterment no longer requires an order from the Judiciary. Disinterment can now take place with an order from the Judiciary, the issuance of a disinterment permit, or reburial by Land Management to resolve a recordkeeping error *[see 127.7-1(a) to (c)]*.
 - The list of persons who can request a disinterment has expanded to include:
 - An individual, as designated in writing by the decedent as listed in the Authorization for Final Disposition *[see 127.7-3(b)(1)]*.
 - Any other person authorized, under obligation, or agreeing to dispose of the decedent's corpse *[see 127.7-3(b)(7)]*.
- Complaints regarding the implementation or enforcement of this law are now filed with Land Management rather than the Oneida Trust Enrollment Committee *[see 127.9-1]*. Land Management shall respond to complaints in writing to the individual filing the complaint, Oneida Land Commission and to the Environmental Resource Board within 5 days *[see 127.9-2]*.

Rulemaking Authority

The following entities have been granted rulemaking authority under this law in accordance with the Administrative Rulemaking law *[see Administrative Rulemaking, 1 O.C. 106]*.

- Land Management shall create rules in order to carry out their responsibilities under this law *[see 127.4-3(j)]*.
- Land Management shall establish rules related to the appearance and maintenance of an Oneida Nation cemetery *[see 127.4-4(b) and 127.8-1]*.
- Land Management shall create rules regarding plot and marking fees *[see 127.6-3]*.
- Land Management shall establish rules regarding maximum height, width and thickness requirements for monuments or flush markers placed at a plot, as well as the types of materials that may be used for monuments and flush markers *[see 127.6-6]*.
- The Environmental Resource Board has been granted rulemaking authority regarding provisions related to the Public Use of Tribal Lands law *[see Public Use of Tribal Land, 6 O.C. 609.4(g)]* and shall promulgate rules related to prohibited uses of Oneida Nation cemetery grounds *[see 127.8-2]*.

B. The law has been significantly redrafted.

SECTION 6. INTENT

- A.** The purpose of the law has been updated to clearly state the intent is to establish administrative authority for the Oneida cemetery, establish cemetery maintenance responsibility, govern the sale, transfer and recordkeeping of plots, establish eligibility for interment, establish a process for disinterment, and delegate rulemaking authority.
- B.** It is clear that the law applies to those eligible for interment, those who visit the Oneida cemetery, the Trust Enrollment Department, Land Management, Oneida Police Department, Oneida Conservation Department, the Environmental Resource Board, Oneida Land Commission and the Community Public Health Officer.

SECTION 7. EFFECT ON EXISTING LEGISLATION

- A.** No Oneida laws will be impacted by this legislation and there are no conflicts with existing legislation.

SECTION 8. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

A. The proposed legislation will not affect existing rights of members of the Nation.

B. Due process was addressed in the law:

- The Environmental Resource Board shall promulgate rules concerning prohibited uses of Oneida Nation cemetery grounds *[see 127.8-2]*.
- The Oneida Police Department or Oneida Conservation Department may issue citations for violation of this law or the cemetery rules in accordance with applicable Oneida law *[see 127.8-2(a)]*.
- Criminal or any other unlawful activity occurring at an Oneida Nation cemetery shall be handled in accordance with applicable law *[see 127.8-2(b)]*.
- Any Individual may file a complaint with Land Management regarding the implementation and enforcement of this law *[see 127.9-1]*. Land Management shall respond to the complaint with a remedy within 5 business days of the receipt of the complaint to the individual filing the complaint, the Oneida Land Commission and the Environmental Resource Board *[see 127.9-2]*.

D. Land Management will now be responsible to enter into contracts with the appropriate vendor to carry out applicable provisions in the law *[see 127.4-3(j) and 127.4-4(c)]*.

E. Land Management will now be responsible for setting fees and rules in accordance with the Administrative Rulemaking law *[see 127.6-3]*.

SECTION 9. ENFORCEMENT

A. The Oneida Police Department or Oneida Conservation may issue citations for violation of this law or the cemetery rules in accordance with applicable Oneida law *[see 127.8-2(a)]*. Criminal or any other unlawful activity occurring at an Oneida Nation cemetery shall be handled in accordance with applicable law *[see 127.8-2(b)]*.

B. There are existing human resources available for enforcement.

SECTION 10. ACCOUNTABILITY

A. Land Management is responsible for administration *[see 127.4-3]* and maintenance *[127.4-4]* of the Oneida Cemetery. The Community Public Health Officer is responsible for issuing and enforcing orders under the law including the power to take possession or control of any remains and make orders specific to embalming, interment, cremation, disinterment, transportation, or other disposal *[see 127.4-5]*.

B. The Community Public Health Officer shall provide and maintain a list of communicable diseases and other notifiable conditions to affected departments and the public by request *[see 127.4-5(a)(1)]*.

Title 1. Government and Finances– Chapter 127
CEMETERY LAW
Tsi? Lotiya?tata Olihwa'ke
The matters concerning when they bury the body

127.1. Purpose and Policy	127.6. Interment and Plots
127.2. Adoption, Amendment, Repeal	127.7. Disinterment
127.3. Definitions	127.8. Prohibited Items and Behavior on Cemetery Grounds
127.4. Administration and Authority	127.9. Reporting.
127.5. Eligibility and Ownership	

127.1. Purpose and Policy

127.1-1. *Purpose.* The purpose of this law is to establish administrative authority for Oneida Nation cemeteries on the Oneida Reservation, establish cemetery maintenance responsibility, govern the sale, transfer and recordkeeping of plots, establish who is eligible for interment, establish a process for disinterment, and delegate authority pursuant to Oneida laws.

127.1-2. *Policy.* It is the policy of the Nation that all enrolled Oneida Nation members, their families and descendants may be interred in an Oneida Nation cemetery.

127.2. Adoption, Amendment, Repeal

127.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-19-89-E and amended by resolutions BC-6-29-05-A, BC-1-14-09-E, BC-07-23-14-B and BC-_____.

127.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

127.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

127.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

127.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

127.3. Definitions

127.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Decedent” means a person who has died.

(b) “Descendant” means a person who is not enrolled in the Nation, but is a blood relative in the direct line of descent of an Oneida Nation member.

(c) “Disinterment” means to exhume interred human remains or cremated human remains.

(d) “Disinterment permit” means the form established by Land Management to authorize removal of a human corpse from a grave or tomb.

(e) “Family” means husband, wife, mother, father, son, daughter, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, step-parent and step-children as established through a certified copy of the original marriage license, foster children, adopted children, kinship and fictive kinship relationships and/or a person who accepts legal responsibility for the decedent.

(f) “Interment” means to bury remains.

(g) “Judiciary” means the judicial system that was established by Oneida General Tribal Council to administer the judicial authorities and responsibilities of the Oneida Nation.

(h) “Nation” means the Oneida Nation.

(i) “Reinterment” means to rebury remains.

(j) “Remains” means the body of a deceased person, regardless of its state, and includes cremated remains. “Remains” is synonymous and may be used interchangeably with “decedent” and “corpse”.

(k) “Reservation” means all the lands and waters within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(l) “Rule” means a set of requirements, including citation fees and penalty schedules, in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

127.4. Administration and Authority

127.4-1. The land designation, administrative duties and maintenance responsibilities for the Oneida Sacred Burial Grounds, also known as Tsi’ Tyeya’ Tat’alih and any other cemetery owned by the Nation shall be as provided within this section.

127.4-2. *Land Designation Responsibilities.* The Oneida Land Commission shall designate parcel(s) of land to be used for one (1) or more Oneida Nation cemeteries.

127.4-3. *Administrative Responsibilities.* Land Management shall be responsible for the administrative duties for all Oneida Nation cemeteries. These duties include:

(a) Issuance of disinterment permits, where appropriate. An approved disinterment permit constitutes authorization to transport the remains and reinter the disinterred remains at an approved location within the boundaries of the Oneida Reservation. If the remains are being transported outside the boundaries of the Oneida Reservation and/or reinterment is occurring at a location outside the boundaries of the Oneida Reservation, other laws may apply and the parties involved are responsible for compliance. Permits shall include:

(1) Information that is necessary to identify the decedent;

(2) The date and place of death;

(3) The current place of interment;

(4) The intended place of interment, the name of the person requesting the disinterment; and

(5) The name of the person in charge of the disinterment.

(b) Maintaining vital statistics of decedents interred, disinterred, and/or reinterred in an Oneida Nation cemetery including data derived from certificates death, fetal death reports or related reports, a report for final disposition, authorization for disinterment or reinterment or related judicial order or any other data as determined by Land Management.

(c) Creating long-term strategic plans for Oneida Nation cemeteries and reporting such information as may be required by the Oneida Business Committee or General Tribal Council.

(d) Causing portions of land designed to be used for an Oneida Nation cemetery to be surveyed and mapped into plots, drives and walks.

(e) Maintain records concerning all plots.

(f) Requesting additional portions of land to be designated for use as an Oneida Nation cemetery, if needed.

(g) Selling and transferring plots and restricting the use of plots.

(h) Administering accounting activities related to the sale or transfer of a plot.

(i) Determining how to utilize gifts to an Oneida Nation cemetery.

(j) Establishing rules, entering into agreements with person(s) or entities, where needed, in order to carry out their responsibilities under this law.

127.4-4. *Maintenance Responsibilities.* Land Management shall be responsible for cemetery maintenance duties including:

(a) Maintaining Oneida Nation cemetery grounds.

(b) Ensuring the appearance of an Oneida Nation cemetery is kept in accordance with any established rules.

(c) Entering into agreements and communication with person(s) or entities, where needed, in order to meet the maintenance responsibilities.

(d) Oversight of any position created to care for the cemetery.

127.4-5. *Public Health Emergency and Communicable Diseases.* The Community Public Health Officer shall, in a state of emergency related to public health as duly proclaimed, issue and enforce orders that are reasonable and necessary to provide for the safe disposal of remains in an Oneida Nation cemetery. This includes the power to take possession or control of any remains and make orders specific to embalming, interment, cremation, disinterment, transportation, or other disposal. Additionally, the Community Public Health Officer may:

(a) Determine conditions and order a specific method of disposal of remains in an Oneida Nation cemetery of a decedent who has died of a communicable disease that is dangerous to public health, within a reasonable or necessary timeframe, as determined by the Community Public Health Officer.

(1) The Community Public Health Officer shall provide and maintain a list of communicable diseases and other notifiable conditions to affected departments and the public by request.

(b) Require the labeling of all remains before disposal in an Oneida Nation cemetery with all available identifying information and information concerning the circumstances of death and, in addition, require the remains of a decedent with a communicable disease be clearly tagged to indicate that remains contain a communicable disease and, if known, the specific communicable disease.

(c) Maintain or require the maintenance of a written or electronic record of all remains that are disposed of in an Oneida Nation cemetery, including all available identifying information and information concerning the circumstances of death and disposal. These written and electronic records shall be safeguarded following applicable privacy standards and may only be released in accordance with applicable laws. If it is impossible to identify remains prior to disposal in an Oneida Nation cemetery, the Public Health Office or designee may request that the local coroner or medical examiner obtain any fingerprints, photographs, or identifying dental information, and/ or collect a specimen of deoxyribonucleic acid from the remains and transmit this information to any interested public health authority.

127.4-6. *Other requirements.* Neither this section nor any other section of this law relieves any person from all applicable legal, professional, or other requirements.

147 **127.5. Eligibility and Ownership**

148 127.5-1. *Eligibility.* The following persons may be interred in an Oneida Nation cemetery:

149 (a) An Oneida Nation member, his or her family, or descendants.

150 (b) Remains that are:

151 (1) Returned to the Nation;

152 (2) Repatriated; or

153 (3) Discovered on the Reservation if Oneida's Cultural Heritage Department,
154 along with any other appropriate Oneida entity has determined that the most
155 suitable place for interment of the remains is an Oneida Nation cemetery.

156 127.5-2. *Ownership of Plots.* Plots in an Oneida Nation cemetery may be purchased by anyone
157 for individuals eligible to be interred in an Oneida Nation cemetery, as defined in section 127.5-
158 1, but the owner of the plot shall be the individual for whom the plot was purchased, if living,
159 and shall be specified at purchase. Purchase of a plot does not result in any ownership rights in
160 the plot itself, but grants an individual the right to be interred in the plot or determine who will
161 be interred in the plot, subject to the eligibility requirements of this law.

162 (a) In the event the owner of a plot becomes ineligible to be interred in an Oneida Nation
163 cemetery, the plot shall be resold to the Nation in accordance with section 127.5-2(c).

164 (b) A plot is not inheritable, but may be transferred from the owner to an individual
165 eligible to be interred in an Oneida Nation cemetery. The transfer of a plot from one
166 owner to another shall be processed through Land Management.

167 (c) A plot may only be resold by the owner of the plot to the Nation through Land
168 Management. Plots resold to the Nation shall be bought for the original purchase price.

169 The following owners of plots may resell a plot to the Nation:

170 (1) Competent individuals who are at least eighteen (18) years of age;

171 (2) Individuals who are less than eighteen (18) years of age, with the written
172 permission of the original purchaser of the plot; and

173 (3) Incompetent individuals who are at least eighteen (18) years of age, with the
174 permission of their guardian or appropriate power of attorney.
175

176 **127.6. Interment and Plots**

177 127.6-1. All interments shall be approved by Land Management prior to interment to ensure the
178 health and safety of the public will not be endangered, that the plot is properly marked, and to
179 provide information to any company or contractor providing services for the interment.

180 (a) In any case in which a decedent will be buried in an Oneida Nation cemetery, Land
181 Management shall report any known situations involving communicable diseases to
182 Oneida's Community Public Health Officer for investigation. The Community Public
183 Health Officer may determine conditions for disposal of the remains in accordance with
184 section 127.4-5.

185 127.6-2. No interments will be scheduled on the observance of any Holiday recognized by the
186 Nation.

187 127.6-3. *Cost of Interment.* All fees for the cost of a plot and/or an interment, or disinterment or
188 re-interment, including all the below listed fees, are the responsibility of the decedent's estate,
189 if any, family assuming responsibility, or other individual assuming legal responsibility for the
190 remains, unless otherwise stated. Land Management shall create rules regarding plot and
191 marking fees.

192 (a) Plot fees shall be paid prior to interment.

(b) Marking fees for the plot or monument location shall be assessed and required each time an interment occurs, regardless of container use or method of disposition.

(c) Opening and closing fees shall be determined by the vendor chosen.

(1) Any such vendor is required to have the qualifications and experience to perform opening and closings. Family members or private persons lacking qualifications or experience to perform burial related openings may not perform openings for the burial of caskets.

(d) There shall be no plot fees or marking fees assessed for remains interred in accordance with section 127.7-4. If the Nation or its contracted vendor opens or closes a plot for the interment of human remains in accordance with section 127.7-4, no fees shall be assessed for the opening or closing of the plot.

127.6-4. *Outer Burial Containers.* Outer burial containers, such as liners and vaults, while recommended, are not required for interment. Land Management shall provide information concerning the potential effects if a burial container is not used.

127.6-5. *Division of Plots.* Each plot may only be used for the interment of:

(a) one (1) human corpse;

(b) one (1) human corpse along with the cremated remains of one (1) other decedent; or

(c) the cremated remains of up to four (4) decedents.

127.6-6. *Monuments and Flush Markers.* No more than four (4) monuments or flush markers shall be allowed per plot. If a plot is designated for more than two (2) decedents, only flush markers can be installed outside of the designated headstone area. Land Management shall establish rules regarding maximum height, width and thickness requirements for monuments or flush markers placed at a plot. In addition, Land Management may establish the types of materials that may be used for monuments or flush markers.

(a) No monuments/markers will be installed from November 1st through May 1st.

127.7. Disinterment

127.7-1. Disinterment from an Oneida Nation cemetery may occur pursuant to any of the following; requirements for each are listed below:

(a) Issuance of an Order for Authorization of Disinterment and/or Reinterment by the Oneida Judiciary;

(b) Land Management's issuance of a disinterment permit; or

(c) Reburial required by Land Management in accordance with section 127.7-4. .

127.7-2 Issuance of an Order for Authorization of Disinterment and/or Reinterment by the Oneida Judiciary. The Oneida Judiciary may issue an Order for Authorization for Disinterment and/or Reinterment as follows:

(a) When a petition for an Order for Authorization for Disinterment and/or Reinterment is filed with the Oneida Judiciary, unless a hearing is held determining circumstances exist that would reasonably justify dispensing of the notice requirement, the petitioner shall serve a copy of the Petition for an Order for Authorization for Disinterment and/or Reinterment upon Land Management and all members of the same or a prior class as listed in section 127.7-3(b). A Petition for an Order for Authorization for Disinterment and/ or Reinterment shall include all of the following:

(1) The decedent's name, date of death, and burial location;

(2) The requester's name, address, telephone number, and relationship with the decedent;

(3) The requester's intent to obtain an order of disinterment/reinterment;

- 240 (4) The reason for the disinterment;
- 241 (5) The location of reinterment and/or certification that the petitioner will have
- 242 the remains cremated;
- 243 (6) Individual or entity responsible for the disinterment/reinterment; and
- 244 (7) That any objections shall be filed with the Judiciary within five (5) business
- 245 days of the notification, or may be presented at the hearing.
- 246 (b) Unless the Judiciary has found that grounds exist to dispense with Notice
- 247 requirements, the Judiciary shall set a hearing date on the Petition for Order for
- 248 Authorization for Disinterment and/or Reinterment at the earliest possible time after the
- 249 deadline for filing objections has passed and shall issue an Order on the matter within ten
- 250 (10) days after the hearing. The Judiciary may, for good cause, extend the time for
- 251 issuance of an Order for an additional ten (10) days. When entering its decision, the
- 252 Judiciary may also take into consideration:
- 253 (1) The cause and manner of the decedent's death, including whether the
- 254 Petitioner was convicted for a murder or homicide related offense in connection
- 255 with the decedent's death;
- 256 (2) Whether disinterment would create a known public health risk;
- 257 (3) The decedent's will or other evidence of the decedent's wishes concerning
- 258 final disposition, if known;
- 259 (4) Any objections filed with the Judiciary or presented at the hearing;
- 260 (5) Whether an order of disinterment or similar order from a court other than the
- 261 Judiciary has been issued;
- 262 (6) Whether any required permits regarding re-interment have been obtained; or
- 263 (7) Any other factor requiring consideration.
- 264 (c) The Judiciary may deny the Petition for Order for Authorization for Disinterment
- 265 and/or Reinterment based solely on an objection to the disinterment either filed or
- 266 presented by an individual with the same or a higher priority than the requester.
- 267 (d) *Appeals*. An appeal of an Order issued under this section shall be filed with the
- 268 Judiciary within five (5) business days after the order is issued. The Judiciary may
- 269 modify the appeal time frame if it is determined exigent circumstances exist requiring
- 270 more immediate disinterment. If no appeal is filed, disinterment shall take place within
- 271 sixty (60) days after the deadline for filing an appeal has passed. If an appeal is filed, a
- 272 stay of the disinterment may be ordered, but only after inquiry into the facts and a finding
- 273 that based on the facts it is reasonable to stay disinterment pending appeal.
- 274 127.7-3. *Land Management's issuance of a disinterment permit*. Land Management shall issue
- 275 a Permit for Disinterment when all of the following occur:
- 276 (a) The person in charge of the disinterment submits a complete Application for
- 277 Disinterment Permit to Land Management.
- 278 (b) The person in charge of the disinterment submits a complete Land Management
- 279 Consent Form, signed by any of the following persons, in the order of priority stated
- 280 below, when persons in prior classes are not available at the time of application, and in
- 281 the absence of actual notice of contrary indications by the decedent or actual notice of
- 282 opposition by a member of the same or a prior class:
- 283 (1) An individual, as designated in writing by the decedent as listed in the
- 284 Authorization for Final Disposition;
- 285 (2) The decedent's spouse;
- 286 (3) An adult son or daughter of the decedent;

- (4) Either parent of the decedent;
- (5) An adult brother or sister of the decedent;
- (6) A guardian of the person of the decedent at the time of the decedent's death;
- (7) Any other person authorized, under obligation, or agreeing to dispose of the decedent's corpse.

(c) Land Management shall deny the request for a Disinterment Permit when an objection to the disinterment is either filed or presented by an individual with the same or a higher priority than the requester. In such cases, Land Management shall refer the requester to the Judiciary.

127.7-4. *Reinterment by Land Management.* Land Management may reinter or disinter human remains that are interred in an Oneida cemetery in another plot in the same cemetery under the following circumstances:

- (a) Reinterment is necessary to correct a recordkeeping error made by the Nation or its designee when the human remains were first buried; and
- (b) Notification concerning the need for reinterment is made to one of the following, in descending order, by registered mail:
 - (1) The decedent's spouse;
 - (2) An adult son or daughter of the decedent;
 - (3) Either parent of the decedent; or
 - (4) An adult brother or sister of the decedent.

(c) Land Management shall maintain a record of its attempt to provide notification under this section as part of Land Management's permanent records.

127.7-5. The Nation shall be responsible for making all arrangements and incurring all costs associated with disinterment and reinterment due to a recordkeeping error on the Nation's behalf.

127.8. Prohibited Items and Behavior on Cemetery Grounds

127.8-1. Land Management shall promulgate rules concerning the maintenance and appearance of Oneida Nation cemetery grounds which shall be publically posted, including on Oneida Nation cemetery grounds. Land Management shall notify the Environmental Resource Board of the current rules and any changes to such rules.

- (a) Land Management or its designee may remove and dispose of any non-conforming objects from plots and/or cemetery grounds.

127.8-2. In accordance with applicable Oneida law, the Environmental Resource Board shall promulgate rules concerning prohibited uses of Oneida Nation cemetery grounds.

- (a) The Oneida Police Department or Oneida Conservation Department may issue citations for violation of this law or the cemetery rules in accordance with applicable Oneida law.

- (b) Criminal or any other unlawful activity occurring at an Oneida Nation cemetery shall be handled in accordance with applicable law.

127.9. Complaint Process

127.9-1. Any individual may file a complaint with Land Management regarding the implementation and enforcement of this law.

127.9-2. Within five (5) business days of the receipt of a complaint, Land Management shall respond in writing indicating any action taken or planned action to remedy the complaint to the individual that filed the complaint, if the address is known, to the Oneida Land Commission, and to the Environmental Resource Board.

334
335 *End.*
336

337 BC-09-02-88-A (Adoption of the Burial Ordinance)
338 BC-05-19-89-E (Adoption of Burial Ordinance)
339 BC-02-23-05-F (Emergency Adoption of Amendments)
340 BC-06-29-05-A (Permanent Adoption of Emergency Amendments)
341 BC-1-14-09-E (Adoption of Cemetery Law)
342 BC-10-09-13-B (Adoption of Emergency Amendments)
343 BC-03-26-14-C (Extension of Emergency Amendments)
344 BC-07-23-14-B (Adoption of Amendments)

Title 1. Government and Finances— Chapter 127

CEMETERY LAW

Tsi? Lotiya? tata Olihwa'ke

The matters concerning when they bury the body

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127.9. Reporting.

127.1. Purpose and Policy

127.1-1. *Purpose.* The purpose of this Lawlaw is to establish administrative authority for Oneida Nation cemeteries on the Oneida Reservation, establish cemetery maintenance responsibility, govern the sale, transfer and recordkeeping of plots and, establish who is eligible for interment in, establish a Tribal cemetery on the Oneida Reservation, process for disinterment, and delegate authority pursuant to Oneida laws.

127.1-2. *Policy.* It is the policy of the TribeNation that all enrolled TribalOneida Nation members, their families and descendants may be interred in a Tribal an Oneida Nation cemetery.

127.2. Adoption, Amendment, Repeal

127.2-1. This Lawlaw was adopted by the Oneida Business Committee by resolution BC-5-19-89-E and amended by resolutions BC-6-29-05-A, BC-1-14-09-E and, BC-07-23-14-B: and BC-

127.2-2. This Lawlaw may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

127.2-3. Should a provision of this Lawlaw or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Lawlaw which are considered to have legal force without the invalid portions.

127.2-4. In the event of a conflict between a provision of this Lawlaw and a provision of another law, the provisions of this Lawlaw shall control. Provided that, this Law repeals the following:

(a) BC 03-11-98 N (Resolution regarding Opposition to Disturbance/Removal of Human Burials

(b) BC 2-18-98 A (Repatriated Human Remains)

127.2-5. This Lawlaw is adopted under authority of the Constitution of the Oneida Tribe of Indians of WisconsinNation.

127.3. Definitions

127.3-1. This section shall govern the definitions of words and phrases used within this Lawlaw. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Days” shall mean calendar days, unless otherwise specifically stated.

(a) “Decedent” means a person who has died.

(b) “Descendant” shall mean means a person who is not enrolled in the TribeNation, but is a blood relative in the direct line of descent of a Tribal an Oneida Nation member.

(c) “Disinterment” shall mean means to exhume buriedinterred human remains or cremated human remains.

(d) “Disinterment permit” means the form established by Land Management to authorize removal of a human corpse from a grave or tomb.

(e) “Family” shall mean a Tribal member’s means husband, wife, mother, father, son, daughter, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, step-parent, spouse and step-children as established through a certified copy of the original marriage license, foster children, adopted children, kinship and fictive kinship relationships and/or a person who accepts legal responsibility for the decedent.

(f) “Interment” shall mean the act or ceremony of burying human remains or means to bury remains.

(g) “Judiciary” means the judicial system that was established by Oneida General Tribal Council to administer the judicial authorities and responsibilities of the Oneida Nation.

(h) “Nation” means the Oneida Nation.

(i) “Reinterment” means to rebury remains.

(j) “Remains” means the body of a deceased person, regardless of its state, and includes cremated remains. “Remains” is synonymous and may be used interchangeably with “decedent” and “corpse”.

~~(f) “Re-interment” shall mean to rebury human remains or cremated remains.~~

~~(g) “Tribe” or “Tribal” shall mean the Oneida Tribe of Indians of Wisconsin.~~

(k) “Reservation” means all the lands and waters within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(l) “Rule” means a set of requirements, including citation fees and penalty schedules, in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

127.4. Administration and Authority

127.4-1. The land designation, administrative duties and maintenance responsibilities for the Oneida Sacred Burials Grounds, also known as Tsi’ Tyeya’ Tat’alih and any other cemetery owned by the Nation shall be as provided within this section.

127.4-2. Land Designation Responsibilities. The Oneida Land Commission shall designate parcel(s) of land to be used for one (1) or more Oneida Nation cemeteries.

127.4-3. Administrative Responsibilities. ~~The Enrollment Department~~ Land Management shall be responsible for the administrative duties for all Oneida Nation cemeteries. These duties include:

(a) Issuance of disinterment permits, where appropriate. An approved disinterment permit constitutes authorization to transport the remains and reinter the disinterred remains at an approved location within the boundaries of the Oneida Reservation. If the remains are being transported outside the boundaries of the Oneida Reservation and/or reinterment is occurring at a location outside the boundaries of the Oneida Reservation, other laws may apply and the parties involved are responsible for compliance. Permits shall include:

(1) Information that is necessary to identify the decedent;

(2) The date and place of death;

(3) The current place of interment;

(4) The intended place of interment, the name of the person requesting the disinterment; and

(5) The name of the person in charge of the disinterment.

(b) Maintaining vital statistics of ~~those~~ decedents interred ~~in a Tribal~~, disinterred, and/or reinterred in an Oneida Nation cemetery, ~~creating~~ including data derived from certificates death, fetal death reports or related reports, a report for final disposition, authorization for disinterment or reinterment or related judicial order or any other data as determined by Land Management.

(c) Creating long-term strategic plans for ~~Tribal~~ Oneida Nation cemeteries and reporting such information as may be required by the Oneida Business Committee or General Tribal Council.

~~(b) - d)~~ Causing portions of land designed to be used for a ~~Tribal~~ Oneida Nation cemetery to be surveyed and mapped into plots, drives and walks.

~~(e) -~~ (e) Maintain records concerning all plots.

(f) Requesting additional portions of land to be designated for use as an Oneida Nation cemetery, if needed.

(g) Selling and transferring plots and restricting the use of plots.

~~(d) - h)~~ Administering ~~all payment~~ accounting activities related to the sale or transfer of a plot.

~~(e) i)~~ Determining how to utilize gifts to a ~~Tribal~~ Oneida Nation cemetery.

~~(f) -~~ Maintaining Tribal cemeteries.

~~(g) - j)~~ Establishing ~~regulations or~~ rules, entering into agreements with person(s) or entities, where needed, in order to carry out their responsibilities under this ~~Law~~ law.

127.5. Tribal Cemeteries

~~127.5-1. The Oneida 4-4. Maintenance Responsibilities.~~ Land ~~Commission~~ Management shall ~~designate parcel(s) of land to be used~~ responsible for ~~one (1) or more Tribal cemeteries.~~ cemetery maintenance duties including:

~~127.5-2.~~ (a) Maintaining Oneida Nation cemetery grounds.

(b) Ensuring the appearance of an Oneida Nation cemetery is kept in accordance with any established rules.

(c) Entering into agreements and communication with person(s) or entities, where needed, in order to meet the maintenance responsibilities.

(d) Oversight of any position created to care for the cemetery.

127.4-5. Public Health Emergency and Communicable Diseases. The Community Public Health Officer shall, in a state of emergency related to public health as duly proclaimed, issue and enforce orders that are reasonable and necessary to provide for the safe disposal of remains in an Oneida Nation cemetery. This includes the power to take possession or control of any remains and make orders specific to embalming, interment, cremation, disinterment, transportation, or other disposal. Additionally, the Community Public Health Officer may:

(a) Determine conditions and order a specific method of disposal of remains in an Oneida Nation cemetery of a decedent who has died of a communicable disease that is dangerous to public health, within a reasonable or necessary timeframe, as determined by the Community Public Health Officer.

(1) The Community Public Health Officer shall provide and maintain a list of communicable diseases and other notifiable conditions to affected departments and the public by request.

(b) Require the labeling of all remains before disposal in an Oneida Nation cemetery with all available identifying information and information concerning the circumstances of death and, in addition, require the remains of a decedent with a communicable disease be clearly tagged to indicate that remains contain a communicable disease and, if known, the specific communicable disease.

(c) Maintain or require the maintenance of a written or electronic record of all remains that are disposed of in an Oneida Nation cemetery, including all available identifying information and information concerning the circumstances of death and disposal. These written and electronic records shall be safeguarded following applicable privacy standards and may only be released in accordance with applicable laws. If it is impossible to identify remains prior to disposal in an Oneida Nation cemetery, the Public Health Office or designee may request that the local coroner or medical examiner obtain any fingerprints, photographs, or identifying dental information, and/ or collect a specimen of deoxyribonucleic acid from the remains and transmit this information to any interested public health authority.

127.4-6. Other requirements. Neither this section nor any other section of this law relieves any person from all applicable legal, professional, or other requirements.

127.5. Eligibility and Ownership

127.5-1. Eligibility. The following persons may be interred in a Tribal Oneida Nation cemetery:

(a) A Tribal Oneida Nation member, his or her family ~~and, or~~ descendants.

(b) ~~Human remains~~ Remains that are:

(1) Returned to the ~~Tribe; or~~ Nation;

(2) Repatriated; or

(3) Discovered on the Reservation and the Enrollment Department, if Oneida's Cultural Heritage Department and, along with any other interested parties have appropriate Oneida entity has determined that the most suitable place for interment of the remains is a Tribal Oneida Nation cemetery.

127.5-32. Ownership of Plots. Plots in a Tribal Oneida Nation cemetery may be purchased by anyone for individuals eligible to be interred in a Tribal Oneida Nation cemetery, as defined in section 127.5-2. The 1, but the owner of the plot shall be the individual for whom the plot was purchased, if living, and shall be specified at purchase. Purchase of a plot does not result in any ownership rights in the plot itself, but grants an individual the right to be interred in the plot or determine who will be interred in the plot, subject to the eligibility requirements of this ~~Law~~ law.

(a) In the event the owner of a plot becomes ineligible to be interred in a Tribal Oneida Nation cemetery, ~~he or she shall resell~~ the plot shall be resold to the Tribe Nation in accordance with section 127.5-32(c).

(b) A plot is not inheritable, ~~and but~~ may ~~only~~ be transferred from ~~one the~~ owner to an individual eligible to be interred in a Tribal Oneida Nation cemetery, ~~as defined in 127.5-2.~~ The transfer of a plot from one owner to another shall be processed through ~~the Enrollment Department~~ Land Management.

(c) A plot may only be ~~re-sold~~ resold by the owner of the plot to the Tribe Nation through ~~the Enrollment Department~~ Land Management. Plots ~~re-sold~~ resold to the Tribe Nation shall be bought for the original purchase price. The following owners of plots may resell a plot to the Tribe Nation:

(1) Competent individuals who are at least eighteen (18) years of age;

(2) Individuals who are less than eighteen (18) years of age, with the written permission of the original purchaser of the plot; and

(3) Incompetent individuals who are at least eighteen (18) years of age, with the permission of their guardian or appropriate power of attorney.

127.6. Interment and Plots

127.6-1. ~~All interments shall be approved by the Enrollment Department~~ Land Management prior to interment to ensure the health and safety of the public will not be endangered, that the plot is properly marked, and to provide information to any company or contractor providing services for the interment.

(a) In any case in which a decedent will be buried in an Oneida Nation cemetery, Land Management shall report any known situations involving communicable diseases to Oneida's Community Public Health Officer for investigation. The Community Public Health Officer may determine conditions for disposal of the remains in accordance with section 127.4-5.

127.6-2. No interments will be scheduled on the observance of any Holiday recognized by the Nation.

127.6-3. *Cost of Interment.* All fees for the cost of a plot and/or an interment, or disinterment or re-interment, including all the below listed fees, are the responsibility of the ~~deceased person's~~ decedent's estate ~~or, if any, family assuming responsibility, or other individual assuming legal responsibility for the remains, unless otherwise stated. Land Management shall create rules regarding plot and marking fees.~~

(a) Plot fees shall be paid prior to interment. ~~The Oneida Business Committee, upon recommendation of the Enrollment Department, shall set plot fees through resolution.~~

(b) Marking fees for the plot or monument location shall be assessed and required each time an interment occurs, ~~whether the interment is of human remains, with or without a casket, or cremated remains, regardless of container use or method of disposition.~~

(c) Opening and closing fees shall be ~~assessed~~ determined by the vendor chosen ~~by the deceased's family or estate.~~

(1) Any such vendor is required to have the qualifications and experience to perform opening and closings. Family members or private persons lacking qualifications or experience to perform burial related openings may not perform openings for the burial of caskets.

(d) There shall be no plot fees or marking fees assessed for ~~human~~ remains re-buried interred in accordance with section 127.5-2(b), 7-4. If the ~~Tribe~~ Nation or its contracted vendor opens or closes a plot for the ~~re-burial~~ interment of human remains in accordance with section 127.5-2(b), 7-4, no fees shall be assessed for the opening or closing of the plot. ~~Any fees for opening and closing a plot assessed by an outside vendor shall be the responsibility of the Tribe.~~

127.6-~~34~~ 34. *Outer Burial Containers.* Outer burial containers, such as liners and vaults, while recommended, are not required for interment, ~~however if an outer burial container is purchased, the company shall notify the Enrollment Department before delivering and installing it in the designated plot in order to ensure the plot is properly prepared.~~ Land Management shall provide information concerning the potential effects if a burial container is not used.

~~127.6-4.~~ 127.6-5. *Division of Plots.* Each plot may only be used for the interment of:

(a) one (1) or more human remains, corpse;

(b) one (1) human corpse along with or without a casket(s) and/or the cremated remains of one (1) other decedent; or

(c) the cremated remains of an individual(s) as determined by the Enrollment Department up to four (4) decedents.

127.6-6. ~~127.6-5.~~ Monuments and Flush Markers. No more than four (4) monuments or flush markers ~~per plot~~ shall be allowed. ~~The Enrollment Department per plot.~~ If a plot is designated for more than two (2) decedents, only flush markers can be installed outside of the designated headstone area. Land Management shall establish rules regarding maximum height, width and thickness requirements for monuments or flush markers placed at a plot. In addition, ~~the Enrollment Department~~ Land Management may establish the types of materials that may be used for monuments or flush markers.

(a) No monuments/markers will be installed from November 1st through May 1st.

~~127.6-6. Decorations. The Enrollment Department shall remove all inappropriate and deteriorated items left at a plot.~~

~~127.6-7. Disinterment. Disinterment from a Tribal cemetery shall only occur upon order of the Tribe's judicial system. Disinterment is an extraordinary remedy that shall only be ordered when all other reasonable means for obtaining the requester's objective have been exhausted and when the Tribe's judicial system determines that substantial cause exists to order disinterment.~~

~~(a) A request to the Tribe's judicial system to issue an order for disinterment from a Tribal~~ 127.7-1. Disinterment from an Oneida Nation cemetery may be made by occur pursuant to any of the following persons, in the following order; requirements for each are listed below:

(a) Issuance of ~~priority:~~ an Order for Authorization of Disinterment and/or Reinterment by the Oneida Judiciary;

(1) The surviving spouse of the deceased.

(2) An adult child of the deceased.

(3) A parent of the deceased.

(4) An adult sibling of the deceased.

(5) A guardian of the person of the deceased at the time of the deceased's death.

~~(b) A requester shall notify the Enrollment Department and all individuals of the same or a higher priority of his or her intent to request the Tribe's judicial system to issue an order of disinterment. If any member of the same or a higher priority cannot be located, this, along with the efforts taken to locate the individual, shall be reported to the Tribe's judicial system. Notification shall specifically state:~~

~~(1) the~~ (b) Land Management's issuance of a disinterment permit; or

(c) Reburial required by Land Management in accordance with section 127.7-4. .

127.7-2 Issuance of an Order for Authorization of Disinterment and/or Reinterment by the Oneida Judiciary. The Oneida Judiciary may issue an Order for Authorization for Disinterment and/or Reinterment as follows:

(a) When a petition for an Order for Authorization for Disinterment and/or Reinterment is filed with the Oneida Judiciary, unless a hearing is held determining circumstances exist that would reasonably justify dispensing of the notice requirement, the petitioner shall serve a copy of the Petition for an Order for Authorization for Disinterment and/or Reinterment upon Land Management and all members of the same or a prior class as listed in section 127.7-3(b). A Petition for an Order for Authorization for Disinterment and/ or Reinterment shall include all of the following:

(1) The decedent's name, date of death, and burial location;

(2) The requester's name, address, telephone number, and relationship with the decedent;

(3) The requester's intent to obtain an order of disinterment/reinterment;

~~(2) the~~ (4) The reason for the disinterment;

~~(3) the place~~ (5) The location of re-interment/reinterment and/or intent of certification that the requestor to petitioner will have humanthe remains cremated; and

~~(4) that~~ (6) Individual or entity responsible for the disinterment/reinterment; and

(7) That any objections shall be filed with the Tribe's judicial systemJudiciary within five (5) business days of the notification, or may be presented at the hearing.

~~(c) Disinterment Process.~~

~~(1) The Tribe's judicial system~~ (b) Unless the Judiciary has found that grounds exist to dispense with Notice requirements, the Judiciary shall set a hearing date on the disinterment requestPetition for Order for Authorization for Disinterment and/or Reinterment at the earliest possible time after the deadline for filing objections has passed and shall issue an orderOrder on the matter within ten (10) days after the hearing, taking. The Judiciary may, for good cause, extend the time for issuance of an Order for an additional ten (10) days. When entering its decision, the Judiciary may also take into consideration:

~~(A) the manner in which the deceased died;~~

~~(B) whether~~ (1) The cause and manner of the decedent's death, including whether the Petitioner was convicted for a murder or homicide related offense in connection with the decedent's death;

(2) Whether disinterment would create a known public health risk;

~~(C) 3) The decedent's will or other evidence of~~ the decedent's wishes concerning final disposition, if known;

~~(D) any~~ (4) Any objections filed with the Tribe's judicial systemJudiciary or presented at the hearing;

~~(E) whether~~ (5) Whether an order of disinterment or similar order from a court other than the Tribe's judicial systemJudiciary has been issued; and

~~(F) whether~~ (6) Whether any required permits regarding re-interment have been obtained; or

~~(2) All of the factors listed in 127.6-~~ (7) Any other factor requiring consideration.

~~(c) shall be considered when determining whether to allow disinterment, although the Tribe's judicial system The Judiciary may deny the request for disintermentPetition for Order for Authorization for Disinterment and/or Reinterment based solely on any objectionsan objection to the disinterment either filed or presented by an individual with the same or a higher priority than the requester.~~

~~(3) The Tribe's judicial system may, for good cause, extend the time for an order to be issued for an additional ten (10) days.~~

~~(4) The Tribe's judicial system may issue an additional order(s) to assist the requester in obtaining his or her objective for disinterment, including testing, inspection and/or transportation of the remains.~~

(d) Appeals. An appeal of an orderOrder issued under this section shall be filed with the Tribe's judicial systemJudiciary within five (5) business days after the order is issued. All appeals shall be heard in accordance with the Tribe's Rules of Appellate Procedure.

~~(e) Time lines for Disinterment.~~

~~(1) The Judiciary may modify the appeal time frame if it is determined exigent circumstances exist requiring more immediate disinterment. If no appeal of an order issued under this section is filed, disinterment shall take place within sixty (60) days after the deadline for filing an appeal has passed. If an appeal is filed, a stay of the disinterment may be ordered, but only after inquiry into the facts and a finding that based on the facts it is reasonable to stay disinterment pending appeal.~~

~~(2) If an appeal is filed, disinterment shall take place within sixty (60) days after the final judgment has been issued.~~

~~(f) Following disinterment, the remains of the deceased person shall be reinterred or cremated within forty-eight (48) hours of disinterment.~~

~~(g) The Enrollment Department shall be present at each disinterment and re-interment that occurs in the Tribal cemetery and shall have the authority to restrict who may be present during a disinterment or re-interment.~~

~~(h) The requester~~ 127.7-3. Land Management's issuance of a disinterment permit. Land Management shall issue a Permit for Disinterment when all of the following occur:

(a) The person in charge of the disinterment submits a complete Application for Disinterment Permit to Land Management.

(b) The person in charge of the disinterment submits a complete Land Management Consent Form, signed by any of the following persons, in the order of priority stated below, when persons in prior classes are not available at the time of application, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class:

(1) An individual, as designated in writing by the decedent as listed in the Authorization for Final Disposition;

(2) The decedent's spouse;

(3) An adult son or daughter of the decedent;

(4) Either parent of the decedent;

(5) An adult brother or sister of the decedent;

(6) A guardian of the person of the decedent at the time of the decedent's death;

(7) Any other person authorized, under obligation, or agreeing to dispose of the decedent's corpse.

(c) Land Management shall deny the request for a Disinterment Permit when an objection to the disinterment is either filed or presented by an individual with the same or a higher priority than the requester. In such cases, Land Management shall refer the requester to the Judiciary.

127.7-4. Reinterment by Land Management. Land Management may reinter or disinter human remains that are interred in an Oneida cemetery in another plot in the same cemetery under the following circumstances:

(a) Reinterment is necessary to correct a recordkeeping error made by the Nation or its designee when the human remains were first buried; and

(b) Notification concerning the need for reinterment is made to one of the following, in descending order, by registered mail:

(1) The decedent's spouse;

(2) An adult son or daughter of the decedent;

(3) Either parent of the decedent; or

(4) An adult brother or sister of the decedent.

(c) Land Management shall maintain a record of its attempt to provide notification under this section as part of Land Management's permanent records.

127.7-5. The Nation shall be responsible for making all arrangements and incurring all costs associated with disinterment and ~~re-interment~~ reinterment due to a recordkeeping error on the Nation's behalf.

127.7-8. Prohibited Items and Behavior on Cemetery Grounds

~~127.7-1. The Enrollment Department~~ Land Management shall ~~establish cemetery~~ promulgate rules concerning the maintenance and appearance of Oneida Nation cemetery grounds which shall be publically posted, including on Tribal Oneida Nation cemetery grounds. ~~The Enrollment Department~~ Land Management shall notify the ~~Oneida Trust/Enrollment Committee~~ Environmental Resource Board of the current rules and any changes to ~~any such~~ rules.

~~127.7-2. The Enrollment Department,~~ (a) Land Management or its designee, may remove and dispose of any non-conforming objects from plots, ~~prohibit individuals who violate this Law and/or the cemetery grounds.~~

127.8-2. In accordance with applicable Oneida law, the Environmental Resource Board shall promulgate rules from accessing a Tribal concerning prohibited uses of Oneida Nation cemetery and/or contact the grounds.

(a) The Oneida Police Department ~~for assistance with individuals who violate this Law or the cemetery rules.~~

~~(a) The Oneida Police or Oneida Conservation~~ Department may issue citations for violation of this ~~Law~~ law or the cemetery rules in accordance with ~~the Public Use of Tribal Lands Schedule of Citations adopted by the Oneida Business Committee~~ applicable Oneida law.

(b) Criminal or any other unlawful activity conducted occurring at a Tribal an Oneida Nation cemetery shall be handled in accordance with applicable law.

~~127.7-3. Appeals. Enrollment Department decisions~~ 9. Complaint Process

127.9-1. Any individual may file a complaint with Land Management regarding the implementation and enforcement of this ~~Law and~~ law.

127.9-2. Within five (5) business days of the receipt of a complaint, Land Management shall respond in writing indicating any action taken or planned action to remedy the complaint to the individual that filed the creation and enforcement of any cemetery rules may be appealed to complaint, if the Trust/Enrollment Committee address is known, to the Oneida Land Commission, and to the Environmental Resource Board.

End.

BC-09-02-88-A (Adoption of the Burial Ordinance)
 BC-05-19-89-E (Adoption of Burial Ordinance)
 BC-02-23-05-F (Emergency Adoption of Amendments)
 BC-06-29-05-A (Permanent Adoption of Emergency Amendments)
 BC-1-14-09-E (Adoption of Cemetery Law)
 BC-10-09-13-B (Adoption of Emergency Amendments)
 BC-03-26-14-C (Extension of Emergency Amendments)
 BC-07-23-14-B (Adoption of Amendments)

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

DATE: March 27, 2017

FROM: Rae Skenandore, Project Manager

TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

RE: **Fiscal Impact of Amendments – Cemetery Law**

I. Estimated Fiscal Impact Summary

Law: Cemetery Law		Draft 7
Implementing Agency	Division of Land Management Environmental Resource Board	
Estimated time to comply	6 (six) months	
Estimated Impact	Current Fiscal Year	10 Year Estimate
Start up	\$0	
Personnel	\$0	
Office	\$0	
Documentation Costs	\$0	
Total Estimated Fiscal Impact	\$0	\$0
Revenue and cost considerations	None	
Uncertainties and Unknowns	None	

II. Background

A. Legislative History

This Law was adopted by the Oneida Business Committee by resolution BC-5-19-89-E and amended by resolutions BC-6-29-05-A, BC-1-14-09-E and, BC-07-23-14-B.

B. Summary of Content

1. Designate the Division of Land Management (DOLM) with administrative & maintenance oversight.
2. Designate the Community Public Health Officer with authority over situations involving decedents who have died of communicable diseases.
3. Grant rulemaking authority to the Division of Land Management, the Environmental Resource Board and the Community Public Health Officer.
4. Update the complaint process regarding the implementation and enforcement of this law.

C. Methodology and Assumptions

1. A “Fiscal Impact Statement” means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the law after implementation.
2. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.
3. The analysis was completed based on the information provided as of the date of this memo.

II. Agency

This Law transfers the authority and the responsibility for the Cemetery from Enrollments to Land Management. According to the Division of Land Management (DOLM), additional duties will be absorbed by existing employees. The outside contract for maintenance of the grounds will transfer from Enrollments to DOLM. Therefore, there is no fiscal impact.

Rulemaking and additional processes & forms will need development. DOLM is requesting a minimum of 6 (six) months prior to implementation compliance.

III. Financial Impact

No impact.

IV. Recommendation

Finance does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.



Legislative Operating Committee
July 19, 2017

Hunting, Fishing, Trapping Law Amendments

Submission Date: 5/17/17	Public Meeting: 6/15/17
LOC Sponsor: Tehassi Hill	Emergency Enacted: n/a Expires: n/a

Summary: *This is a request to amend the law to remove the Environmental Resource Board's Hearing Body Authority and transfer it to the Judiciary and to clarify this law does not negate the jurisdiction of the State of Wisconsin in instances that involve non-member Indians and non-Indians.*

5/17/17 LOC: Motion by David P. Jordan to add each of these to the Active Files List as a high priority, assign Tehassi Hill as the sponsor, approve the public meeting packet, in addition to the Tribal Environmental Response law for June 15, 2017; seconded by Fawn Billie. Motion carried unanimously.

6/7/17 LOC: Motion by Tehassi Hill to approve the May 23, 2017 E-Poll regarding the Hunting, Fishing, and Trapping law; seconded by Fawn Billie. Motion carried unanimously.

6/15/17: Public meeting held.

Next Steps:

- Accept the public meeting comments.
- Approve the Hunting, Fishing, Trapping Law Amendments adoption packet and forward to the OBC for consideration.



TO: Legislative Operating Committee (LOC)
FROM: Krystal John, Staff Attorney, Oneida Law Office
DATE: July 19, 2017
RE: Hunting, Fishing, Trapping law Amendments: Public Meeting Comment Review

On June 15, 2017 a public meeting was held regarding the Hunting, Fishing, Trapping law Amendments. There were no oral or written comments received during the public meeting on June 15, 2017, or during the public meeting comment period ending on June 29, 2017; therefore no additional revisions were made to the draft.



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING
Environmental Resource Board's Authority Transfer**
Business Committee Conference Room-2nd Floor Norbert Hill Center
June 15, 2017 12:15 p.m.

Present: Brandon Stevens, Candice Skenandore, Clorissa Santiago, Leyne Orosco, Cathy Bachhuber, Chad Wilson, Laura Manthe, Eugene Schubert.

Brandon Stevens: Greetings. The time is 12:25 p.m. and today's date is Thursday June 15, 2017. I will now call the public meeting to order for the following laws:

- All-Terrain Vehicle
- On-Site Waste Disposal Ordinance
- Public Use of Tribal Land
- Tribal Environmental Response
- Water Resource Ordinance
- Well Abandonment
- Hunting, Fishing, and Trapping

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding these legislative proposals. The public meeting is not a question and answer period. All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Thursday June 29, 2017.

In attendance for today is just myself, Brandon Stevens. And I will impose a time limit for all speakers pursuant to section 16.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons.

Revisions were made to the identified laws which transfer the Environmental Resource Board's hearing authority to the Judiciary. In addition, the Hunting, Fishing, and Trapping law has an additional amendment which clarifies that non-member Indians and non-Indians that hunt, fish, and trap on the Reservation may be subject to State requirements as well as the requirements set forth in the Hunting, Fishing, and Trapping law.

Although the amendments are the same for all laws, except for the additional change to Hunting, Fishing, and Trapping law; we will process these laws individually for the sake of this public meeting. We will begin today's public meeting for All-Terrain Vehicle law.

Okay, we have people checked in and no oral testimony is requested from anyone in attendance. Anyone want to come up that is not on the list, please do so at this time.

Okay, seeing no oral testimony for the All-Terrain Vehicle law, I will close this public meeting at 12:18 p.m.

I will now open up the public meeting for the On-Site Waste Disposal Ordinance. The public meeting for the On-Site Waste Disposal Ordinance, or, and I'll sorry. I will ask at this time if anyone would like to come up and provide oral testimony please so do, that's not on the list. Seeing none, I will close this public meeting for the On-Site Waste Disposal Ordinance at 12:19 p.m.

I will now open up the public meeting for the Public Use of Tribal Land at 12:19 p.m. I will open up the floor for oral testimony for those who have not signed in and would like to provide oral testimony. Seeing none, I will close this public meeting for the Public Use of Tribal Land at 12:19 p.m.

I will now open up the public meeting for the Tribal Environmental Response at 12:20 p.m. Open up the floor for any of those who want to provide oral testimony that are not signed in. Seeing none, I will close this public meeting for the Tribal Environmental Response at 12:20 p.m.

I will now open up the public meeting for the Water Resource Ordinance at 12:20 p.m. I'll open up the floor for any of those who would like to provide oral testimony that are not on the list. Seeing none, I will close the public meeting for the Water Resource Ordinance at 12:20 p.m.

I will now open up the public meeting for the Well Abandonment at 12:21 p.m. I'll open up the floor for any oral testimony for those who are not on the list. Seeing none, I will close the public meeting for the Well Abandonment at 12:21 p.m.

I will now open up the public meeting for the Hunting, Fishing, and Trapping . Please note that in addition to revision that transfers ERB's hearing authority to the Judiciary, an additional revision was made to provide clarity that non-member Indians and non-Indians that hunt, fish, and trap on the Reservation may be subject to State requirements as well as the requirements set forth in the Hunting, Fishing, and Trapping law. Opening up the floor for those who would like to provide oral testimony that are not signed in. Seeing none, I will close the public meeting for the Hunting, Fishing, and Trapping law at 12:22 p.m.

With no more individuals wanting to provide oral comment, I am closing the public meeting at 12:22 p.m. As a reminder the public comment period will remain open until Thursday, June 29, 2017 by close of business. Thank you.

-End of Meeting-



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson *BS*
DATE: July 26, 2017
RE: Hunting, Fishing and Trapping Law Amendments

Please find the following attached backup documentation for your consideration of the Hunting, Fishing and Trapping Law Amendments:

1. Resolution: Hunting, Fishing and Trapping Law Amendments
2. Statement of Effect: Hunting, Fishing and Trapping Law Amendments
3. Hunting, Fishing and Trapping Law Amendments: Legislative Analysis
4. Hunting, Fishing and Trapping Law Amendments: Clean Draft
5. Hunting, Fishing and Trapping Law Amendments: Redline to Current Draft
6. Hunting, Fishing and Trapping Law Amendments: Fiscal Impact Statement

Overview

This resolution adopts amendments to the Hunting, Fishing and Trapping Law to:

- Transfer the Environmental Resource Board's hearing authority to the Judiciary;
- Clarify provisions of jurisdiction section;
- Clarify that non-member Indians and non-Indians that hunt, fish, and trap on the Reservation may be subject to State requirements as well as the requirements set forth in the Hunting, Fishing, and Trapping law; and
- Clarify that license and permit holders may not exercise any hunting, fishing, or trapping privileges within the Reservation boundaries using a State of Wisconsin license that would amount to greater privileges than those afford pursuant to this Law and associated rules.

In accordance with the Legislative Procedures Act, a public meeting was held regarding this law on June 15, 2017 with a comment period closing on June 29, 2017. There were no comments provided. These amendments will become effective beginning in the new fiscal year on October 1, 2017.

Requested Action

Approve the Resolution: Hunting, Fishing and Trapping Law Amendments

BC Resolution _____*Hunting, Fishing and Trapping Law Amendments*

WHEREAS, the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and

WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

WHEREAS, the Oneida Business Committee originally adopted the Hunting, Fishing and Trapping Law through resolution BC-08-31-94-C and thereafter amended it through resolutions BC-04-24-96-A, BC-07-22-98-A, BC-09-13-00-D, BC-06-04-03-A, BC-06-30-04-I, BC-07-13-05-E, BC-08-29-07-F, BC-06-24-09-E, BC-08-26-10-I, BC-12-14-11-E, BC-05-22-13-A and BC-01-25-17-D; and

WHEREAS, the Amendments transfer the Environmental Resource Board's original hearing body authority to the Oneida Judiciary and clarify the Law's jurisdiction section; and

WHEREAS, a public meeting on the proposed Amendments was held on June 15, 2016 in accordance with the Legislative Procedures Act; and

NOW THEREFORE BE IT RESOLVED, that the Hunting, Fishing and Trapping Law Amendments are hereby adopted and shall become effective on October 1, 2017.



Statement of Effect

Hunting, Fishing and Trapping Law Amendments

Summary

This Resolution adopts Amendments to the Hunting, Fishing and Trapping Law Amendments (the “Law”) which transfer the Environmental Resource Board’s original hearing body authority to the Oneida Judiciary and clarify the jurisdiction section of the Law.

Submitted by: Krystal L. John, Staff Attorney, Oneida Law Office

Analysis by the Legislative Reference Office

As stated above, these amendments will transfer the delegation of original hearing body authority from the Environmental Resource Board to the Oneida Judiciary. Such a transfer would implicate the Judiciary law and the Environmental Resource Board’s by-laws.

The transfer of hearing body authority would fit into the Oneida Judiciary’s subject matter jurisdiction according to the Judiciary law based on section 801.5-2, which provides that, “The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following... (a) Tribal laws which specifically authorize the Trial Court to exercise jurisdiction...” *Judiciary*, 8 O.C. 801 § 801.5-2. These amendments to the Law specifically authorize the Trial Court to exercise jurisdiction based on section 406.10-5. *Contested Action Hearings*, which reads as follows:

All citations, penalties, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved. ...

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure. ...

The Environmental Resource Board’s by-laws provide the Board’s duties and responsibilities, among other things. Adoption of this law conflicts with the Board’s by-laws and the by-laws recognize the Environmental Resource Board’s original hearing body authority in section 1-4.b., which reads as follows: “The ERB shall serve as the original hearing body in matters concerning environmental and conservation laws and ordinances promulgated by the Oneida Tribe.” Accordingly, if this resolution is adopted, the Environmental Resource Board’s by-laws would need

to be amended to remove the original hearing body authority from the Board's duties and responsibilities.

In addition to addressing the transfer of hearing body authority, these amendments also clarify the jurisdiction section. These jurisdictional revisions do not implicate any existing laws, policies or rules of the Nation.

A public meeting was held for these Amendments on June 15, 2017 for which the public comment period expired on June 22, 2017 in accordance with the Legislative Procedures Act. There were not any oral or written comments submitted.

Conclusion

Adoption of this Resolution would require the Environmental Resource Board's by-laws to be amended to remove the original hearing body authority from the Board's duties and responsibilities.



Hearing Authority Transfer Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: LOC	SPONSOR: Tehassi Hill	DRAFTER: Krystal L. John	ANALYST: Candice E. Skenandore
Intent of the Amendments	To further utilize the Judiciary.		
Purpose	To transfer the Environmental Resource Board (ERB) hearing authority to the Judiciary.		
Affected Entities	Trial Court, ERB		
Affected Legislation	Hunting, Fishing and Trapping law, Public Use of Tribal Land, Tribal Environmental Response, Well Abandonment Law, All-Terrain Vehicle Law, Water Resources Ordinance		
Enforcement/Due Process	ERB will no longer hold hearings; hearing will now be conducted by the Trial Court in accordance with the Rules of Civil Procedure.		
Public Meeting	A public meeting was held on June 15, 2017.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. Since 1985, ERB served as the hearing body authority over the Nation's environmental regulations. On May 2, 1990, the Oneida Business Committee established the Oneida Tribal Judicial System (aka Oneida Appeals Commission) and General Tribal Council reauthorized the Oneida Tribal Judicial System on August 19, 1991 [*See BC Resolution 05-02-90 and GTC Resolution 8-19-91-A*]. The purpose of the Oneida Appeals Commission was to enhance and protect self-governance and sovereignty as well as enhance the separation of powers between the legislative, executive and juridical responsibilities of the Nation. The Oneida Appeals Commission removed the Oneida Business Committee from initial judicial decisions [*See GTC Resolution 8-19-91-A*].
- B. In 2013, the General Tribal Council changed the structure of the Oneida Tribal Judicial System by creating an Oneida Judiciary comprised of the Tribal Court and a Court of Appeals through the adoption of the Judiciary law. The purpose of the Judiciary is to grant the Trial Court and Court of Appeals expanded subject matter jurisdiction and create a greater role for the use of mediation and/or peacemaking [*See GTC Resolution 01-07-13-B*].
- C. These proposed amendments will transfer hearing authority from ERB to the Trial Court. The following laws are amended to reflect the transfer of hearing authority:
- Hunting, Fishing and Trapping law (HTF)
 - Public Use of Tribal Land (Public Use)
 - Tribal Environmental Response (TERP)
 - Well Abandonment Law (Well Abandonment)
 - All-Terrain Vehicle Law (ATV)
 - Water Resources Ordinance (Water Resources)
 - On-Site Waste Disposal Ordinance (Waste Disposal)

SECTION 3. CONSULTATION

A. ERB and the Trial Court have been consulted in the development of this legislative analysis.

SECTION 4. PROCESS

A. These Laws have followed the process set forth in the Legislative Procedures Act (LPA) except that the public meeting was not properly noticed to all managers or directors. The LPA requires the public meeting notice, legislation, legislative analysis and fiscal impact statement, if fiscal impact statement is available, to be electronically provided to all managers or directors a minimum of ten business days before a public meeting is held [See *Legislative Procedures Act, 1 O.C. 109.8-2 (b)*]. The notice and backup documents were provided electronically to all managers or directors on Tuesday, June 13, 2017; the public meeting was held Thursday, June 15, 2017. The public meeting was properly noticed in the Kalihwisaks and was made public on the Oneida Register at least ten business days prior to the public meeting as required by the LPA [See *Legislative Procedures Act, 1 O.C. 8-2 (a & b)*]. The LOC extended the public comment period for these laws for an additional five business days, ending on Thursday, June 29, 2017.

B. A work meeting with ERB was held on Wednesday, May 17, 2017 and a work meeting with ERB and the Judiciary was held on Monday, June 12, 2017.

SECTION 5. CONTENTS OF THE LEGISLATION

A. The identified laws in Section 2.C of this analysis have been amended to state that the Trial Court is the entity authorized to conduct hearings.

SECTION 6. INTENT

A. The intent of these amendments is to further utilize the Oneida Judiciary. The LOC has already decided to transfer hearing authority from identified entities to the Judiciary. The majority of the Oneida Land Commission's and some of the Trust Enrollments Committee's hearing authority has already transferred to the Judiciary. Because the LOC is currently working on amendments the Domestic Animals law in which ERB has hearing authority, it was decided to amend all laws which grant ERB hearing authority and transfer that authority to the Judiciary.

SECTION 7. EFFECT ON EXISTING LEGISLATION

A. These amendments do not conflict with other laws or policies of the Nation.

SECTION 8. OTHER CONSIDERATIONS

A. The following table shows the type and approximate number of hearings ERB has held since 2012. Included are hearings that pertain to Domestic Animals violations; however, the Domestic Animal amendments are being processed separately in order to make further revisions. In total, ERB has held approximately 69 hearings since 2012.

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	ATV	HFT	Waste Disposal	Public Use	TERP	Water Resources	Well Abandonment	Domestic Animal	TOTAL
2012	0	1	0	0	0	0	0	1	2
2013	0	5	0	0	0	0	0	0	5
2014	0	14	0	0	0	0	0	3	17
2015	0	0	0	1	0	0	0	6	7
2016	0	11	0	2	0	0	0	19	32
2017	0	2	0	0	0	0	0	4	6
TOTAL	0	33	0	3	0	0	0	33	69

65 **B.** Minor changes, including formatting, have been made to these laws to comply with drafting style.

66 These changes do not affect the content of these laws.

67 **C.** Please refer to the fiscal impact statement for any financial impacts.

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69 SECTION 9. ADDITIONAL AMENDMENTS

70 **A. *Hunting, Fishing, and Trapping law (Law)*.** In additions to the amendments which transfer ERB's
71 hearing authority to the Judiciary, additional amendments were made to the Hunting, Fishing, and
72 Trapping law. These amendments include revising section 406.4-3 which states that this Law does
73 not negate the jurisdiction of the State of Wisconsin in instances that involve non-member Indians
74 and non-Indians. This means that non-member Indians and non-Indians hunting, fishing and trapping
75 on land owned by the Nation must adhere to the Nation's license, permit and tag requirements but
76 may also be subject to State requirements. In addition, license and permit holders cannot utilize
77 hunting, fishing, or trapping privileges within the Reservation using a State license that would
78 provide greater privileges than those afforded in this Law and any applicable rules [*See Hunting,*
79 *Fishing and Trapping, 4 O.C. 406.4-3*].

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Title 4. Environment and Natural Resources – Chapter 406
HUNTING, FISHING AND TRAPPING
Lutol@tha>, Latsyw@aha> O>kh@le Atlist@y< Tsi> Kayanl^hsla
Our laws concerning hunting, fishing and trapping

406.1.	Purpose and Policy	406.6.	Licenses and Permits
406.2.	Adoption, Amendment, Repeal	406.7.	General Regulations
406.3.	Definitions	406.8.	Wildlife Damage and Nuisance Control
406.4.	Jurisdiction	406.9.	Hunting
406.5.	Administration and Supervision	406.10.	Enforcement and Penalties

406.1. Purpose and Policy

406.1-1. *Purpose.* The purpose of this law is to protect and conserve wildlife on the reservation and to promote respect among sportsmen, respect both the environment and fellow sportsmen.

406.1-2. *Policy.* It is the policy of this law to provide:

- (a) An adequate and flexible system for the protection, management, supervision, conservation, and enhancement of all wildlife and natural resources on the reservation; and
- (b) An enforceable system of licensing and permitting which establishes clear rules pursuant to the Administrative Rulemaking law related to hunting, fishing and trapping, and associated fines and penalties for violations of this law and the said rules.

406.2. Adoption, Amendment, Repeal

406.2-1. This law was adopted by the Oneida Business Committee by resolution BC-8-31-94-C, and amended by resolutions BC-4-24-96-A, BC-7-22-98-A, BC-09-13-00-D, BC-6-04-03-A, BC- 6-30-04-I, BC-7-13-05-E, BC-8-29-07-F, BC-06-24-09-E, BC-08-26-10-I, BC-12-14-11-E, BC-05-22-13-A and BC-01-25-17-D.

406.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

406.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

406.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

406.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

406.3. Definitions

406.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Aircraft” means a conveyance that can travel through the air and that is supported either by its own lightness or by the action of the air against its surfaces. The term includes hovercraft and both manned aircraft such as airplanes and helicopters and unmanned aircraft such as drones.
- (b) “Barrel Length” means the length of a gun’s barrel as measured from the muzzle to the firing pin with the action closed, or from the muzzle to the breech face.
- (c) “ERB” means the Environmental Resources Board.
- (d) “Daily Bag Limit” means the maximum number of a species of wildlife that a person may take during a twenty-four (24) hour period measured from midnight to

midnight.

(e) “Department” means the Oneida Conservation Department.

(f) “Dependent” means a person under the age of eighteen (18) who is the child or step-child of a Tribal member or who lives with a Tribal member for more than half of the year.

(g) “Designated Hunter” means the person named by a permittee as authorized to harvest wildlife on behalf of the permittee pursuant to the permit held by the permittee.

(h) “Elder” means any person fifty-five (55) years of age or older.

(i) “Endangered or Threatened” means any species of wildlife within the reservation in danger of extinction or likely to become in danger of distinction as recognized by ERB and the Department and under federal law.

(j) “Fine” means a monetary punishment issued to a person violating this law and/or the rules created pursuant to this law, which is payable to ERB or the Department within the amount of time designated by the rules.

(k) “Fishing” means the taking, capturing, harvesting or attempting to take, capture or harvest fish of any variety in any manner.

(l) “Hunt” or “Hunting” means shooting, shooting at, pursuing, taking, attempting to take, catch, harvest or attempting to harvest any wildlife.

(m) “License” means a written document issued by the Department granting authority to engage in specific activities covered under this law and the rules created pursuant to this law.

(n) “Loaded” means any firearm containing a cartridge in the chamber or any firearm containing a cartridge or cartridges in the attached cylinder, magazine or clip.

(1) Muzzleloading firearms may not be considered loaded if a percussion cap is not covering the percussion nipple or .209 primers are not in the receiver.

(2) Flint lock muzzleloading firearms may not be considered loaded if the flash pan is cleaned of powder.

(o) “Nation” means the Oneida Nation.

(p) “Non-Indian” means a person who is not a member of any federally recognized Indian tribe, band, or community.

(q) “Non-Member Indian” means a person who is a member of a federally recognized Indian tribe, band or community other than this Nation.

(r) “Nuisance Animal” means any wildlife causing and one (1) or combination of the following:

(1) Damage to property;

(2) Damage to or endangered or threatened species of wildlife and/or plants;

(3) Depredation of crops and/or livestock; or

(4) Health and/or safety risks posed to persons.

(s) “Penalty” means a punishment, other than a fine, imposed on a person violating this law and/or the rules created pursuant to this law and may include, but is not limited to, the confiscation of equipment and/or wildlife with return of the same at the discretion of ERB, the imposition of a wildlife protection assessment (civil recovery value), revocation and/or ineligibility for licenses and/or permits for a specified period of time, and restitution.

(t) “Permit” means a document, stamp or tag authorizing a specific activity which is issued by the Department to the holder of a license.

(u) “Protected Species” means any species of wildlife that is not endangered or

threatened, but for which ERB has established seasons, daily bag limits, or otherwise restricted the taking of.

(v) “Reservation” means all the property within the exterior boundaries of the reservation of the Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(w) “Rule” means a set of requirements, including citation fees and penalty schedules, enacted by ERB and/or the Department in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

(x) “Take” or “Taking” means pursuing, shooting, hunting, fishing, netting (including placing or setting any net or other capturing device), capturing, harvesting, snaring or trapping any wildlife, or attempting any of the foregoing.

(y) “Transport” means to bring or move from one place to another by means of carrying, dragging, pushing, towing, or storing in or on a vehicle, aircraft or boat.

(z) “Trapping” means the taking of, or attempting to take, any wildlife by means of setting or operating any device or mechanism that is designed, built, or made to close upon, hold fast, snare or otherwise capture wildlife.

(aa) “Tribal Land” means any land within the reservation that is held in fee or in trust and is owned by the Nation, a Tribal member, or a non-member Indian.

(bb) “Tribal Member” means an enrolled member of the Nation.

(cc) “Vehicle” means any self-propelled conveyance that derives power from a motor and is used to transport persons or objects over land, including but not limited to, an automobile, truck, sport utility vehicle, snowmobile, motorcycle, all-terrain vehicle, moped or similar conveyance.

(dd) “Wildlife” means any non-domesticated mammal, bird, fish, reptile, or amphibian, or any part or carcass of the same.¹

406.4. Jurisdiction

406.4-1. This law applies to the following persons:

(a) All Tribal members,

(b) All non-member Indians,

(c) All non-Indians who:

(1) apply for and receive a license and/or permit, and/or

(2) enter Tribal land,

(d) All persons as otherwise permitted under federal law.

406.4-2. This law applies:

(a) within the boundaries of the reservation, and

(b) on lands held in trust for the Nation outside the boundaries of the reservation.

406.4-3. *Jurisdiction.* The Nation has jurisdiction over the management and regulation of the Nation’s natural resources. However this law shall not negate the jurisdiction of the State of Wisconsin in certain instances involving non-member Indians and non-Indians. Thus, to hunt, fish, or trap on tribal land, non-member Indians and non-Indians shall adhere to the Nation’s

¹ For additional information, please reference the definition of “domestic animal” in the Nation’s Domestic Animal law; any animal that does not fall into the “domestic animal” classification is considered “wildlife” for the purpose of this law.

license, permit, and tag requirements and may also be subject to the requirements of the State of Wisconsin. License and permit holders may not exercise any hunting, fishing, or tapping privileges within the Reservation boundaries using a State of Wisconsin license that would amount to greater privileges than those afford pursuant to this Law and associated rules.

406.5. Administration and Supervision

406.5-1. ERB and the Department, shall protect, manage, supervise, conserve, and enhance all wildlife within the reservation. ERB and the Department shall jointly establish and maintain the rules that are required to implement this law. The Department shall administer and enforce this law and the rules created pursuant to this law.

406.5-2. *Authority.* In addition to any other duties delegated to ERB and the Department under this law, jointly, ERB and the Department are hereby jointly delegated the rulemaking authority to:

(a) Determine the types and number of licenses and permits that may be issued by the Department, including how many licenses and permits that may be issued to non-Indian hunters.

(b) Establish a fee schedule and application requirements and deadlines for obtaining licenses and/or permits.

(c) Establish or amend daily bag limits and possession limits based on the supply of wildlife, the needs of conservation, and the objective of achieving a fair allocation of the harvest. Restrictions in such rules may include, but are not limited to, limits related to gender, species, size, age, and maturity.

(d) Based on the monitoring and supervision of all wildlife, when necessary, declare any species in need of protection a protected species or an endangered or threatened species, and thereafter modify or revoke such declarations as may be appropriate.

(e) Fix, shorten, extend or close seasons and hunting hours on any wildlife. Provided that ERB and the Department shall base the open season for the hunting of migratory birds on the Nation's agreement with the U.S. Fish and Wildlife Service.

(f) Establish and/or modify areas' territorial limits, including bodies of water or parts thereof, for any of the following, as may be necessary:

(1) the taking of wildlife;

(2) other specified areas, pursuant to the rules jointly developed by ERB and the Department.

(g) Establish methods for checking persons into and out of areas specified under subsection (f) above.

(h) Regulate the operation of boats upon reservation waters and the operation of vehicles and aircraft used while hunting, fishing or trapping.

(i) Regulate and prescribe the means and methods by which wildlife may be taken, including, but not limited to, the use of:

(1) bait;

(2) decoys;

(3) hunting dogs

(4) traps;

(5) firearms;

(6) ammunition;

(7) laser sights; and

(8) night vision.

(j) Regulate the transportation, registration, tagging, and storage of all wildlife within the reservation and the shipment or transportation of wildlife off the reservation.

(k) Prescribe safety and fire control measures and other rules as may be necessary for range, forest or wildlife management, and/or for the safety and welfare of outdoor recreationists, landowners, lessees, occupants and the Nation.

(l) Establish a process for retention, storage and disposal of items confiscated or turned over to the Department in accordance with this law and the rules established pursuant to this law.

(m) Establish a citation schedule that sets the monetary fines and penalties for violations of this law and/or the rules established pursuant to this law.

(n) Create other rules as specifically directed throughout this law or as may be necessary to implement this law. ERB shall provide notice of said rules on the Nation's website and ERB and/or the Department shall develop a rule booklet, which the Department shall provide to each person receiving a license or permit pursuant to this law.

406.5-3. *Department Wardens.* Department wardens shall enforce this law and corresponding rules on the reservation, and, accordingly shall:

(a) Observe persons engaged in hunting, fishing and/or trapping in order to ensure that the methods and equipment utilized are lawful.

(b) Investigate reports of violations of wildlife and environmental laws, including, but not limited to, this law and corresponding rules.

(c) Work to prevent persons from violating this law and/or the corresponding rules.

(d) Issue warnings and/or citations, which may include fines and/or penalties, for violations of this law and/or the corresponding rules.

406.5-4. *Oneida Police Department.* Any Oneida Police Department officer, who observes a violation of this law and/or corresponding rules, shall report such violation to the Department and/or a Department warden. However, if immediate action is necessary to prevent imminent danger to life or serious damage to property, the Oneida Police Department officer may issue a warning or citation for the said violation(s) and/or prevent persons from committing the said violation(s).

406.6. Licenses and Permits

406.6-1. *Sportsman License.*

(a) A sportsman license is required for all persons hunting, fishing or trapping on Tribal land, except:

(1) Fishing is permitted without a sportsman license for Tribal members, dependents, and non-member Indians whom are sixteen (16) years of age or younger.

(2) Landowners and lessees and guests with the permission of the landowners or lessees, may hunt and trap the following species on the property they own or lease, year-round, without a sportsman license:

(A) coyote;

(B) fox;

(C) raccoon;

(D) woodchuck;

(E) rabbit;

(F) squirrel; and

(G) any nuisance animal that is not an endangered or threaten species and

is also not a regulated or protected species.

(b) Anyone born on or after January 1, 1973 shall successfully complete a state-certified hunter safety course to be eligible for a sportsman license, except that:

(1) *Fishing Only Sportsman License.* A sportsman license may be issued which permits fishing only. In such circumstances, successful completion of a state-certified hunter safety course is not required and the Department shall internally record such licenses as permitting fishing only.

(A) A person issued a “fishing only” sportsman license may not hunt or trap, or be eligible to hunt or trap, until the licensee provides the Department with proof of successful completion of a state-certified hunter safety course.

(B) Any licensee holding a fishing only sportsman license may name a designated hunter to fill the hunting or trapping permits that regularly accompany a sportsman license based on the rules established pursuant to this Law. For the requirements related to naming a designated hunter, refer to section 406.9-4.

406.6-2. *Ceremonial and/or Feast Permit.* Tribal members may apply for a ceremonial and/or feast permit to group hunt wildlife outside of the regular applicable seasons.

(a) When the ceremonial and/or feast permit is for deer hunting, it may only be issued for antlerless deer.

(b) A ceremonial and/or feast permit may be issued to a group and/or organization meeting each of the following requirements:

(1) At least eighty-five percent (85%) of the group and/or organization members are Tribal members;

(2) The agent of the group/organization is a Tribal member;

(3) The occasion for the ceremonial and/or feast requiring the hunt out of season is recognized by the Oneida community; and

(4) The hunt takes place on the reservation.

(c) All persons participating in the ceremonial and/or feast hunt shall be named hunters on the ceremonial and/or feast permit.

(d) The agent of the group ceremonial and/or feast hunt shall notify the Department warden of the time and place where the hunt will take place no later than twenty-four (24) hours prior to the hunt. The Department warden may monitor any portion, or the entirety, of the group ceremonial and/or feast hunt.

406.6-3. *Other Permits, Tags and Stamps.* In accordance with this law and corresponding rules, the Department may issue permits authorizing a person to engage in specific hunting, fishing and/or trapping activities, including nuisance animal removal permits pursuant to section 406.8-2.

406.6-4. It is unlawful for any person to:

(a) Provide false information or fail to report relevant information as requested by the Department, when applying for a license or permit; or

(b) Aid another in fraudulently securing a license or permit.

406.6-5. Except as provided under sections 406.6-1(b)(1)(A), 406.9-4 and 406.9-6, licenses and/or permits are not transferable and may not be altered, defaced or lent to or from another person, any may not be used by any person other than the person to whom the license and/or permit is issued.

406.6-6. *Disabled Hunter Permits.* The Department may issue a disabled hunter permit to any

person who is physically disabled, upon a showing of medical verification of a physical disability. Disabled hunters shall display the disabled hunter permit sticker in a manner and location as required by the Department. A disabled hunter permit authorizes a person to hunt from a stationary vehicle within fifty (50) feet on the center of a road as further detailed in the rules developed pursuant to this law.

406.6-7. Denial of a License or Permit.

(a) The Department may decline to issue a license and/or permit to an applicant if:

(1) The applicant has unpaid fines, civil assessments, other fees and/or restitution owed because of a violation of this law and/or corresponding rules.

(2) At any time and for any reason, the Department determines that issuing the license and/or permit poses a risk to the health, safety, and/or welfare of the Nation, to natural resources on the reservation, or to any persons. There is a rebuttable presumption that an applicant poses such a risk under the following circumstances:

(A) At the time of the request, the applicant's hunting, fishing or trapping license, permit or related privileges are suspended or revoked in any jurisdiction.

(B) Within three (3) years of the request, the applicant has repeatedly and/or egregiously done any one (1) or more of the following:

(i) violated this law and/or corresponding rules and/or the hunting, fishing, or trapping laws and regulations of other jurisdictions;

(ii) violated other laws or rules of the Nation while engaged in hunting, fishing or trapping activities; or

(iii) demonstrated poor judgment, disregard for safety or unsportsmanlike behavior while hunting, fishing or trapping; including while interacting with other sportsmen or with wardens, of this jurisdiction or any other.

(C) At any time, the applicant has been found guilty of imposing or threatening to impose great bodily harm on another. For the purposes of this section, great bodily harm means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

(b) Any person who has had a license or permit denied in accordance with section 406.6-7(a) may appeal the Department's decision by requesting a hearing before ERB pursuant to section 406.10-4.

406.7. General Requirements

406.7-1. Persons may not:

(a) Enter onto private lands and/or waters to take or retrieve wildlife, without permission from the landowner, lessee or occupant.

(b) Leave, deposit, place or throw litter, debris, wildlife, or any other waste material, on the reservation's lands and waters.

(c) Cause damage to land or property belonging to another, including but not limited to, the Department's decoys placed for law enforcement purposes by Department wardens or

other law enforcement officers, and signs that give notice of a hunting and/or trespass restriction.

(d) Carelessly waste wildlife. Persons hunting, trapping or fishing shall make every reasonable effort to retrieve all wildlife killed or crippled, provided that all persons shall comply with section 406.7-1(a).

(e) Knowingly disturb any den, nest, lodge, hut, dam or house that wildlife may build to shelter themselves and their young.

(f) No person may take, pursue, injure, or harass small game while on or in its nest or den, or remove any eggs or young except as may be approved in advance by the Environmental Resource Board for activities which may include, but are not limited to, normal agricultural or horticultural practices or wildlife research practices.

(g) Harvest wildlife with the aid of an explosive, poison, exploding point or tip, electrical device or stupefying substance or agent.

(h) Take another person's wildlife or disturb another person's hunting, fishing, or trapping equipment without permission; or otherwise interfere with the lawful hunting, fishing, or trapping of another person.

(i) Stock or possess any live wildlife on the reservation without a permit.

(j) Introduce or release wildlife, fish eggs, or receptacles containing bait, on the reservation or into reservation waters without a permit.

(k) Use in a reckless manner any device typically used for the harvesting of wildlife, including but not limited to, firearms, bows, traps and knives.

(l) Shoot firearms, or place or operate any traps, except live traps, within one hundred (100) yards of any building structure, unless the owner-occupant, lessee or tenant has given permission.

(m) Use a gas powered motorboat on the Nation's waters, except for the Department's use for law enforcement and conservation purposes.

(n) Hunt, trap, or possess any hunting, or trapping equipment while on Tribal land where hunting or trapping is expressly prohibited by the Nation's laws or rules.

(o) Sell or purchase wildlife that was harvested on the reservation, except as may be expressly allowed by this law and corresponding rules.

(1) Under no circumstances may trading, gifting, or sharing of wildlife for traditional or ceremonial purposes be considered a violation of this section.

(p) Refuse to obey a Department warden's lawful order.

(q) Inflict or threaten to inflict bodily harm upon a Department warden. For the purposes of this law, "bodily harm" means physical pain or injury or any impairment of the physical condition.

406.7-2. *Possession, Registration and Transportation of Carcasses.* No person may hunt, trap, possess or transport any wildlife unless he or she possesses the appropriate license and any required permit, including tags, for harvesting and/or possessing such wildlife.

406.7-3. Any person who accidentally collides with and kills a deer while operating a vehicle on a roadway, may retain possession of the said deer, provided that the person shall have the deer tagged by the Department or the Department's designee.

406.7-4. *Carcass Tags.* Except as otherwise provided in this law and corresponding rules, any person hunting a species of wildlife which is required to be tagged, shall possess a valid carcass tag, and, upon harvest, shall immediately validate and attach the tag to the carcass in such manner as ERB and the Department shall jointly establish in its the rules. No person may possess or transport harvested wildlife that is not properly tagged in accordance with this law and

corresponding rules.

406.7-5. *Health Advisory*. ERB and the Department shall ensure that all hunting and fishing rule booklets contain a warning stating that fish caught in Duck Creek, as well as ducks, geese and other wildlife may contain Polychlorinated Biphenyl (PCBs) which may pose risks of health defects, that such risks are greatest for women and children, and that detailed information about PCBs is available from the Department upon request.

406.8. Wildlife Damage and Nuisance Control

406.8-1. Landowners and lessees may remove wildlife considered a nuisance animal from land under their control and their associated structures, provided that landowners and lessees shall satisfy all requirements of this law and corresponding rules, including, but not limited to the permitted methods of taking and hunting hours. Further, live-captured nuisance animals may not be relocated to Tribal lands without express written authorization from the Department, and, similarly, may not be relocated to private property without express written authorization from the landowner.

406.8-2. *Nuisance Animal Removal Permit*. A nuisance animal removal permit is required to hunt, trap, or live-capture and relocate any endangered or threatened and protected species.

(a) In order to be eligible for a nuisance animal removal permit, the applicant shall demonstrate that:

(1) He or she has the authority to control hunting and trapping access to the lands subject to the nuisance or being damaged as well as any contiguous lands. In circumstances where the contiguous lands are not owned or leased by the applicant, the applicant shall demonstrate authority to control hunting and trapping access to the contiguous lands by providing the Department with the property owner's or lessor's written consent;

(2) He or she either is employing or agrees to employ, reasonable alternative abatement methods to removal;

(3) The wildlife sought to be removed is a nuisance animal and reasonable alternative abatement methods either have been or are reasonably likely to be unsuccessful;

(4) He or she has complied with this law and corresponding rules and the conditions of any previously-issued nuisance animal removal permit, at a minimum, for the previous twelve (12) months from the date he or she applies for the permit;

(5) The nuisance animal removal permit applied for does not conflict with any provisions of the Nation's agreement with the United States Fish and Wildlife Service regarding the taking of birds classified as migratory under 50 CFR 10.13.

(b) Each permittee shall keep a record of all permit activities and shall provide the said permit record to the Department within ten (10) days of the permit's expiration. At a minimum, the permittee shall include in the record any agents assigned under section 406.8-4 and the total number of nuisance animals removed pursuant to the permit, provided that, the Department may name additional items required to be included in the record. All permit records may be inspected by the Department at any time.

(c) The permittee shall return all unused permits, including carcass tags, to the Department within ten (10) days of the permit's expiration.

406.8-3. *Nuisance Animal Removal Permit Not Required*. A nuisance animal removal permit is not required if the nuisance animal would otherwise be exempt from the license and permit

requirements under section 406.6-1(a)(2). Also, a nuisance animal removal permit is specifically not required in following circumstances:

(a) *Beaver*. A nuisance animal removal permit is not needed for a landowner, lessee, or an authorized agent to hunt or trap beaver(s) that are nuisance animals, or to remove a beaver dam. However, only the landowner and the Department may set traps on a beaver dam on Tribal land; this privilege may not be transferred to an agent.

(b) *Emergencies*. Nuisance animals for which a nuisance animal removal permit is otherwise required, may be removed without the required permit if such removal is necessary to maintain a person's immediate health and safety.

(1) Persons taking a nuisance animal under emergency circumstances shall report the emergency taking to the Department on the required form available with the Department.

(2) The Department shall conduct an investigation into the validity of the alleged emergency circumstance. If the investigation provides clear and convincing evidence that the taking was not in fact required due to a legitimate threat to a person's immediate health and safety, the Department shall classify the taking an unlawful taking without a permit and shall take the appropriate corrective measures.

406.8-4. *Designated Agents*. A landowner may utilize an agent to remove a nuisance animal pursuant to the provisions of this law. If the requirements of this law and corresponding rules are satisfied, the landowner's nuisance animal removal permit and associated carcass tags, if applicable, may be utilized by the landowner's assigned agent.

(a) In order for an agent to be assigned to remove a nuisance animal, the landowner shall ensure that the following conditions are met:

(1) The agent shall have a valid license for hunting or trapping that nuisance animal's species;

(2) The landowner shall grant written permission to the agent specifically identifying the following:

(A) The location of the nuisance animal where the removal activities are sought to occur;

(B) An authorized time period for the removal of the nuisance animal; and

(C) Any other information as may be required by the rules established pursuant to this law.

(b) The Department may limit the number of persons permitted to assist in a removal.

(c) The landowner or lessee permittee may not charge any assigned agent any form of fee.

406.8-5. *Annual Migratory Bird Report*. Persons killing crows, cowbirds, grackles, and red-winged blackbirds shall provide an annual report to the U.S. Fish and Wildlife Service Region 3 Migratory Bird Permit Office by January 31st for all such takings occurring within the previous January to December.

406.8-6. *Department Warden's Access*. Any landowner or lessee pursuing the removal of a nuisance animal shall grant Department wardens free and unrestricted access to the premises on which the said removal is being conducted, is anticipated to be conducted, or has been conducted. Further, the landowner or lessee, and the landowner's agent, if applicable, shall promptly furnish any information requested by a Department warden relating to the said removal.

406.8-7. *Retaining Fur, Carcasses and other Parts of Nuisance Animals*. The following applies

to nuisance animals removed in accordance with this section:

(a) The permittee and each agent assigned under section 406.8-4 may retain no more than one (1) deer removed pursuant to a nuisance animal removal permit. The Department shall distribute or dispose of any deer that are not so retained by offering them to Tribal members in the following order:

(1) Elders;

(2) Disabled persons; and

(3) Any other interested persons.

(b) In order to keep, either for oneself or for sale, the furs of a nuisance animal taken pursuant to a nuisance animal removal permit, the permittee shall be explicitly and separately authorized by the permit to retain the wildlife and to sell the wildlife.

(c) Furs from nuisance animals which did not require a nuisance animal removal permit in order to be removed, may be retained by a landowner, lessee or assigned agent without a permit. Provided that the landowner, lessee or assigned agent shall have a valid license and/or permit in order to commercialize in, sell, trade, ship or transport any wildlife, except that any squirrels' parts retained may be sold during the closed season.

406.9. Hunting

406.9-1. *General Firearm and Archer Restrictions.* Persons may not:

(a) Hunt using any weapon other than a firearm, air rifle, bow or crossbow that is authorized under this law and corresponding rules for the taking of a particular species.

(b) Discharge a firearm, air rifle, bow or crossbow:

(1) Into reservation lakes, reservoirs, or any area designated for public use pursuant to the Public Use of Tribal Land law, except for the purpose of hunting migratory birds during established seasons, in accordance with the rules created pursuant to this law;

(2) Across any roadway; or

(3) Within one hundred (100) yards of any structure, unless the owner-occupant, lessee or tenant has granted express permission.

(c) Transport any loaded firearm, air rifle, or cocked bow or crossbow in a vehicle.

406.9-2. *General Hunting Restrictions.* Persons may not, unless specifically authorized by a permit, if applicable, do any of the following:

(a) Hunt with the use of aircraft;

(b) Hunt within fifty (50) feet of the center of a paved road;

(c) Hunt from a vehicle;

(d) Hunt while under the influence of alcohol or a controlled substance;

(e) Hunt with the aid of artificial light, provided that it is permissible to use artificial light to find one's way and while hunting on foot, at the point of harvest of coyote, raccoon, fox, or any other authorized unprotected species;

(f) Shine between the hours of 10:00 p.m. and sunrise during the months of September, October, November and December; during all other months, shining is allowed at any hour;

(g) Hunt in a party of more than ten (10) persons;

(h) Hunt with, or possess while hunting:

(1) Any firearm for which the possession is unlawful under Wisconsin or Federal law;

(2) Slugs, except that a person may possess slugs during deer firearm season if he

or she also possesses the required associated permit;

(3) A handgun with a barrel length of less than five (5) inches;

(4) A concealed handgun without a valid permit from the State of Wisconsin; and/or

(5) Any of the following without a valid federal permit:

(A) A shotgun that has a barrel length of less than eighteen (18) inches or an overall length of less than twenty-six (26) inches;

(B) A rifle that has a barrel length of less than sixteen (16) inches or an overall length of less than twenty-six (26) inches;

(C) A fully-automatic firearm;

(D) Any mechanism designed to muffle, silence or minimize the report of any firearm.

406.9-3. *Accidents.* Any person, who discharges a firearm, bow, or crossbow while hunting and injures another person, shall render or attempt to obtain necessary medical assistance, provide the injured person with his or her name and contact information including address, and report the accident to either the Department or the Oneida Police Department as soon as possible.

406.9-4. *Designated Hunters.* A permittee may name a designated hunter to hunt, fish, or trap on behalf of the permittee in the event that the permittee is physically or legally unable to take pursuant to his or her own permit, provided that, the designated hunter shall provide his or her name and contact information to the Department along with a signed statement from the original permittee naming the designated hunter. The designated hunter shall receive the Department's approval of the designation before using the permits of the original permittee.

(a) To be eligible to be named a Designated Hunter, the named person shall:

(1) Possess a valid hunting license;

(2) Be eligible for the permits for which the person is named the designated hunter; and

(3) Meet any other requirements of the rules created pursuant to this law.

(b) Designated hunters may hunt for the number of permittees as authorized by the rules developed pursuant to this law.

(c) Any wildlife taken by a designated hunter remains the property of the original permittee; the designated hunter shall transfer any wildlife taken by designation to the original permittee's possession as soon as practicable following the taking.

406.9-5. *Age Restrictions.*

(a) Persons between the ages of twelve (12) and fourteen (14) years old may only hunt if they have obtained the required license and permits and are under the immediate supervision of a parent, legal guardian or a responsible adult to which a parent or legal guardian has delegated his or her supervisory responsibilities. Adults accompanying youth hunters pursuant to this section shall remain within voice and sight contact of the youth hunters at all times.

(b) Tribal members, descendants², non-member Indians and dependents aged ten (10) or eleven (11) years old may hunt if they have a mentor present while hunting and have obtained any required licenses and permits.

(c) Tribal members, descendants³, non-member Indians and dependents having less than

² Requirements for descendency are determined by the Oneida Trust Enrollment Committee.

³ See footnote 2.

ten (10) years of age may accompany a mentor while hunting, provided that youth under the age of ten (10) may not use a weapon during the hunt.

(d) The following limitations apply to youth hunters and their mentors hunting pursuant to this section:

(1) Only one (1) weapon may be possessed jointly between the mentor and his or her mentee(s);

(2) Mentors may mentor a maximum of two (2) youth hunters at the same time; and

(3) The mentor shall remain within an arm's grasp of each youth hunter at all times.

(e) In order to be eligible to be a mentor, the person shall:

(1) Be at least eighteen (18) years old;

(2) Have a valid license and any required permits; and

(3) Be the youth hunter's parent or legal guardian or have permission from the hunter's parent or legal guardian to be the hunter's mentor.

406.9-6. *Deer Hunting Parties.* A deer hunting party consists of a minimum of two (2) people and may be limited in size as provided in the rules developed pursuant to this law. Any member of a deer hunting party may harvest deer on behalf of another member of the deer hunting party under the following circumstances:

(a) At the time and place of the harvest, the member of the hunting party who harvests the deer shall be in contact with the member of the hunting party on whose behalf the deer was harvested. For the purpose of this section, contact means visual or voice contact without the aid of any mechanical or electronic amplifying device other than a hearing aid. Hand radios are permitted, however may not be used as an acceptable means of contact as required in this section.

(b) The member of the hunting party for whom the deer was harvested shall possess a valid, license and carcass tag for the deer.

(c) The member of the hunting party who harvests the deer shall ensure that a valid carcass tag is attached to the deer by a member of the hunting party prior to field dressing and moving the deer; the member of the hunting party that harvests the deer may not leave said deer unattended until it has been properly tagged.

406.10. Enforcement and Penalties

406.10-1. *Reporting Violations.* All persons shall report any violation(s) of this law and/or the corresponding rules to the Department or the Oneida Police Department. The department receiving information regarding violations shall keep the information confidential.

406.10-2. *Licenses/Permits Suspension, Revocation and/or Ineligibility.* The Department may suspend, revoke or deem a party ineligible for a license or permit as a penalty for committing any one (1) of the following acts or any combination thereof:

(a) Has committed an act causing any of his or hers hunting, fishing or trapping licenses, permits or privileges to be suspended or revoked by any other jurisdiction, whether it be tribal, state or federal, where, for the purposes of this section, a person's right to possess firearms is considered a hunting privilege;

(b) Provides false information, or assists other in providing false information, when applying for a license or permit;

(c) Fails to timely pay a fine or abide by a penalty assessed against him or her as a consequence for violating the provisions of this law and/or the corresponding rules; and/or

(d) Violates this law and/or the corresponding rules and the violation is one for which the citation schedule identifies suspension, revocation, or ineligibility of a license or permit as an available penalty.

406.10-3. *Warning and Citations.* Department wardens may issue verbal and/or written warnings and/or citations to any person found to be in violation of this law and/or the corresponding rules. The Department shall ensure that all warning and citations identify the relevant violation and, if applicable, the fine and/or penalties imposed as a consequence of the violation.

406.10-4. *Appeal of License and/or Permit Decision.* Any person wishing to contest a decision of the Department related to a license and/or permit may appeal such action by filing a complaint with the Judiciary Trial Court naming the Department.

406.10-5. *Contested Action Hearings.* All citations, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service.* Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) *Allocation of Citation Revenue.* All fines and penalties issued by citations are payable to ERB or its designee, the proceeds of which ERB shall contribute to the Nation's general fund.

(c) *Appealing the Decision of the Judiciary Trial Court.* Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) *Pursuing Payment of a Citation.* ERB may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

End.

Adopted - BC-8-31-94-C

Adopted - BC-4-24-96-A

Adopted - BC-07-22-98-A

Amended - BC-09-13-00-D

Amended - BC-6-04-03-A

Amended - BC-6-30-04-I

Amended - BC-7-13-05-E

Amended - BC-8-29-07-F

Amended - BC-06-24-09-E

Amended - BC-08-26-10-I

Emergency Amended - BC-06-22-11-H (Expired)

Amended - BC-12-14-11-E

Amended - BC-05-22-13-A

Amended - BC-01-25-17-D

Title 4. Environment and Natural Resources – Chapter 406
HUNTING, FISHING AND TRAPPING
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Our laws concerning hunting, fishing and trapping

406.1.	Purpose and Policy	406.6.	Licenses and Permits
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406.5.	Administration and Supervision	406.10.	Enforcement and Penalties

406.1. Purpose and Policy

406.1-1. *Purpose.* The purpose of this law is to protect and conserve wildlife on the reservation and to promote respect among sportsmen, respect both the environment and fellow sportsmen.

406.1-2. *Policy.* It is the policy of this law to provide:

(a) An adequate and flexible system for the protection, management, supervision, conservation, and enhancement of all wildlife and natural resources on the reservation; and

(b) An enforceable system of licensing and permitting which establishes clear rules pursuant to the Administrative Rulemaking law related to hunting, fishing and trapping, and associated fines and penalties for violations of this law and the said rules.

406.2. Adoption, Amendment, Repeal

406.2-1. This law was adopted by the Oneida Business Committee by resolution BC-8-31-94-C, and amended by resolutions BC-4-24-96-A, BC-7-22-98-A, BC-09-13-00-D, BC-6-04-03-A, BC- 6-30-04-I, BC-7-13-05-E, BC-8-29-07-F, BC-06-24-09-E, BC-08-26-10-I, BC-12-14-11-E, BC-05-22-13-A and BC-01-25-17-D.

406.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

406.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

406.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

406.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

406.3. Definitions

406.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Aircraft” means a conveyance that can travel through the air and that is supported either by its own lightness or by the action of the air against its surfaces. The term includes hovercraft and both manned aircraft such as airplanes and helicopters and unmanned aircraft such as drones.

(b) “Barrel Length” means the length of a gun’s barrel as measured from the muzzle to the firing pin with the action closed, or from the muzzle to the breech face.

(c) “ERB” means the Environmental Resources Board.

(d) “Daily Bag Limit” means the maximum number of a species of wildlife that a person may take during a twenty-four (24) hour period measured from midnight to

midnight.

(e) “Department” means the Oneida Conservation Department.

(f) “Dependent” means a person under the age of eighteen (18) who is the child or step-child of a Tribal member or who lives with a Tribal member for more than half of the year.

(g) “Designated Hunter” means the person named by a permittee as authorized to harvest wildlife on behalf of the permittee pursuant to the permit held by the permittee.

(h) “Elder” means any person fifty-five (55) years of age or older.

(i) “Endangered or Threatened” means any species of wildlife within the reservation in danger of extinction or likely to become in danger of distinction as recognized by ERB and the Department and under federal law.

(j) “Fine” means a monetary punishment issued to a person violating this law and/or the rules created pursuant to this law, which is payable to ERB or the Department within the amount of time designated by the rules.

(k) “Fishing” means the taking, capturing, harvesting or attempting to take, capture or harvest fish of any variety in any manner.

(l) “Hunt” or “Hunting” means shooting, shooting at, pursuing, taking, attempting to take, catch, harvest or attempting to harvest any wildlife.

(m) “License” means a written document issued by the Department granting authority to engage in specific activities covered under this law and the rules created pursuant to this law.

(n) “Loaded” means any firearm containing a cartridge in the chamber or any firearm containing a cartridge or cartridges in the attached cylinder, magazine or clip.

(1) Muzzleloading firearms may not be considered loaded if a percussion cap is not covering the percussion nipple or .209 primers are not in the receiver.

(2) Flint lock muzzleloading firearms may not be considered loaded if the flash pan is cleaned of powder.

(o) “Nation” means the Oneida Nation.

(p) “Non-Indian” means a person who is not a member of any federally recognized Indian tribe, band, or community.

(q) “Non-Member Indian” means a person who is a member of a federally recognized Indian tribe, band or community other than this Nation.

(r) “Nuisance Animal” means any wildlife causing and one (1) or combination of the following:

(1) Damage to property;

(2) Damage to or endangered or threatened species of wildlife and/or plants;

(3) Depredation of crops and/or livestock; or

(4) Health and/or safety risks posed to persons.

(s) “Penalty” means a punishment, other than a fine, imposed on a person violating this law and/or the rules created pursuant to this law and may include, but is not limited to, the confiscation of equipment and/or wildlife with return of the same at the discretion of ERB, the imposition of a wildlife protection assessment (civil recovery value), revocation and/or ineligibility for licenses and/or permits for a specified period of time, and restitution.

(t) “Permit” means a document, stamp or tag authorizing a specific activity which is issued by the Department to the holder of a license.

(u) “Protected Species” means any species of wildlife that is not endangered or threatened, but for which ERB has established seasons, daily bag limits, or otherwise restricted the taking of.

(v) “Reservation” means all the property within the exterior boundaries of the reservation of the Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(w) “Rule” means a set of requirements, including citation fees and penalty schedules, enacted by ERB and/or the Department in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

(x) “Take” or “Taking” means pursuing, shooting, hunting, fishing, netting (including placing or setting any net or other capturing device), capturing, harvesting, snaring or trapping any wildlife, or attempting any of the foregoing.

(y) “Transport” means to bring or move from one place to another by means of carrying, dragging, pushing, towing, or storing in or on a vehicle, aircraft or boat.

(z) “Trapping” means the taking of, or attempting to take, any wildlife by means of setting or operating any device or mechanism that is designed, built, or made to close upon, hold fast, snare or otherwise capture wildlife.

(aa) “Tribal Land” means any land within the reservation that is held in fee or in trust and is owned by the Nation, a Tribal member, or a non-member Indian.

(bb) “Tribal Member” means an enrolled member of the Nation.

(cc) “Vehicle” means any self-propelled conveyance that derives power from a motor and is used to transport persons or objects over land, including but not limited to, an automobile, truck, sport utility vehicle, snowmobile, motorcycle, all-terrain vehicle, moped or similar conveyance.

(dd) “Wildlife” means any non-domesticated mammal, bird, fish, reptile, or amphibian, or any part or carcass of the same.¹

406.4. Jurisdiction

406.4-1. This law applies to the following persons:

(a) All Tribal members,

(b) All non-member Indians, ~~and~~

(c) All non-Indians who:

~~(1) enter Tribal land, or~~

~~(2) apply for and receive a license and/or permit, and/or~~

~~(2) enter Tribal land.~~

(d) All persons as otherwise permitted under federal law.

406.4-2. This law applies:

(a) within the boundaries of the reservation, and

(b) on lands held in trust for the Nation outside the boundaries of the reservation.

406.4-3. ~~—Lack of State Jurisdiction.—~~ The Nation ~~and the federal government have sole~~ has jurisdiction over the management and regulation of the Nation’s natural resources. ~~Accordingly,~~

¹ For additional information, please reference the definition of “domestic animal” in the Nation’s Domestic Animal law; any animal that does not fall into the “domestic animal” classification is considered “wildlife” for the purpose of this law.

~~licenses, permits, tags~~ However this law shall not negate the jurisdiction of the State of Wisconsin in certain instances involving non-member Indians and non-Indians. Thus, to hunt, fish, or trap on tribal land, non-member Indians and ~~the like issued by~~ non-Indians shall adhere to the ~~state have no legal effect on lands over which~~ Nation's license, permit, and tag requirements and may also be subject to the ~~Nation exercises its jurisdiction under Section 406.4 2.~~ requirements of the State of Wisconsin. License and permit holders may not exercise any hunting, fishing, or tapping privileges within the Reservation boundaries using a State of Wisconsin license that would amount to greater privileges than those afford pursuant to this Law and associated rules.

406.5. Administration and Supervision

406.5-1. ERB and the Department, shall protect, manage, supervise, conserve, and enhance all wildlife within the reservation. ERB and the Department shall jointly establish and maintain the rules that are required to implement this law. The Department shall administer and enforce this law and the rules created pursuant to this law.

406.5-2. *Authority.* In addition to any other duties delegated to ERB and the Department under this law, jointly, ERB and the Department are hereby jointly delegated the rulemaking authority to:

- (a) Determine the types and number of licenses and permits that may be issued by the Department, including how many licenses and permits that may be issued to non-Indian hunters.
- (b) Establish a fee schedule and application requirements and deadlines for obtaining licenses and/or permits.
- (c) Establish or amend daily bag limits and possession limits based on the supply of wildlife, the needs of conservation, and the objective of achieving a fair allocation of the harvest. Restrictions in such rules may include, but are not limited to, limits related to gender, species, size, age, and maturity.
- (d) Based on the monitoring and supervision of all wildlife, when necessary, declare any species in need of protection a protected species or an endangered or threatened species, and thereafter modify or revoke such declarations as may be appropriate.
- (e) Fix, shorten, extend or close seasons and hunting hours on any wildlife. Provided that ERB and the Department shall base the open season for the hunting of migratory birds on the Nation's agreement with the U.S. Fish and Wildlife Service.
- (f) Establish and/or modify areas' territorial limits, including bodies of water or parts thereof, for any of the following, as may be necessary:
 - (1) the taking of wildlife;
 - (2) other specified areas, pursuant to the rules jointly developed by ERB and the Department.
- (g) Establish methods for checking persons into and out of areas specified under subsection (f) above.
- (h) Regulate the operation of boats upon reservation waters and the operation of vehicles and aircraft used while hunting, fishing or trapping.
- (i) Regulate and prescribe the means and methods by which wildlife may be taken, including, but not limited to, the use of:
 - (1) bait;
 - (2) decoys;
 - (3) hunting dogs

- (4) traps;
(5) firearms;
(6) ammunition;
(7) laser sights; and
(8) night vision.
- (j) Regulate the transportation, registration, tagging, and storage of all wildlife within the reservation and the shipment or transportation of wildlife off the reservation.
- (k) Prescribe safety and fire control measures and other rules as may be necessary for range, forest or wildlife management, and/or for the safety and welfare of outdoor recreationists, landowners, lessees, occupants and the Nation.
- (l) Establish a process for retention, storage and disposal of items confiscated or turned over to the Department in accordance with this law and the rules established pursuant to this law.
- (m) Establish a citation schedule that sets the monetary fines and penalties for violations of this law and/or the rules established pursuant to this law.
- (n) Create other rules as specifically directed throughout this law or as may be necessary to implement this law. ERB shall provide notice of said rules ~~both on~~ [ERB's](#) ~~the Nation's~~ website and ERB and/or the Department shall develop a rule booklet, which the Department shall provide to each person receiving a license or permit pursuant to this law.
- 406.5-3. *Department Wardens.* Department wardens shall enforce this law and corresponding rules on the reservation, and, accordingly shall:
- (a) Observe persons engaged in hunting, fishing and/or trapping in order to ensure that the methods and equipment utilized are lawful.
- (b) Investigate reports of violations of wildlife and environmental laws, including, but not limited to, this law and corresponding rules.
- (c) Work to prevent persons from violating this law and/or the corresponding rules.
- (d) Issue warnings and/or citations, which may include fines and/or penalties, for violations of this law and/or the corresponding rules.
- 406.5-4. *Oneida Police Department.* Any Oneida Police Department officer, who observes a violation of this law and/or corresponding rules, shall report such violation to the Department and/or a Department warden. However, if immediate action is necessary to prevent imminent danger to life or serious damage to property, the Oneida Police Department officer may issue a warning or citation for the said violation(s) and/or prevent persons from committing the said violation(s).
- 406.6. Licenses and Permits**
- 406.6-1. *Sportsman License.*
- (a) A sportsman license is required for all persons hunting, fishing or trapping on Tribal land, except:
- (1) Fishing is permitted without a sportsman license for Tribal members, dependents, and non-member Indians whom are sixteen (16) years of age or younger.
- (2) Landowners and lessees and guests with the permission of the landowners or lessees, may hunt and trap the following species on the property they own or lease, year-round, without a sportsman license:

- (A) coyote;
(B) fox;
(C) raccoon;
(D) woodchuck;
(E) rabbit;
(F) squirrel; and
(G) any nuisance animal that is not an endangered or threaten species and is also not a regulated or protected species.
- (b) Anyone born on or after January 1, 1973 shall successfully complete a state-certified hunter safety course to be eligible for a sportsman license, except that:
- (1) *Fishing Only Sportsman License.* A sportsman license may be issued which permits fishing only. In such circumstances, successful completion of a state-certified hunter safety course is not required and the Department shall internally record such licenses as permitting fishing only.
- (A) A person issued a “fishing only” sportsman license may not hunt or trap, or be eligible to hunt or trap, until the licensee provides the Department with proof of successful completion of a state-certified hunter safety course.
- (B) Any licensee holding a fishing only sportsman license may name a designated hunter to fill the hunting or trapping permits that regularly accompany a sportsman license based on the rules established pursuant to this Law. For the requirements related to naming a designated hunter, refer to section 406.9-4.
- 406.6-2. *Ceremonial and/or Feast Permit.* Tribal members may apply for a ceremonial and/or feast permit to group hunt wildlife outside of the regular applicable seasons.
- (a) When the ceremonial and/or feast permit is for deer hunting, it may only be issued for antlerless deer.
- (b) A ceremonial and/or feast permit may be issued to a group and/or organization meeting each of the following requirements:
- (1) At least eighty-five percent (85%) of the group and/or organization members are Tribal members;
- (2) The agent of the group/organization is a Tribal member;
- (3) The occasion for the ceremonial and/or feast requiring the hunt out of season is recognized by the Oneida community; and
- (4) The hunt takes place on the reservation.
- (c) All persons participating in the ceremonial and/or feast hunt shall be named hunters on the ceremonial and/or feast permit.
- (d) The agent of the group ceremonial and/or feast hunt shall notify the Department warden of the time and place where the hunt will take place no later than twenty-four (24) hours prior to the hunt. The Department warden may monitor any portion, or the entirety, of the group ceremonial and/or feast hunt.
- 406.6-3. *Other Permits, Tags and Stamps.* In accordance with this law and corresponding rules, the Department may issue permits authorizing a person to engage in specific hunting, fishing and/or trapping activities, including nuisance animal removal permits pursuant to section 406.8-2.
- 406.6-4. It is unlawful for any person to:

(a) Provide false information or fail to report relevant information as requested by the Department, when applying for a license or permit; or

(b) Aid another in fraudulently securing a license or permit.

406.6-5. Except as provided under sections 406.6-1(b)(1)(A), 406.9-4 and 406.9-6, licenses and/or permits are not transferable and may not be altered, defaced or lent to or from another person, any may not be used by any person other than the person to whom the license and/or permit is issued.

406.6-6. *Disabled Hunter Permits.* The Department may issue a disabled hunter permit to any person who is physically disabled, upon a showing of medical verification of a physical disability. Disabled hunters shall display the disabled hunter permit sticker in a manner and location as required by the Department. A disabled hunter permit authorizes a person to hunt from a stationary vehicle within fifty (50) feet on the center of a road as further detailed in the rules developed pursuant to this law.

406.6-7. *Denial of a License or Permit.*

(a) The Department may decline to issue a license and/or permit to an applicant if:

(1) The applicant has unpaid fines, civil assessments, other fees and/or restitution owed because of a violation of this law and/or corresponding rules.

(2) At any time and for any reason, the Department determines that issuing the license and/or permit poses a risk to the health, safety, and/or welfare of the Nation, to natural resources on the reservation, or to any persons. There is a rebuttable presumption that an applicant poses such a risk under the following circumstances:

(A) At the time of the request, the applicant's hunting, fishing or trapping license, permit or related privileges are suspended or revoked in any jurisdiction.

(B) Within three (3) years of the request, the applicant has repeatedly and/or egregiously done any one (1) or more of the following:

(i) violated this law and/or corresponding rules and/or the hunting, fishing, or trapping laws and regulations of other jurisdictions;

(ii) violated other laws or rules of the Nation while engaged in hunting, fishing or trapping activities; or

(iii) demonstrated poor judgment, disregard for safety or unsportsmanlike behavior while hunting, fishing or trapping; including while interacting with other sportsmen or with wardens, of this jurisdiction or any other.

(C) At any time, the applicant has been found guilty of imposing or threatening to impose great bodily harm on another. For the purposes of this section, great bodily harm means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

(b) Any person who has had a license or permit denied in accordance with section 406.6-7(a) may appeal the Department's decision by requesting a hearing before ERB pursuant to section 406.10-4.

406.7. General Requirements

406.7-1. Persons may not:

- (a) Enter onto private lands and/or waters to take or retrieve wildlife, without permission from the landowner, lessee or occupant.
- (b) Leave, deposit, place or throw litter, debris, wildlife, or any other waste material, on the reservation's lands and waters.
- (c) Cause damage to land or property belonging to another, including but not limited to, the Department's decoys placed for law enforcement purposes by Department wardens or other law enforcement officers, and signs that give notice of a hunting and/or trespass restriction.
- (d) Carelessly waste wildlife. Persons hunting, trapping or fishing shall make every reasonable effort to retrieve all wildlife killed or crippled, provided that all persons shall comply with section 406.7-1(a).
- (e) Knowingly disturb any den, nest, lodge, hut, dam or house that wildlife may build to shelter themselves and their young.
- (f) No person may take, pursue, injure, or harass small game while on or in its nest or den, or remove any eggs or young except as may be approved in advance by the Environmental Resource Board for activities which may include, but are not limited to, normal agricultural or horticultural practices or wildlife research practices.
- (g) Harvest wildlife with the aid of an explosive, poison, exploding point or tip, electrical device or stupefying substance or agent.
- (h) Take another person's wildlife or disturb another person's hunting, fishing, or trapping equipment without permission; or otherwise interfere with the lawful hunting, fishing, or trapping of another person.
- (i) Stock or possess any live wildlife on the reservation without a permit.
- (j) Introduce or release wildlife, fish eggs, or receptacles containing bait, on the reservation or into reservation waters without a permit.
- (k) Use in a reckless manner any device typically used for the harvesting of wildlife, including but not limited to, firearms, bows, traps and knives.
- (l) Shoot firearms, or place or operate any traps, except live traps, within one hundred (100) yards of any building structure, unless the owner-occupant, lessee or tenant has given permission.
- (m) Use a gas powered motorboat on the Nation's waters, except for the Department's use for law enforcement and conservation purposes.
- (n) Hunt, trap, or possess any hunting, or trapping equipment while on Tribal land where hunting or trapping is expressly prohibited by the Nation's laws or rules.
- (o) Sell or purchase wildlife that was harvested on the reservation, except as may be expressly allowed by this law and corresponding rules.
 - (1) Under no circumstances may trading, gifting, or sharing of wildlife for traditional or ceremonial purposes be considered a violation of this section.
- (p) Refuse to obey a Department warden's lawful order.
- (q) Inflict or threaten to inflict bodily harm upon a Department warden. For the purposes of this law, "bodily harm" means physical pain or injury or any impairment of the physical condition.

406.7-2. Possession, Registration and Transportation of Carcasses. No person may hunt, trap,

possess or transport any wildlife unless he or she possesses the appropriate license and any required permit, including tags, for harvesting and/or possessing such wildlife.

406.7-3. Any person who accidentally collides with and kills a deer while operating a vehicle on a roadway, may retain possession of the said deer, provided that the person shall have the deer tagged by the Department or the Department's designee.

406.7-4. *Carcass Tags*. Except as otherwise provided in this law and corresponding rules, any person hunting a species of wildlife which is required to be tagged, shall possess a valid carcass tag, and, upon harvest, shall immediately validate and attach the tag to the carcass in such manner as ERB and the Department shall jointly establish in its the rules. No person may possess or transport harvested wildlife that is not properly tagged in accordance with this law and corresponding rules.

406.7-5. *Health Advisory*. ERB and the Department shall ensure that all hunting and fishing rule booklets contain a warning stating that fish caught in Duck Creek, as well as ducks, geese and other wildlife may contain Polychlorinated Biphenyl (PCBs) which may pose risks of health defects, that such risks are greatest for women and children, and that detailed information about PCBs is available from the Department upon request.

406.8. Wildlife Damage and Nuisance Control

406.8-1. Landowners and lessees may remove wildlife considered a nuisance animal from land under their control and their associated structures, provided that landowners and lessees shall satisfy all requirements of this law and corresponding rules , including, but not limited to the permitted methods of taking and hunting hours. Further, live-captured nuisance animals may not be relocated to Tribal lands without express written authorization from the Department, and, similarly, may not be relocated to private property without express written authorization from the landowner.

406.8-2. *Nuisance Animal Removal Permit*. A nuisance animal removal permit is required to hunt, trap, or live-capture and relocate any endangered or threatened and protected species.

(a) In order to be eligible for a nuisance animal removal permit, the applicant shall demonstrate that:

(1) He or she has the authority to control hunting and trapping access to the lands subject to the nuisance or being damaged as well as any contiguous lands. In circumstances where the contiguous lands are not owned or leased by the applicant, the applicant shall demonstrate authority to control hunting and trapping access to the contiguous lands by providing the Department with the property owner's or lessor's written consent;

(2) He or she either is employing or agrees to employ, reasonable alternative abatement methods to removal;

(3) The wildlife sought to be removed is a nuisance animal and reasonable alternative abatement methods either have been or are reasonably likely to be unsuccessful;

(4) He or she has complied with this law and corresponding rules and the conditions of any previously-issued nuisance animal removal permit, at a minimum, for the previous twelve (12) months from the date he or she applies for the permit;

(5) The nuisance animal removal permit applied for does not conflict with any provisions of the Nation's agreement with the United States Fish and Wildlife

Service regarding the taking of birds classified as migratory under 50 CFR 10.13.

(b) Each permittee shall keep a record of all permit activities and shall provide the said permit record to the Department within ten (10) days of the permit's expiration. At a minimum, the permittee shall include in the record any agents assigned under section 406.8-4 and the total number of nuisance animals removed pursuant to the permit, provided that, the Department may name additional items required to be included in the record. All permit records may be inspected by the Department at any time.

(c) The permittee shall return all unused permits, including carcass tags, to the Department within ten (10) days of the permit's expiration.

406.8-3. *Nuisance Animal Removal Permit Not Required.* A nuisance animal removal permit is not required if the nuisance animal would otherwise be exempt from the license and permit requirements under section 406.6-1(a)(2). Also, a nuisance animal removal permit is specifically not required in following circumstances:

(a) *Beaver.* A nuisance animal removal permit is not needed for a landowner, lessee, or an authorized agent to hunt or trap beaver(s) that are nuisance animals, or to remove a beaver dam. However, only the landowner and the Department may set traps on a beaver dam on Tribal land; this privilege may not be transferred to an agent.

(b) *Emergencies.* Nuisance animals for which a nuisance animal removal permit is otherwise required, may be removed without the required permit if such removal is necessary to maintain a person's immediate health and safety.

(1) Persons taking a nuisance animal under emergency circumstances shall report the emergency taking to the Department on the required form available with the Department.

(2) The Department shall conduct an investigation into the validity of the alleged emergency circumstance. If the investigation provides clear and convincing evidence that the taking was not in fact required due to a legitimate threat to a person's immediate health and safety, the Department shall classify the taking an unlawful taking without a permit and shall take the appropriate corrective measures.

406.8-4. *Designated Agents.* A landowner may utilize an agent to remove a nuisance animal pursuant to the provisions of this law. If the requirements of this law and corresponding rules are satisfied, the landowner's nuisance animal removal permit and associated carcass tags, if applicable, may be utilized by the landowner's assigned agent.

(a) In order for an agent to be assigned to remove a nuisance animal, the landowner shall ensure that the following conditions are met:

(1) The agent shall have a valid license for hunting or trapping that nuisance animal's species;

(2) The landowner shall grant written permission to the agent specifically identifying the following:

(A) The location of the nuisance animal where the removal activities are sought to occur;

(B) An authorized time period for the removal of the nuisance animal; and

(C) Any other information as may be required by the rules established pursuant to this law.

(b) The Department may limit the number of persons permitted to assist in a removal.

(c) The landowner or lessee permittee may not charge any assigned agent any form of

fee.

406.8-5. *Annual Migratory Bird Report.* Persons killing crows, cowbirds, grackles, and red-winged blackbirds shall provide an annual report to the U.S. Fish and Wildlife Service Region 3 Migratory Bird Permit Office by January 31st for all such takings occurring within the previous January to December.

406.8-6. *Department Warden's Access.* Any landowner or lessee pursuing the removal of a nuisance animal shall grant Department wardens free and unrestricted access to the premises on which the said removal is being conducted, is anticipated to be conducted, or has been conducted. Further, the landowner or lessee, and the landowner's agent, if applicable, shall promptly furnish any information requested by a Department warden relating to the said removal.

406.8-7. *Retaining Fur, Carcasses and other Parts of Nuisance Animals.* The following applies to nuisance animals removed in accordance with this section:

(a) The permittee and each agent assigned under section 406.8-4 may retain no more than one (1) deer removed pursuant to a nuisance animal removal permit. The Department shall distribute or dispose of any deer that are not so retained by offering them to Tribal members in the following order:

(1) Elders;

(2) Disabled persons; and

(3) Any other interested persons.

(b) In order to keep, either for oneself or for sale, the furs of a nuisance animal taken pursuant to a nuisance animal removal permit, the permittee shall be explicitly and separately authorized by the permit to retain the wildlife and to sell the wildlife.

(c) Furs from nuisance animals which did not require a nuisance animal removal permit in order to be removed, may be retained by a landowner, lessee or assigned agent without a permit. Provided that the landowner, lessee or assigned agent shall have a valid license and/or permit in order to commercialize in, sell, trade, ship or transport any wildlife, except that any squirrels' parts retained may be sold during the closed season.

406.9. Hunting

406.9-1. *General Firearm and Archer Restrictions.* Persons may not:

(a) Hunt using any weapon other than a firearm, air rifle, bow or crossbow that is authorized under this law and corresponding rules for the taking of a particular species.

(b) Discharge a firearm, air rifle, bow or crossbow:

(1) Into reservation lakes, reservoirs, or any area designated for public use pursuant to the Public Use of Tribal Land law, except for the purpose of hunting migratory birds during established seasons, in accordance with the rules created pursuant to this law;

(2) Across any roadway; or

(3) Within one hundred (100) yards of any structure, unless the owner-occupant, lessee or tenant has granted express permission.

(c) Transport any loaded firearm, air rifle, or cocked bow or crossbow in a vehicle.

406.9-2. *General Hunting Restrictions.* Persons may not, unless specifically authorized by a permit, if applicable, do any of the following:

(a) Hunt with the use of aircraft;

(b) Hunt within fifty (50) feet of the center of a paved road;

- (c) Hunt from a vehicle;
- (d) Hunt while under the influence of alcohol or a controlled substance;
- (e) Hunt with the aid of artificial light, provided that it is permissible to use artificial light to find one's way and while hunting on foot, at the point of harvest of coyote, raccoon, fox, or any other authorized unprotected species;
- (f) Shine between the hours of 10:00 p.m. and sunrise during the months of September, October, November and December; during all other months, shining is allowed at any hour;
- (g) Hunt in a party of more than ten (10) persons;
- (h) Hunt with, or possess while hunting:

- (1) Any firearm for which the possession is unlawful under Wisconsin or Federal law;
- (2) Slugs, except that a person may possess slugs during deer firearm season if he or she also possesses the required associated permit;
- (3) A handgun with a barrel length of less than five (5) inches;
- (4) A concealed handgun without a valid permit from the State of Wisconsin; and/or
- (5) Any of the following without a valid federal permit:
 - (A) A shotgun that has a barrel length of less than eighteen (18) inches or an overall length of less than twenty-six (26) inches;
 - (B) A rifle that has a barrel length of less than sixteen (16) inches or an overall length of less than twenty-six (26) inches;
 - (C) A fully-automatic firearm;
 - (D) Any mechanism designed to muffle, silence or minimize the report of any firearm.

406.9-3. *Accidents.* Any person, who discharges a firearm, bow, or crossbow while hunting and injures another person, shall render or attempt to obtain necessary medical assistance, provide the injured person with his or her name and contact information including address, and report the accident to either the Department or the Oneida Police Department as soon as possible.

406.9-4. *Designated Hunters.* A permittee may name a designated hunter to hunt, fish, or trap on behalf of the permittee in the event that the permittee is physically or legally unable to take pursuant to his or her own permit, provided that, the designated hunter shall provide his or her name and contact information to the Department along with a signed statement from the original permittee naming the designated hunter. The designated hunter shall receive the Department's approval of the designation before using the permits of the original permittee.

- (a) To be eligible to be named a Designated Hunter, the named person shall:

- (1) Possess a valid hunting license;
- (2) Be eligible for the permits for which the person is named the designated hunter; and
- (3) Meet any other requirements of the rules created pursuant to this law.

- (b) Designated hunters may hunt for the number of permittees as authorized by the rules developed pursuant to this law.

- (c) Any wildlife taken by a designated hunter remains the property of the original permittee; the designated hunter shall transfer any wildlife taken by designation to the original permittee's possession as soon as practicable following the taking.

406.9-5. *Age Restrictions.*

(a) Persons between the ages of twelve (12) and fourteen (14) years old may only hunt if they have obtained the required license and permits and are under the immediate supervision of a parent, legal guardian or a responsible adult to which a parent or legal guardian has delegated his or her supervisory responsibilities. Adults accompanying youth hunters pursuant to this section shall remain within voice and sight contact of the youth hunters at all times.

(b) Tribal members, descendants², non-member Indians and dependents aged ten (10) or eleven (11) years old may hunt if they have a mentor present while hunting and have obtained any required licenses and permits.

(c) Tribal members, descendants³, non-member Indians and dependents having less than ten (10) years of age may accompany a mentor while hunting, provided that youth under the age of ten (10) may not use a weapon during the hunt.

(d) The following limitations apply to youth hunters and their mentors hunting pursuant to this section:

(1) Only one (1) weapon may be possessed jointly between the mentor and his or her mentee(s);

(2) Mentors may mentor a maximum of two (2) youth hunters at the same time; and

(3) The mentor shall remain within an arm's grasp of each youth hunter at all times.

(e) In order to be eligible to be a mentor, the person shall:

(1) Be at least eighteen (18) years old;

(2) Have a valid license and any required permits; and

(3) Be the youth hunter's parent or legal guardian or have permission from the hunter's parent or legal guardian to be the hunter's mentor.

406.9-6. *Deer Hunting Parties.* A deer hunting party consists of a minimum of two (2) people and may be limited in size as provided in the rules developed pursuant to this law. Any member of a deer hunting party may harvest deer on behalf of another member of the deer hunting party under the following circumstances:

(a) At the time and place of the harvest, the member of the hunting party who harvests the deer shall be in contact with the member of the hunting party on whose behalf the deer was harvested. For the purpose of this section, contact means visual or voice contact without the aid of any mechanical or electronic amplifying device other than a hearing aid. Hand radios are permitted, however may not be used as an acceptable means of contact as required in this section.

(b) The member of the hunting party for whom the deer was harvested shall possess a valid, license and carcass tag for the deer.

(c) The member of the hunting party who harvests the deer shall ensure that a valid carcass tag is attached to the deer by a member of the hunting party prior to field dressing and moving the deer; the member of the hunting party that harvests the deer may not leave said deer unattended until it has been properly tagged.

² Requirements for descendency are determined by the Oneida Trust Enrollment Committee.

³ See footnote 2.

406.10. Enforcement and Penalties

406.10-1. *Reporting Violations.* All persons shall report any violation(s) of this law and/or the corresponding rules to the Department or the Oneida Police Department. The department receiving information regarding violations shall keep the information confidential.

406.10-2. *Licenses/Permits Suspension, Revocation and/or Ineligibility.* The Department may suspend, revoke or deem a party ineligible for a license or permit as a penalty for committing any one (1) of the following acts or any combination thereof:

(a) Has committed an act causing any of his or hers hunting, fishing or trapping licenses, permits or privileges to be suspended or revoked by any other jurisdiction, whether it be tribal, state or federal, where, for the purposes of this section, a person's right to possess firearms is considered a hunting privilege;

(b) Provides false information, or assists other in providing false information, when applying for a license or permit;

(c) Fails to timely pay a fine or abide by a penalty assessed against him or her as a consequence for violating the provisions of this law and/or the corresponding rules; and/or

(d) Violates this law and/or the corresponding rules and the violation is one for which the citation schedule identifies suspension, revocation, or ineligibility of a license or permit as an available penalty.

406.10-3. *Warning and Citations.* Department wardens may issue verbal and/or written warnings and/or citations to any person found to be in violation of this law and/or the corresponding rules. The Department shall ensure that all warning and citations identify the relevant violation and, if applicable, the fine and/or penalties imposed as a consequence of the violation.

406.10-4. *Appeal of License and/or Permit Decision.* Any person wishing to contest a decision of the Department related to a license and/or permit may appeal such action by ~~requesting a hearing before ERB.~~ filing a complaint with the Judiciary Trial Court naming the Department.

~~(a) In order to be considered timely, the person contesting an action of the Department shall file the appeal within ten (10) business days of the date of the Department's action. ERB may not hear appeals that are not timely filed.~~

~~(b) ERB shall schedule a hearing for all timely filed appeal, and shall ensure that such hearings are held within thirty (30) calendar days from the date the appeal was filed.~~

~~(c) ERB shall conduct hearings in accordance with its bylaws and any other applicable regulations, standard operating procedures, rules, laws or policies governing the Nation's administrative hearings.~~

~~(d) ERB's determination related to a license and/or permit is final; no further review is available.~~

406.10-5. *Contested Action Hearings.* All citations, orders and declarations issued pursuant to this law shall include a ~~prehearing date~~ pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) ~~calendar~~ days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the ~~Environmental Resource Board~~ Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. ~~For The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for~~ all persons entering a plea contesting the fact that they committed the act for which a citation was issued, ~~ERB shall~~

~~schedule a hearing as expeditiously as possible, provided that ERB shall schedule all hearings within ninety (90) days of the date of the prehearing.~~ In addition to scheduling requested hearings, ERBthe Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

~~(a) ERB shall conduct prehearings and hearings in accordance with its bylaws and any other applicable regulations, standard operating procedures, rules, laws or policies governing the Nation's administrative hearings.~~

~~(b) Community Service.~~ Community service may be substituted for fines at ERB'sthe Judiciary's discretion, provided that, if so substituted, ERBthe Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

~~(c) Allocation of Citation Revenue.~~ All fines and penalties issued by citations are payable to ERB or its designee, the proceeds of which ERB shall contribute to the Nation's general fund.

~~(d) (c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.~~

~~(d) Pursuing Payment of a Citation.~~ ERB may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

~~(e) Any person wishing to contest ERB's determination related to a contested citation may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.~~

End.

Adopted - BC-8-31-94-C
 Adopted - BC-4-24-96-A
 Adopted - BC-07-22-98-A
 Amended - BC-09-13-00-D
 Amended - BC-6-04-03-A
 Amended - BC-6-30-04-I
 Amended - BC-7-13-05-E
 Amended - BC-8-29-07-F
 Amended - BC-06-24-09-E
 Amended - BC-08-26-10-I
 Emergency Amended - BC-06-22-11-H (Expired)
 Amended - BC-12-14-11-E
 Amended - BC-05-22-13-A
 Amended - BC-01-25-17-D

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

DATE: June 7, 2017

FROM: Rae Skenandore, Project Manager

TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

RE: **Fiscal Impact of the transfer of the Environmental Resource Board's Hearing Authority to the Oneida Judiciary**

I. Estimated Fiscal Impact Summary

Law: Domestic Animal		Draft 19
Hunting, Fishing and Trapping law (HTF)		Draft 2
Public Use of Tribal Land (Public Use)		Draft 1
Tribal Environmental Response (TERP)		Draft 1
Well Abandonment Law (Well Abandonment)		Draft 1
All-Terrain Vehicle Law (ATV)		Draft 1
Water Resources Ordinance (Water Resources)		Draft 1
On-Site Waste Disposal Ordinance (Waste Disposal)		Draft 1
Implementing Agency		
Oneida Police Department (OPD)		
Conservation		
Environmental Resource Board (ERB)		
Emergency Management		
Environmental Health and Safety Division		
Comprehensive Health Division		
Oneida Judiciary		
Estimated time to comply		January 1, 2018
Estimated Impact	Current Fiscal Year	10 Year Estimate
ERB stipend savings	\$830	\$8,300
Total Estimated Savings	\$830	\$8,300
Revenue and cost considerations		
Fee Schedules should be removed from the various Laws		
Uncertainties and Unknowns		
None		

II. Background

A. Legislative History

The Oneida Business Committee created the Environmental Resource Board through Resolution BC-02-22-85-B. GTC Resolution 01-07-13-B established the Oneida Judiciary.

B. Summary of Content

1. The Domestic Animal amendments are being processed separately in order to make further revisions. However, it is included here because there are no additional fiscal impacts due to the amendments.
2. All Laws are being amended to state that the Trial Court is the entity authorized to conduct hearings.
3. Other minor changes, including formatting, have been made to these Laws to comply with drafting style. These changes do not affect the content of these Laws.

C. Methodology and Assumptions

1. A “Fiscal Impact Statement” means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.
2. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.
3. The analysis was completed based on the information provided as of the date of this memo.

III. Agency

The hearing authority will simply be transferred from ERB to the Judiciary. Historical hearing stipends paid to the Board were \$750 in 2017, \$1,200 in 2016, and \$700 in 2015. Transferring the hearing authority to the Judiciary would result in an average savings of approximately \$830 annually. The Judiciary does not anticipate any additional costs as this will simply be absorbed into their existing duties. ERB has stated that they expect the transition of the hearing authority to be complete by January 1, 2018

IV. Financial Impact

Approximately \$830 savings annually.

V. Recommendation

Finance does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.



Legislative Operating Committee
July 19, 2017

All-Terrain Vehicle Law Amendments

Submission Date: 5/17/17	Public Meeting: 6/15/17
LOC Sponsor: Tehassi Hill	Emergency Enacted: n/a Expires: n/a

Summary: *This is a request to amend the law to remove the Environmental Resource Board's Hearing Body Authority and transfer it to the Judiciary.*

5/17/17 LOC: Motion by David P. Jordan to add each of these to the Active Files List as a high priority, assign Tehassi Hill as the sponsor, approve the public meeting packet, in addition to the Tribal Environmental Response law for June 15, 2017; seconded by Fawn Billie. Motion carried unanimously.

6/15/17: Public meeting held.

Next Steps:

- Accept the public meeting comments.
- Approve the All-Terrain Vehicle Law Amendments adoption packet and forward to the OBC for consideration.



TO: Legislative Operating Committee (LOC)
FROM: Krystal John, Staff Attorney, Oneida Law Office
DATE: July 19, 2017
RE: All-Terrain Vehicle Law Amendments: Public Meeting Comment Review

On June 15, 2017 a public meeting was held regarding the All-Terrain Vehicle Law Amendments. There were no oral or written comments received during the public meeting on June 15, 2017, or during the public meeting comment period ending on June 29, 2017; therefore no additional revisions were made to the draft.



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING
Environmental Resource Board's Authority Transfer**
Business Committee Conference Room-2nd Floor Norbert Hill Center
June 15, 2017 12:15 p.m.

Present: Brandon Stevens, Candice Skenandore, Clorissa Santiago, Leyne Orosco, Cathy Bachhuber, Chad Wilson, Laura Manthe, Eugene Schubert.

Brandon Stevens: Greetings. The time is 12:25 p.m. and today's date is Thursday June 15, 2017. I will now call the public meeting to order for the following laws:

- All-Terrain Vehicle
- On-Site Waste Disposal Ordinance
- Public Use of Tribal Land
- Tribal Environmental Response
- Water Resource Ordinance
- Well Abandonment
- Hunting, Fishing, and Trapping

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding these legislative proposals. The public meeting is not a question and answer period. All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Thursday June 29, 2017.

In attendance for today is just myself, Brandon Stevens. And I will impose a time limit for all speakers pursuant to section 16.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons.

Revisions were made to the identified laws which transfer the Environmental Resource Board's hearing authority to the Judiciary. In addition, the Hunting, Fishing, and Trapping law has an additional amendment which clarifies that non-member Indians and non-Indians that hunt, fish, and trap on the Reservation may be subject to State requirements as well as the requirements set forth in the Hunting, Fishing, and Trapping law.

Although the amendments are the same for all laws, except for the additional change to Hunting, Fishing, and Trapping law; we will process these laws individually for the sake of this public meeting. We will begin today's public meeting for All-Terrain Vehicle law.

Okay, we have people checked in and no oral testimony is requested from anyone in attendance. Anyone want to come up that is not on the list, please do so at this time.

Okay, seeing no oral testimony for the All-Terrain Vehicle law, I will close this public meeting at 12:18 p.m.

I will now open up the public meeting for the On-Site Waste Disposal Ordinance. The public meeting for the On-Site Waste Disposal Ordinance, or, and I'll sorry. I will ask at this time if anyone would like to come up and provide oral testimony please so do, that's not on the list. Seeing none, I will close this public meeting for the On-Site Waste Disposal Ordinance at 12:19 p.m.

I will now open up the public meeting for the Public Use of Tribal Land at 12:19 p.m. I will open up the floor for oral testimony for those who have not signed in and would like to provide oral testimony. Seeing none, I will close this public meeting for the Public Use of Tribal Land at 12:19 p.m.

I will now open up the public meeting for the Tribal Environmental Response at 12:20 p.m. Open up the floor for any of those who want to provide oral testimony that are not signed in. Seeing none, I will close this public meeting for the Tribal Environmental Response at 12:20 p.m.

I will now open up the public meeting for the Water Resource Ordinance at 12:20 p.m. I'll open up the floor for any of those who would like to provide oral testimony that are not on the list. Seeing none, I will close the public meeting for the Water Resource Ordinance at 12:20 p.m.

I will now open up the public meeting for the Well Abandonment at 12:21 p.m. I'll open up the floor for any oral testimony for those who are not on the list. Seeing none, I will close the public meeting for the Well Abandonment at 12:21 p.m.

I will now open up the public meeting for the Hunting, Fishing, and Trapping . Please note that in addition to revision that transfers ERB's hearing authority to the Judiciary, an additional revision was made to provide clarity that non-member Indians and non-Indians that hunt, fish, and trap on the Reservation may be subject to State requirements as well as the requirements set forth in the Hunting, Fishing, and Trapping law. Opening up the floor for those who would like to provide oral testimony that are not signed in. Seeing none, I will close the public meeting for the Hunting, Fishing, and Trapping law at 12:22 p.m.


With no more individuals wanting to provide oral comment, I am closing the public meeting at 12:22 p.m. As a reminder the public comment period will remain open until Thursday, June 29, 2017 by close of business. Thank you.

-End of Meeting-



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson 
DATE: July 26, 2017
RE: All-Terrain Vehicle Law Amendments

Please find the following attached backup documentation for your consideration of the All-Terrain Vehicle Law Amendments:

1. Resolution: All-Terrain Vehicle Law Amendments
2. Statement of Effect: All-Terrain Vehicle Law Amendments
3. All-Terrain Vehicle Law Amendments: Legislative Analysis
4. All-Terrain Vehicle Law Amendments: Clean Draft
5. All-Terrain Vehicle Law Amendments: Redline to Current Draft
6. All-Terrain Vehicle Law Amendments: Fiscal Impact Statement

Overview

This resolution adopts amendments to the All-Terrain Vehicle Law to transfer the Environmental Resource Board's hearing authority to the Judiciary.

In accordance with the Legislative Procedures Act, a public meeting was held regarding this law on June 15, 2017 with a comment period closing on June 29, 2017. There were no comments provided. These amendments will become effective beginning in the new fiscal year on October 1, 2017.

Requested Action

Approve the Resolution: All-Terrain Vehicle Law Amendments

BC Resolution _____
All-Terrain Vehicle Law Amendments

WHEREAS, the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and

WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

WHEREAS, the Oneida Business Committee originally adopted the All-Terrain Vehicle Law through resolution BC-06-16-04-B; and

WHEREAS, the Amendments to the Law transfer the Environment Resource Board's original hearing body authority and responsibilities to the Oneida Judiciary as part of an effort to standardize and streamline all of the Nation's hearing responsibilities; and

WHEREAS, a public meeting on the proposed Amendments was held on June 15, 2017 in accordance with the Legislative Procedures Act; and

NOW THEREFORE BE IT RESOLVED, that the All-Terrain Vehicle Law Amendments are hereby adopted and shall become effective on October 1, 2017.



Statement of Effect

All-Terrain Vehicle Law Amendments

Summary

This Resolution adopts Amendments to the All-Terrain Vehicle Law (the “Law”) which transfer the Environmental Resource Board’s original hearing body authority to the Oneida Judiciary.

Submitted by: Krystal L. John, Staff Attorney, Oneida Law Office

Analysis by the Legislative Reference Office

As stated above, these amendments will transfer the delegation of original hearing body authority from the Environmental Resource Board to the Oneida Judiciary. Such a transfer would implicate the Judiciary law and the Environmental Resource Board’s by-laws.

The transfer of hearing body authority would fit into the Oneida Judiciary’s subject matter jurisdiction according to the Judiciary law based on section 801.5-2, which provides that, “The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following... (a) Tribal laws which specifically authorize the Trial Court to exercise jurisdiction...” 8 O.C. 801 § 801.5-2. The amendments to the Law specifically authorize the Trial Court to exercise jurisdiction based on section 410.7-2. *Hearing and Appeals of Contested Actions*, which reads as follows:

All citations, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved. ...

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure. ...

The Environmental Resource Board’s by-laws provide the Board’s duties and responsibilities, among other things. Adoption of this law conflicts with the Board’s by-laws and the by-laws recognize the Environmental Resource Board’s original hearing body authority in section 1-4.b., which reads as follows: “The ERB shall serve as the original hearing body in matters concerning environmental and conservation laws and ordinances promulgated by the Oneida Tribe.” Accordingly, if this resolution is adopted, the Environmental Resource Board’s by-laws would need to be amended to remove the original hearing body authority from the Board’s duties and responsibilities.

A public meeting was held for these Amendments on June 15, 2017 for which the public comment period expired on June 22, 2017 in accordance with the Legislative Procedures Act. There were not any oral or written comments submitted.

Conclusion

Adoption of this Resolution would require the Environmental Resource Board's by-laws to be amended to remove the original hearing body authority from the Board's duties and responsibilities.



Hearing Authority Transfer Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: LOC	SPONSOR: Tehassi Hill	DRAFTER: Krystal L. John	ANALYST: Candice E. Skenandore
Intent of the Amendments	To further utilize the Judiciary.		
Purpose	To transfer the Environmental Resource Board (ERB) hearing authority to the Judiciary.		
Affected Entities	Trial Court, ERB		
Affected Legislation	Hunting, Fishing and Trapping law, Public Use of Tribal Land, Tribal Environmental Response, Well Abandonment Law, All-Terrain Vehicle Law, Water Resources Ordinance		
Enforcement/Due Process	ERB will no longer hold hearings; hearing will now be conducted by the Trial Court in accordance with the Rules of Civil Procedure.		
Public Meeting	A public meeting was held on June 15, 2017.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. Since 1985, ERB served as the hearing body authority over the Nation's environmental regulations. On May 2, 1990, the Oneida Business Committee established the Oneida Tribal Judicial System (aka Oneida Appeals Commission) and General Tribal Council reauthorized the Oneida Tribal Judicial System on August 19, 1991 [*See BC Resolution 05-02-90 and GTC Resolution 8-19-91-A*]. The purpose of the Oneida Appeals Commission was to enhance and protect self-governance and sovereignty as well as enhance the separation of powers between the legislative, executive and juridical responsibilities of the Nation. The Oneida Appeals Commission removed the Oneida Business Committee from initial judicial decisions [*See GTC Resolution 8-19-91-A*].
- B. In 2013, the General Tribal Council changed the structure of the Oneida Tribal Judicial System by creating an Oneida Judiciary comprised of the Tribal Court and a Court of Appeals through the adoption of the Judiciary law. The purpose of the Judiciary is to grant the Trial Court and Court of Appeals expanded subject matter jurisdiction and create a greater role for the use of mediation and/or peacemaking [*See GTC Resolution 01-07-13-B*].
- C. These proposed amendments will transfer hearing authority from ERB to the Trial Court. The following laws are amended to reflect the transfer of hearing authority:
- Hunting, Fishing and Trapping law (HTF)
 - Public Use of Tribal Land (Public Use)
 - Tribal Environmental Response (TERP)
 - Well Abandonment Law (Well Abandonment)
 - All-Terrain Vehicle Law (ATV)
 - Water Resources Ordinance (Water Resources)
 - On-Site Waste Disposal Ordinance (Waste Disposal)

SECTION 3. CONSULTATION

A. ERB and the Trial Court have been consulted in the development of this legislative analysis.

SECTION 4. PROCESS

A. These Laws have followed the process set forth in the Legislative Procedures Act (LPA) except that the public meeting was not properly noticed to all managers or directors. The LPA requires the public meeting notice, legislation, legislative analysis and fiscal impact statement, if fiscal impact statement is available, to be electronically provided to all managers or directors a minimum of ten business days before a public meeting is held [See *Legislative Procedures Act, 1 O.C. 109.8-2 (b)*]. The notice and backup documents were provided electronically to all managers or directors on Tuesday, June 13, 2017; the public meeting was held Thursday, June 15, 2017. The public meeting was properly noticed in the Kalihwisaks and was made public on the Oneida Register at least ten business days prior to the public meeting as required by the LPA [See *Legislative Procedures Act, 1 O.C. 8-2 (a & b)*]. The LOC extended the public comment period for these laws for an additional five business days, ending on Thursday, June 29, 2017.

B. A work meeting with ERB was held on Wednesday, May 17, 2017 and a work meeting with ERB and the Judiciary was held on Monday, June 12, 2017.

SECTION 5. CONTENTS OF THE LEGISLATION

A. The identified laws in Section 2.C of this analysis have been amended to state that the Trial Court is the entity authorized to conduct hearings.

SECTION 6. INTENT

A. The intent of these amendments is to further utilize the Oneida Judiciary. The LOC has already decided to transfer hearing authority from identified entities to the Judiciary. The majority of the Oneida Land Commission's and some of the Trust Enrollments Committee's hearing authority has already transferred to the Judiciary. Because the LOC is currently working on amendments the Domestic Animals law in which ERB has hearing authority, it was decided to amend all laws which grant ERB hearing authority and transfer that authority to the Judiciary.

SECTION 7. EFFECT ON EXISTING LEGISLATION

A. These amendments do not conflict with other laws or policies of the Nation.

SECTION 8. OTHER CONSIDERATIONS

A. The following table shows the type and approximate number of hearings ERB has held since 2012. Included are hearings that pertain to Domestic Animals violations; however, the Domestic Animal amendments are being processed separately in order to make further revisions. In total, ERB has held approximately 69 hearings since 2012.

64

	ATV	HFT	Waste Disposal	Public Use	TERP	Water Resources	Well Abandonment	Domestic Animal	TOTAL
2012	0	1	0	0	0	0	0	1	2
2013	0	5	0	0	0	0	0	0	5
2014	0	14	0	0	0	0	0	3	17
2015	0	0	0	1	0	0	0	6	7
2016	0	11	0	2	0	0	0	19	32
2017	0	2	0	0	0	0	0	4	6
TOTAL	0	33	0	3	0	0	0	33	69

65 **B.** Minor changes, including formatting, have been made to these laws to comply with drafting style.

66 These changes do not affect the content of these laws.

67 **C.** Please refer to the fiscal impact statement for any financial impacts.

68

69 SECTION 9. ADDITIONAL AMENDMENTS

70 **A. *Hunting, Fishing, and Trapping law (Law)*.** In additions to the amendments which transfer ERB's
71 hearing authority to the Judiciary, additional amendments were made to the Hunting, Fishing, and
72 Trapping law. These amendments include revising section 406.4-3 which states that this Law does
73 not negate the jurisdiction of the State of Wisconsin in instances that involve non-member Indians
74 and non-Indians. This means that non-member Indians and non-Indians hunting, fishing and trapping
75 on land owned by the Nation must adhere to the Nation's license, permit and tag requirements but
76 may also be subject to State requirements. In addition, license and permit holders cannot utilize
77 hunting, fishing, or trapping privileges within the Reservation using a State license that would
78 provide greater privileges than those afforded in this Law and any applicable rules [*See Hunting,*
79 *Fishing and Trapping, 4 O.C. 406.4-3*].

80

2017 07 26 for OBC Consideration
(Draft 1) – Clean

Title 4. Environment and Natural Resources – Chapter 410

ALL-TERRAIN VEHICLE

Kwah Tsyok Nu O'nikasleghto'tā Kayanlāhsa

Just all over the place, the type of vehicles, their laws

410.1. Purpose and Policy
410.2. Adoption, Amendment, Repeal
410.3. Definitions
410.4. Age Requirements

410.5. Rules of Operation
410.6. Enforcement
410.7. Sanctions

410.1-1. Purpose and Policy

410.1-1. The purpose of this law is to govern the safe use of all-terrain vehicles within the Tribal jurisdiction of the Oneida Reservation to allow enforcement for protection of the community members and the environment.

410.2. Adoption, Amendment, Repeal

410.2-1. This law was adopted by the [Oneida Business Committee or Oneida General Tribal Council] by resolution BC-6-16-04-B and amended by resolution _____.

410.2-2. This law may be amended or repealed by the [Oneida Business Committee and/or Oneida General Tribal Council] pursuant to the procedures set out in the Legislative Procedures Act.

410.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

410.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

410.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

410.3. Definitions

410.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein, or defined within any section, shall be used in their ordinary and everyday sense.

(a) "Agricultural purpose" means a purpose related to beekeeping, operating commercial feedlots, dairying, egg production, floriculture, fish or fur farming, forest and game management, grazing, livestock raising, operating orchards, plant greenhouses or nurseries, poultry raising, raising grain, grass, mint or seed crops, sod farming or raising fruits, nuts, berries or vegetables.

(b) "All-terrain vehicle" means an engine-driven device which has a net weight of 900 pounds or less, which has a width of 48 inches or less, which is equipped with a seat designed to be straddled by the operator and which is designed to travel on 3 or more low-pressure tires. A low-pressure tire is a tire which has a minimum width of 6 inches, which is designed to be mounted on a rim with a maximum diameter of 12 inches and which is designed to be inflated with an operating pressure not to exceed 6 pounds per square inch as recommended by the manufacturer.

(c) "All-terrain vehicle route" means a highway, sidewalk, dirt or gravel trail, designated for use by all-terrain vehicle operators by the Oneida Tribe of Indians of Wisconsin having jurisdiction as authorized under this section.

(d) "All-terrain vehicle trail" means a marked corridor on public property or on private lands subject to public easement or lease, designated for use by all-terrain vehicle operators by the Oneida Tribe of Indians of Wisconsin having jurisdiction, but excluding roadways of highways except those roadways that are seasonally not maintained for motor vehicle traffic.

(e) "Conservation Warden" shall mean an employee of the Oneida Conservation Department empowered by the Oneida Tribe of Indians of Wisconsin to enforce the provisions of this Law and regulations promulgated pursuant to this Law. The term Conservation Warden shall include an Officer of the Oneida Police Department.

(f) "Department" means the Oneida License Department.

(g) "Highway" means all public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel. It includes those roads or driveways within the Reservation, parks and upon the grounds of Tribal schools.

(h) "Immediate family" means persons who are related as spouses, as siblings or as parent and child.

(i) "Implement of husbandry" means a vehicle or piece of equipment or machinery designed for agricultural purposes, used exclusively in the conduct of agricultural operations and used principally off the highway, or a trailer-mounted bulk liquid fertilizer container.

(j) "Land under the management and control of a person's immediate family" means land owned or leased by the person or a member of the person's immediate family over which the owner or lessee has management control. This term excludes land owned or leased by an organization of which the person or a member of the person's immediate family is a member.

(k) "Operator" means a person who operates an all-terrain vehicle, who is responsible for the operation of an all-terrain vehicle or who is supervising the operation of an all-terrain vehicle.

(l) "Owner" means a person who has lawful possession of an all-terrain vehicle by virtue of legal title or equitable interest in the all-terrain vehicle which entitles the person to possession of the all-terrain vehicle.

(m) "Protective Headgear" means a helmet that is specifically designed for motorcycle or all-terrain vehicle use that meets the United States Department of Transportation standards for motorcycle helmets. A bicycle helmet is not an acceptable protective helmet.

(n) "Public utility" means any corporation, company, individual or association which furnishes products or services to the public including but not limited to, railroads, telecommunications or telegraph companies and any company furnishing or producing heat, light, power or water.

(o) "Reservation" shall mean all the lands and waters within the exterior boundaries designated by the Treaty with the Oneida. 7 Stat. 566 (1838).

(p) "Residential area" shall mean a district where people live; occupied primarily by private residences.

(q) "Registration documentation" means an all-terrain vehicle registration certificate, a validated registration receipt, or a registration decal.

(r) "Right of way" means the privilege of the immediate use of the roadway.

(s) "Small all-terrain vehicle" means an all-terrain vehicle that has 4 wheels and that has

either an engine certified by the manufacturer at not more than 90 cubic centimeters or an equivalent power unit.

(t) "Tribal Lands" means all lands within the exterior boundaries of the Oneida Indian reservation as defined by the 1838 Treaty, or all land located in Wisconsin which is held in Trust by the United States of America for the benefit of the Oneida Tribe of Indians of Wisconsin.

(u) "Nation" means the Oneida Nation.

(v) "Used exclusively on private property" means use of an all-terrain vehicle by the owner of the all-terrain vehicle or a member of his or her immediate family only on land owned or leased by the all-terrain vehicle owner or a member of his or her immediate family.

410.4. Age Requirements

410.4-1.

(a) The minimum age to operate an all-terrain vehicle is twelve (12) years of age unless he or she is operating a small all-terrain vehicle on an all-terrain vehicle trail designated by the Nation and he or she is accompanied by his or her parent.

(b) A person who is at least 12 years of age but under 16 years of age may not operate an all-terrain vehicle unless he or she holds a valid all-terrain vehicle safety certificate or is accompanied by a person over 18 years of age.

410.5. Rules of Operation

410.5-1. No person shall operate an all-terrain vehicle:

(a) In any careless way so as to endanger the safety of himself or herself or the property or the safety of another person or property.

(b) On the private property of another without the consent of the owner or lessee. Failure to post private property does not imply consent for all-terrain vehicle use.

(c) On Tribal lands without the consent of the Nation or Indian owner. Failure to post Tribal lands does not imply consent for all-terrain vehicle use.

(d) With any firearms in his or her possession unless it is unloaded and enclosed in a carrying case, or any bow unless it is unstrung or enclosed in a carrying case, within the Reservation and on public highways.

(e) To drive, pursue, take, catch, kill, hunt, trap or harvest any animal except as a part of normal farming operations involving the driving of livestock.

(f) When within 150 feet of a dwelling at a speed exceeding 10 miles per hour without owners consent.

(g) On the frozen surface of public waters within 100 feet of a person not in or on an all-terrain vehicle or motor vehicle or within 100 feet of a fishing shanty at a speed exceeding 10 miles per hour.

(h) On any pathways or sidewalks specified for pedestrian use.

(i) On any public, church, school property, cemetery, burial ground, campground, park or business properties, airport or landing facility without consent.

(j) Without wearing the required eye protection such as goggles, sunglasses, or glasses.

(k) In any streams or creeks.

(l) On any project or program assigned land.

(m) In a manner which violates rules promulgated by the Nation.

(n) In excess of 10 mph when traveling within 100 feet of a person not on an all-terrain

vehicle, snowmobile or motorcycle.

(o) Outside or off of any designated all-terrain route or trail.

410.5-2. *Rental of All Terrain Vehicles.*

(a) No person who is engaged in the rental or leasing of all-terrain vehicles to the public may do any of the following:

(1) Rent or lease an all-terrain vehicle for operation by a person who will be operating an all-terrain vehicle for the first time unless the person engaged in the rental or leasing gives the person instruction on how to operate an all-terrain vehicle.

(2) Rent or lease an all-terrain vehicle to a person under 16 years of age.

(3) Rent or lease an all-terrain vehicle without first ascertaining that any person under the age of 18 who will be on the all-terrain vehicle has required protective headgear

(b) A person who is engaged in the rental or leasing of all-terrain vehicles to the public shall have clean, usable protective headgear available for rent in sufficient quantity to provide headgear to all persons under the age of 18 who will be on all-terrain vehicles that the person rents or leases.

(c) The Environmental Resource Board may promulgate rules to establish minimum standards for the instruction given under par. (a)1.

410.5-3. *Use of Headgear.* No person may operate or be a passenger on an all-terrain vehicle without wearing protective headgear with the chin strap properly fastened, unless one of the following applies:

(a) The person is at least 18 years of age.

(b) The all-terrain vehicle is being operated for an agricultural purpose.

410.5-4. *Operation on or near highways.* All-terrain vehicles may not be operated on any highways within the exterior boundaries of the Nation, except for the following:

(a) All-terrain vehicles owned by the Nation, a municipality, state agency or public utility while the operator is engaged in an emergency or in the operation of an all-terrain vehicle directly related to the functions of the Nation, a municipality, state agency or public utility if safety does not require strict adherence to these restrictions.

(b) The Nation, a county, town, city or village may block off highways under its jurisdiction for the purpose of allowing special all-terrain vehicle and/or public events.

(c) To cross a highway. The crossing of a roadway is authorized only if the crossing is done in the most direct manner practicable, if the crossing is made at a place where no obstruction prevents a quick and safe crossing, and if the operator stops the all-terrain vehicle prior to the crossing and yields the right-of-way to other vehicles, pedestrians, and electric personal assistive mobility devices using the roadway.

(d) On any roadway which is seasonally not maintained for motor vehicle traffic. Operation of an all-terrain vehicle on this type of roadway is authorized only during the seasons when no maintenance occurs and only if the roadway is not officially closed to all-terrain vehicle traffic.

(e) To cross a bridge, culvert or railroad right-of-way. The crossing of a bridge, culvert, or railroad right-of-way is not authorized if the roadway is officially closed to all-terrain vehicle traffic. The crossing is authorized only if the crossing is done in the most direct manner practicable, if the crossing is made at a place where no obstruction prevents a quick and safe crossing, and if the operator stops the all-terrain vehicle prior to crossing and yields to pedestrians, and electric personal assistive mobility devices using the

highway.

(f) On highways designated as all-terrain vehicle routes. Operation of all-terrain vehicles on a highway which is an all-terrain vehicle route is authorized only for the extreme right side of the highway except that left turns may be made from any part of the highway which is safe given prevailing conditions.

(g) On highways if the all-terrain vehicle is an implement of husbandry, if used exclusively for agricultural purposes and if the all-terrain vehicle is registered for private use.

410.5-5. *Operation adjacent to highways.* All-terrain vehicles may be operated adjacent to a highway on an all-terrain vehicle route or trail if the all-terrain vehicle is operated in the following manner:

(a) At a distance of 10 feet or more from the highway along U.S. numbered highways, state and county highways, Tribal roads, town roads, and BIA roads.

(b) Outside of the highways along town highways.

(c) During hours of darkness in the same direction as motor vehicle traffic in the nearest lane, although during daylight hours travel may be in either direction regardless of the flow of motor vehicle traffic.

(d) Not in excess of the speed limits of the adjacent highway and not to exceed 35 miles per hour.

(e) With due regard to safety and in compliance with rules promulgated by the Nation.

(f) Not at a rate of speed that is unreasonable or improper under the circumstances.

410.5-6. *Equipment requirements.*

(a) A person who operates an all-terrain vehicle during hours of darkness or during daylight hours on any highway right-of-way is required to display a lighted headlamp and tail lamp on the all-terrain vehicle.

(b) The headlamp on an all-terrain vehicle is required to display a white light of sufficient illuminating power to reveal any person, vehicle or substantial object at a distance of at least 200 feet ahead of the all-terrain vehicle.

(c) The tail lamp on an all-terrain vehicle is required to display a red light plainly visible during hours of darkness from a distance of 500 feet to the rear.

(d) Every all-terrain vehicle is required to be equipped with at least one brake operated either by hand or by foot.

(e) Every all-terrain vehicle is required to be equipped with a functioning muffler to prevent excessive or unusual noise.

410.5-7. *Residential Areas.*

(a) All-terrain operators in the residential areas:

(1) Are prohibited from operating all-terrain vehicles from 9pm-6am.

(2) Shall not operate all-terrain vehicles in excess of 15 miles per hour.

(3) Shall not operate all-terrain vehicles on sidewalks or yards, unless the operator is on his or her own land or leases the land.

(4) Shall use extra caution, including yielding right of way, whenever pedestrians or other motor vehicle traffic are in the near vicinity.

(5) Shall not cause excessive noise with all-terrain vehicles.

(6) Shall not use the public driveways of Tribal service providers, unless conducting business.

(7) Shall not use the Tribal residential area as a riding area. In the Tribal residential area, all-terrain vehicles should only be utilized to get to and from

another area.

(A) Operators shall use the shortest distances when entering and exiting the Tribal residential area. For example, operators going to a residence within the Tribal residential area must take the most direct route to the residence.

410.5-8. *Accidents.*

(a) If an accident results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of each all-terrain vehicle involved in the accident shall give notice of the accident to a conservation warden or local law enforcement officer as soon as possible and shall file a written report of the accident within 10 days after the accident to the Oneida Police Department.

(b) If the operator of an all-terrain vehicle is physically incapable of making the report required by this subsection and there was another witness to the accident capable of making the report, the witness may make the report.

410.5-9. *Routes and Trails.*

(a) The Nation shall encourage and supervise a system of all-terrain vehicle routes and trails. The Division of Land Management, in cooperation with the Conservation Department, shall establish standards and procedures for certifying the designation of all-terrain vehicle routes and trails.

(b) The Nation may specify effective periods for the use of all-terrain vehicle routes and trails and may restrict or prohibit the operation of an all-terrain vehicle during certain periods of the year.

(c) The Nation shall establish uniform all-terrain vehicle route and trail signs and standards.

(d) Interference with signs and standards are prohibited.

(1) No person may intentionally remove, damage, deface, move or obstruct any uniform all-terrain vehicle route or trail sign or standard or intentionally interfere with the effective operation of any uniform all-terrain vehicle route or trail sign or standards if the sign or standard is legally placed by the Nation, the state, any municipality or any authorized individual.

(2) No person may possess any uniform all-terrain vehicle route or trail sign or standard of the type established by the Nation for the warning, instruction or information of the public, unless he or she obtained the uniform all-terrain vehicle route or trail sign or standard in a lawful manner. Possession of a uniform all-terrain vehicle route or trail sign or standard creates a rebuttable presumption of illegal possession.

(e) Interference with trails prohibited. No person may intentionally obstruct or interfere with an all-terrain vehicle route or trail.

410.6. *Sanctions.*

410.6-1. The following sanctions may be imposed for violations of the All-Terrain Vehicle Law:

(a) All fines and forfeitures shall be paid to the Nation.

Violation		Sanction
(a) Unlawful rental of all-terrain vehicle	sec. 5-2.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00

(b) Operating all-terrain vehicle in a careless manner	sec. 5-1(a)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(c) Operating all-terrain vehicle on the private property of another without consent	sec. 5-1(b)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$130.00
(d) Operating all-terrain vehicle on Tribal Lands without consent	sec. 5-1(c)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00 Non-Members will be turned over to Oneida Police Department or County Sheriff's Department
(e) Transporting loaded or uncased firearm or a strung or uncased bow on all-terrain vehicle	sec. 5-1(d)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$500.00
(f) Drive, pursue, take, catch, kill, hunt, trap or harvest any animal from an all-terrain vehicle	sec. 5-1(e)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$250.00
(g) Operating all-terrain vehicle within 150 feet of a dwelling at a speed exceeding 10 miles per hour without owners consent	sec. 5-1(f)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(h) Operating all-terrain vehicle on frozen surface of public waters within 100 feet of a person or fishing shanty at a speed exceeding 10 miles per hour	sec. 5-1(g)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(i) Operate/ride all-terrain vehicle without protective headgear	sec. 5-3.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(j) Illegal operation of all-terrain vehicles on or in the vicinity of highways	sec. 5-4.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(k) All-terrain equipment violations	sec. 5-7.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(l) Failure to report all-terrain	sec. 5-9.	1 st Violation: \$25.00 2 nd Violation: \$50.00

vehicle accident		3 rd Violation: \$100.00
(m) Interference with all-terrain vehicle route or trail signs and standards	sec. 5-10(d)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$250.00
(o) Operating on a church property, school property, cemetery, burial ground, campground, parks, business, airport or landing facility without permission	sec. 5-1(i)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$200.00
(p) Operating at a speed that is unreasonable or improper	sec. 5-6(f)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(q) Operating all-terrain vehicle in or on project or program assigned lands	sec. 5-1(l)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(r) Operating in excess of 10mph when traveling within 100 feet of a person not on an all-terrain vehicle, snowmobile or motorcycle	sec. 5-1(n)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(s) Owner permitting operation of all-terrain vehicle by person who does meet age requirements	sec. 4-1.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$140.00
(t) Operating an all-terrain vehicle outside or off the designated route or trail	sec. 5-1(o)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(u) Operating an all-terrain vehicle in Tribal Residential Areas	sec.5-8.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(v) Operating on any pathways or sidewalks specified for pedestrian use	sec. 5-1(h)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(w) Operating all-terrain vehicle without eye protection	sec. 5-1(j)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(x) Operating in any streams or creeks	sec. 5-1(k)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(y) Illegally operating on or adjacent	sec. 5-5.	1 st Violation: \$25.00

to highways		2 nd Violation: \$50.00 3 rd Violation: \$150.00
(z) Obstructing trail.	sec. 5-10 (e)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00

410.7. Violations, Enforcement and Appeals

410.7-1. *Citations.* Citations for the violation of this law and/or orders issued pursuant to this law may include sanctions, fines, penalties and conditional and other orders in accordance with the schedule developed under section 410.6-1. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(a) Any order issued pursuant to this law that is not complied with may be physically enforced by Oneida Police Officers or Oneida Conservation Wardens at the Owner's expense.

(b) The Oneida Police Department, by means of Oneida Police Officers and Oneida Conservation Wardens, is authorized to take any appropriate action to prevent or remove a violation of this Law.

410.7-2. *Hearing and Appeals of Contested Actions.* All citations, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service.* Community service may be substituted for monetary fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10) of the fine.

(b) *Allocation of Citation Revenue.* All citations shall be paid to the Environmental Resource Board or its designee, the proceeds of which shall be contributed to General Fund.

(c) *Appealing the Decision of the Judiciary Trial Court.* Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) *Pursuing Payment of a Citation.* The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching the judgment to Tribal member's per capita payment pursuant to the Per Capita law.

End.

Emergency Adoption - BC-9-24-03-A
Emergency Adoption Extension - BC-3-31-04-C
Permanent Adoption - BC-6-16-04-B

2017 07 26 – OBC Consideration
(Draft 1) Redline to Current

Title 4. Environment and Natural Resources – Chapter 410

ALL-TERRAIN VEHICLE

Kwah Tsyok Nu O'nikasleghto'tá Kayanláhsla

Just all over the place, the type of vehicles, their laws

410.1. Purpose and Policy

410.2. Adoption, Amendment, Repeal

410.3. Definitions

410.4. Age Requirements

410.5. Rules of Operation

410.6. Enforcement

410.7. Sanctions

410.1-1. Purpose and Policy

410.1-1. The purpose of this law is to govern the safe use of all-terrain vehicles within the Tribal jurisdiction of the Oneida Reservation to allow enforcement for protection of the community members and the environment.

410.2. Adoption, Amendment, Repeal

410.2-1. This law was adopted by the [Oneida Business Committee or Oneida General Tribal Council] by resolution BC-6-16-04-B and amended by resolution _____.

410.2-2. This law may be amended or repealed by the [Oneida Business Committee and/or Oneida General Tribal Council] pursuant to the procedures set out in the Legislative Procedures Act.

410.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

410.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

410.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

~~410.2-1. This law is adopted by the Oneida Business Committee under the authority granted by the Oneida General Tribal Council through the Constitution of the Oneida Tribe of Indians of Wisconsin.~~

~~410.2-2. This law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.~~

~~410.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.~~

~~410.2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this policy are hereby repealed unless specifically re-enacted after adoption of this law.~~

410.3. Definitions

410.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein, or defined within any section, shall be used in their ordinary and everyday sense.

(a) “Agricultural purpose” means a purpose related to beekeeping, operating commercial feedlots, dairying, egg production, floriculture, fish or fur farming, forest and game management, grazing, livestock raising, operating orchards, plant greenhouses or

nurseries, poultry raising, raising grain, grass, mint or seed crops, sod farming or raising fruits, nuts, berries or vegetables.

(b) –“All-terrain vehicle” means an engine-driven device which has a net weight of 900 pounds or less, which has a width of 48 inches or less, which is equipped with a seat designed to be straddled by the operator and which is designed to travel on 3 or more low-pressure tires. A low-pressure tire is a tire which has a minimum width of 6 inches, which is designed to be mounted on a rim with a maximum diameter of 12 inches and which is designed to be inflated with an operating pressure not to exceed 6 pounds per square inch as recommended by the manufacturer.

(c) –“All-terrain vehicle route” means a highway, sidewalk, dirt or gravel trail, designated for use by all-terrain vehicle operators by the Oneida Tribe of Indians of Wisconsin having jurisdiction as authorized under this section.

(d) –“All-terrain vehicle trail” means a marked corridor on public property or on private lands subject to public easement or lease, designated for use by all-terrain vehicle operators by the Oneida Tribe of Indians of Wisconsin having jurisdiction, but excluding roadways of highways except those roadways that are seasonally not maintained for motor vehicle traffic.

(e) –“Conservation Warden” shall mean an employee of the Oneida Conservation Department empowered by the Oneida Tribe of Indians of Wisconsin to enforce the provisions of this Law and regulations promulgated pursuant to this Law. The term Conservation Warden shall include an Officer of the Oneida Police Department.

(f) –“Department” means the Oneida License Department.

(g) –“Highway” means all public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel. It includes those roads or driveways within the Reservation, parks and upon the grounds of Tribal schools.

(h) –“Immediate family” means persons who are related as spouses, as siblings or as parent and child.

(i) –“Implement of husbandry” means a vehicle or piece of equipment or machinery designed for agricultural purposes, used exclusively in the conduct of agricultural operations and used principally off the highway, or a trailer-mounted bulk liquid fertilizer container.

(j) –“Land under the management and control of a person’s immediate family” means land owned or leased by the person or a member of the person’s immediate family over which the owner or lessee has management control. This term excludes land owned or leased by an organization of which the person or a member of the person’s immediate family is a member.

(k) –“Operator” means a person who operates an all-terrain vehicle, who is responsible for the operation of an all-terrain vehicle or who is supervising the operation of an all-terrain vehicle.

(l) –“Owner” means a person who has lawful possession of an all-terrain vehicle by virtue of legal title or equitable interest in the all-terrain vehicle which entitles the person to possession of the all-terrain vehicle.

(m) –“Protective Headgear” means a helmet that is specifically designed for motorcycle or all-terrain vehicle use that meets the United States Department of Transportation standards for motorcycle helmets. A bicycle helmet is not an acceptable protective helmet.

(n) –“Public utility” means any corporation, company, individual or association which

furnishes products or services to the public including but not limited to, railroads, telecommunications or telegraph companies and any company furnishing or producing heat, light, power or water.

(o) “Reservation” shall mean all the lands and waters within the exterior boundaries designated by the Treaty with the Oneida. 7 Stat. 566 (1838).

(p) “Residential area” shall mean a district where people live; occupied primarily by private residences.

(q) “Registration documentation” means an all-terrain vehicle registration certificate, a validated registration receipt, or a registration decal.

(r) “Right of way” means the privilege of the immediate use of the roadway.

(s) “Small all-terrain vehicle” means an all-terrain vehicle that has 4 wheels and that has either an engine certified by the manufacturer at not more than 90 cubic centimeters or an equivalent power unit.

(t) “Tribal Lands” means all lands within the exterior boundaries of the Oneida Indian reservation as defined by the 1838 Treaty, or all land located in Wisconsin which is held in Trust by the United States of America for the benefit of the Oneida Tribe of Indians of Wisconsin.

(u) “TribeNation” means the Oneida Tribe of Indians of WisconsinNation.

(v) “Used exclusively on private property” means use of an all-terrain vehicle by the owner of the all-terrain vehicle or a member of his or her immediate family only on land owned or leased by the all-terrain vehicle owner or a member of his or her immediate family.

410.4. Age Requirements

410.4-1.

(a) The minimum age to operate an all-terrain vehicle is twelve (12) years of age unless he or she is operating a small all-terrain vehicle on an all-terrain vehicle trail designated by the TribeNation and he or she is accompanied by his or her parent.

(b) A person who is at least 12 years of age but under 16 years of age may not operate an all-terrain vehicle unless he or she holds a valid all-terrain vehicle safety certificate or is accompanied by a person over 18 years of age.

410.5. Rules of Operation

410.5-1. No person shall operate an all-terrain vehicle:

(a) In any careless way so as to endanger the safety of himself or herself or the property or the safety of another person or property.

(b) On the private property of another without the consent of the owner or lessee. Failure to post private property does not imply consent for all-terrain vehicle use.

(c) On Tribal lands without the consent of the TribeNation or Indian owner. Failure to post Tribal lands does not imply consent for all-terrain vehicle use.

(d) With any firearms in his or her possession unless it is unloaded and enclosed in a carrying case, or any bow unless it is unstrung or enclosed in a carrying case, within the Reservation and on public highways.

(e) To drive, pursue, take, catch, kill, hunt, trap or harvest any animal except as a part of normal farming operations involving the driving of livestock.

(f) When within 150 feet of a dwelling at a speed exceeding 10 miles per hour without owners consent.

(g) On the frozen surface of public waters within 100 feet of a person not in or on an all-

terrain vehicle or motor vehicle or within 100 feet of a fishing shanty at a speed exceeding 10 miles per hour.

(h) On any pathways or sidewalks specified for pedestrian use.

(i) On any public, church, school property, cemetery, burial ground, campground, park or business properties, airport or landing facility without consent.

(j) Without wearing the required eye protection such as goggles, sunglasses, or glasses.

(k) In any streams or creeks.

(l) On any project or program assigned land.

(m) In a manner which violates rules promulgated by the [TribeNation](#).

(n) In excess of 10 mph when traveling within 100 feet of a person not on an all-terrain vehicle, snowmobile or motorcycle.

(o) Outside or off of any designated all-terrain route or trail.

410.5-2. Rental of All Terrain Vehicles.

(a) No person who is engaged in the rental or leasing of all-terrain vehicles to the public may do any of the following:

(1) Rent or lease an all-terrain vehicle for operation by a person who will be operating an all-terrain vehicle for the first time unless the person engaged in the rental or leasing gives the person instruction on how to operate an all-terrain vehicle.

(2) Rent or lease an all-terrain vehicle to a person under 16 years of age.

(3) Rent or lease an all-terrain vehicle without first ascertaining that any person under the age of 18 who will be on the all-terrain vehicle has required protective headgear

(b) A person who is engaged in the rental or leasing of all-terrain vehicles to the public shall have clean, usable protective headgear available for rent in sufficient quantity to provide headgear to all persons under the age of 18 who will be on all-terrain vehicles that the person rents or leases.

(c) The [Tribe-Environmental Resource Board](#) may promulgate rules to establish minimum standards for the instruction given under par. (a)1.

410.5-3. -Use of Headgear. No person may operate or be a passenger on an all-terrain vehicle without wearing protective headgear with the chin strap properly fastened, unless one of the following applies:

(a) The person is at least 18 years of age.

(b) The all-terrain vehicle is being operated for an agricultural purpose.

410.5-4. -Operation on or near highways. All-terrain vehicles may not be operated on any highways within the exterior boundaries of the [TribeNation](#), except for the following:

(a) All-terrain vehicles owned by the [TribeNation](#), a municipality, state agency or public utility while the operator is engaged in an emergency or in the operation of an all-terrain vehicle directly related to the functions of the [TribeNation](#), a municipality, state agency or public utility if safety does not require strict adherence to these restrictions.

(b) The [TribeNation](#), a county, town, city or village may block off highways under its jurisdiction for the purpose of allowing special all-terrain vehicle and/or public events.

(c) To cross a highway. The crossing of a roadway is authorized only if the crossing is done in the most direct manner practicable, if the crossing is made at a place where no obstruction prevents a quick and safe crossing, and if the operator stops the all-terrain vehicle prior to the crossing and yields the right-of-way to other vehicles, pedestrians, and electric personal assistive mobility devices using the roadway.

(d) On any roadway which is seasonally not maintained for motor vehicle traffic. Operation of an all-terrain vehicle on this type of roadway is authorized only during the seasons when no maintenance occurs and only if the roadway is not officially closed to all-terrain vehicle traffic.

(e) To cross a bridge, culvert or railroad right-of-way. The crossing of a bridge, culvert, or railroad right-of-way is not authorized if the roadway is officially closed to all-terrain vehicle traffic. The crossing is authorized only if the crossing is done in the most direct manner practicable, if the crossing is made at a place where no obstruction prevents a quick and safe crossing, and if the operator stops the all-terrain vehicle prior to crossing and yields to pedestrians, and electric personal assistive mobility devices using the highway.

(f) On highways designated as all-terrain vehicle routes. Operation of all-terrain vehicles on a highway which is an all-terrain vehicle route is authorized only for the extreme right side of the highway except that left turns may be made from any part of the highway which is safe given prevailing conditions.

(g) On highways if the all-terrain vehicle is an implement of husbandry, if used exclusively for agricultural purposes and if the all-terrain vehicle is registered for private use.

410.5-5. —Operation adjacent to highways. All-terrain vehicles may be operated adjacent to a highway on an all-terrain vehicle route or trail if the all-terrain vehicle is operated in the following manner:

(a) At a distance of 10 feet or more from the highway along U.S. numbered highways, state and county highways, Tribal roads, town roads, and BIA roads.

(b) Outside of the highways along town highways.

(c) During hours of darkness in the same direction as motor vehicle traffic in the nearest lane, although during daylight hours travel may be in either direction regardless of the flow of motor vehicle traffic.

(d) Not in excess of the speed limits of the adjacent highway and not to exceed 35 miles per hour.

(e) With due regard to safety and in compliance with rules promulgated by the [TribeNation](#).

(f) Not at a rate of speed that is unreasonable or improper under the circumstances.

410.5-6. —Equipment requirements.

(a) A person who operates an all-terrain vehicle during hours of darkness or during daylight hours on any highway right-of-way is required to display a lighted headlamp and tail lamp on the all-terrain vehicle.

(b) The headlamp on an all-terrain vehicle is required to display a white light of sufficient illuminating power to reveal any person, vehicle or substantial object at a distance of at least 200 feet ahead of the all-terrain vehicle.

(c) The tail lamp on an all-terrain vehicle is required to display a red light plainly visible during hours of darkness from a distance of 500 feet to the rear.

(d) Every all-terrain vehicle is required to be equipped with at least one brake operated either by hand or by foot.

(e) Every all-terrain vehicle is required to be equipped with a functioning muffler to prevent excessive or unusual noise.

410.5-7. —Residential Areas.

(a) All-terrain operators in the residential areas:

- (1) Are prohibited from operating all-terrain vehicles from 9pm-6am.
- (2) Shall not operate all-terrain vehicles in excess of 15 miles per hour.
- (3) Shall not operate all-terrain vehicles on sidewalks or yards, unless the operator is on his or her own land or leases the land.
- (4) Shall use extra caution, including yielding right of way, whenever pedestrians or other motor vehicle traffic are in the near vicinity.
- (5) Shall not cause excessive noise with all-terrain vehicles.
- (6) Shall not use the public driveways of Tribal service providers, unless conducting business.
- (7) Shall not use the Tribal residential area as a riding area. In the Tribal residential area, all-terrain vehicles should only be utilized to get to and from another area.
- (A) Operators shall use the shortest distances when entering and exiting the Tribal residential area. For example, operators going to a residence within the Tribal residential area must take the most direct route to the residence.

410.5-8. Accidents.

- (a) If an accident results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of each all-terrain vehicle involved in the accident shall give notice of the accident to a conservation warden or local law enforcement officer as soon as possible and shall file a written report of the accident within 10 days after the accident to the Oneida Police Department.
- (b) If the operator of an all-terrain vehicle is physically incapable of making the report required by this subsection and there was another witness to the accident capable of making the report, the witness may make the report.

410.5-9. Routes and Trails.

- (a) The Tribe-Nation shall encourage and supervise a system of all-terrain vehicle routes and trails. The Division of Land Management, in cooperation with the Conservation Department, shall establish standards and procedures for certifying the designation of all-terrain vehicle routes and trails.
- (b) The Tribe-Nation may specify effective periods for the use of all-terrain vehicle routes and trails and may restrict or prohibit the operation of an all-terrain vehicle during certain periods of the year.
- (c) The Tribe-Nation shall establish uniform all-terrain vehicle route and trail signs and standards.
- (d) Interference with signs and standards are prohibited.
 - (1) No person may intentionally remove, damage, deface, move or obstruct any uniform all-terrain vehicle route or trail sign or standard or intentionally interfere with the effective operation of any uniform all-terrain vehicle route or trail sign or standards if the sign or standard is legally placed by the Tribe-Nation, the state, any municipality or any authorized individual.
 - (2) No person may possess any uniform all-terrain vehicle route or trail sign or standard of the type established by the Tribe-Nation for the warning, instruction or information of the public, unless he or she obtained the uniform all-terrain vehicle route or trail sign or standard in a lawful manner. Possession of a uniform all-terrain vehicle route or trail sign or standard creates a rebuttable presumption of illegal possession.

(e) Interference with trails prohibited. No person may intentionally obstruct or interfere with an all-terrain vehicle route or trail.

~~410.6. Enforcement.~~

~~410.6 1. Conservation Wardens shall have the authority to enforce this Law and are authorized to issue citations for a violation(s) of the All Terrain Vehicle Law to an alleged violator.~~

~~(a) The Conservation Warden shall identify himself/herself and title.~~

~~(b) The Conservation Warden shall give the alleged violator the citation and shall retain a copy.~~

~~(c) The citation shall include:~~

~~(1) the violation.~~

~~(2) the penalties and/or fines.~~

~~(3) the date, time, and place of the hearing.~~

~~410.6 2. Environmental Resources Board Hearing. The Board shall hold any and all hearings on alleged violations of this Law in accordance with:~~

~~(a) The Administrative Procedures Act; and~~

~~(b) The By Laws of the Board.~~

410.76. Sanctions.

410.76-1. The following sanctions may be imposed for violations of the All-Terrain Vehicle Law:

(a) All fines and forfeitures shall be paid to the TribeNation.

Violation		Sanction
(a) Unlawful rental of all-terrain vehicle	sec. 5-2.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(b) Operating all-terrain vehicle in a careless manner	sec. 5-1(a)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(c) Operating all-terrain vehicle on the private property of another without consent	sec. 5-1(b)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$130.00
(d) Operating all-terrain vehicle on Tribal Lands without consent	sec. 5-1(c)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00 Non-Members will be turned over to Oneida Police Department or County Sheriff's Department
(e) Transporting loaded or uncased firearm or a strung or uncased bow on all-terrain vehicle	sec. 5-1(d)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$500.00
(f) Drive, pursue, take, catch, kill,	sec. 5-1(e)	1 st Violation: \$25.00

hunt, trap or harvest any animal from an all-terrain vehicle		2 nd Violation: \$50.00 3 rd Violation: \$250.00
(g) Operating all-terrain vehicle within 150 feet of a dwelling at a speed exceeding 10 miles per hour without owners consent	sec. 5-1(f)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(h) Operating all-terrain vehicle on frozen surface of public waters within 100 feet of a person or fishing shanty at a speed exceeding 10 miles per hour	sec. 5-1(g)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(i) Operate/ride all-terrain vehicle without protective headgear	sec. 5-3.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(j) Illegal operation of all-terrain vehicles on or in the vicinity of highways	sec. 5-4.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(k) All-terrain equipment violations	sec. 5-7.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(l) Failure to report all-terrain vehicle accident	sec. 5-9.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(m) Interference with all-terrain vehicle route or trail signs and standards	sec. 5-10(d)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$250.00
(o) Operating on a church property, school property, cemetery, burial ground, campground, parks, business, airport or landing facility without permission	sec. 5-1(i)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$200.00
(p) Operating at a speed that is unreasonable or improper	sec. 5-6(f)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(q) Operating all-terrain vehicle in or on project or program assigned lands	sec. 5-1(l)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(r) Operating in excess of 10mph	sec. 5-1(n)	1 st Violation: \$25.00

when traveling within 100 feet of a person not on an all-terrain vehicle, snowmobile or motorcycle		2 nd Violation: \$50.00 3 rd Violation: \$100.00
(s) Owner permitting operation of all-terrain vehicle by person who does meet age requirements	sec. 4-1.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$140.00
(t) Operating an all-terrain vehicle outside or off the designated route or trail	sec. 5-1(o)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(u) Operating an all-terrain vehicle in Tribal Residential Areas	sec.5-8.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(v) Operating on any pathways or sidewalks specified for pedestrian use	sec. 5-1(h)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(w) Operating all-terrain vehicle without eye protection	sec. 5-1(j)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$100.00
(x) Operating in any streams or creeks	sec. 5-1(k)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(y) Illegally operating on or adjacent to highways	sec. 5-5.	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00
(z) Obstructing trail.	sec. 5-10 (e)	1 st Violation: \$25.00 2 nd Violation: \$50.00 3 rd Violation: \$150.00

410.7. Violations, Enforcement and Appeals

410.7-1. Citations. Citations for the violation of this law and/or orders issued pursuant to this law may include sanctions, fines, penalties and conditional and other orders in accordance with the schedule developed under section 410.6-1. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(a) Any order issued pursuant to this law that is not complied with may be physically enforced by Oneida Police Officers or Oneida Conservation Wardens at the Owner's expense.

(b) The Oneida Police Department, by means of Oneida Police Officers and Oneida Conservation Wardens, is authorized to take any appropriate action to prevent or remove a violation of this Law.

410.7-2. Hearing and Appeals of Contested Actions. All citations, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which

shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service.* Community service may be substituted for monetary fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10) of the fine.

(b) *Allocation of Citation Revenue.* All citations shall be paid to the Environmental Resource Board or its designee, the proceeds of which shall be contributed to General Fund.

(c) *Appealing the Decision of the Judiciary Trial Court.* Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) *Pursuing Payment of a Citation.* The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching the judgment to Tribal member's per capita payment pursuant to the Per Capita law.

~~410.7-2. All fines assessed under this section shall be paid within sixty days of the judgment of the final hearing body hearing and appeal, or otherwise within sixty days of the issuance of the citation.~~

~~410.7-3. Community service may be substituted for fines for any of the above violations at the discretion of the Board at the rate of one hour per \$10.00 of the fine.~~

~~410.7-4. All persons are encouraged to report violations of these regulations to the Oneida Police Department or Oneida Conservation Department. Any information received regarding violations shall be kept confidential by both Departments.~~

End.

Emergency Adoption - BC-9-24-03-A
 Emergency Adoption Extension - BC-3-31-04-C
 Permanent Adoption - BC-6-16-04-B

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

DATE: June 7, 2017

FROM: Rae Skenandore, Project Manager

TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

RE: **Fiscal Impact of the transfer of the Environmental Resource Board's Hearing Authority to the Oneida Judiciary**

I. Estimated Fiscal Impact Summary

Law: Domestic Animal		Draft 19
Hunting, Fishing and Trapping law (HTF)		Draft 2
Public Use of Tribal Land (Public Use)		Draft 1
Tribal Environmental Response (TERP)		Draft 1
Well Abandonment Law (Well Abandonment)		Draft 1
All-Terrain Vehicle Law (ATV)		Draft 1
Water Resources Ordinance (Water Resources)		Draft 1
On-Site Waste Disposal Ordinance (Waste Disposal)		Draft 1
Implementing Agency		
Oneida Police Department (OPD)		
Conservation		
Environmental Resource Board (ERB)		
Emergency Management		
Environmental Health and Safety Division		
Comprehensive Health Division		
Oneida Judiciary		
Estimated time to comply		January 1, 2018
Estimated Impact	Current Fiscal Year	10 Year Estimate
ERB stipend savings	\$830	\$8,300
Total Estimated Savings	\$830	\$8,300
Revenue and cost considerations		
Fee Schedules should be removed from the various Laws		
Uncertainties and Unknowns		
None		

II. Background

A. Legislative History

The Oneida Business Committee created the Environmental Resource Board through Resolution BC-02-22-85-B. GTC Resolution 01-07-13-B established the Oneida Judiciary.

B. Summary of Content

1. The Domestic Animal amendments are being processed separately in order to make further revisions. However, it is included here because there are no additional fiscal impacts due to the amendments.
2. All Laws are being amended to state that the Trial Court is the entity authorized to conduct hearings.
3. Other minor changes, including formatting, have been made to these Laws to comply with drafting style. These changes do not affect the content of these Laws.

C. Methodology and Assumptions

1. A “Fiscal Impact Statement” means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.
2. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.
3. The analysis was completed based on the information provided as of the date of this memo.

III. Agency

The hearing authority will simply be transferred from ERB to the Judiciary. Historical hearing stipends paid to the Board were \$750 in 2017, \$1,200 in 2016, and \$700 in 2015. Transferring the hearing authority to the Judiciary would result in an average savings of approximately \$830 annually. The Judiciary does not anticipate any additional costs as this will simply be absorbed into their existing duties. ERB has stated that they expect the transition of the hearing authority to be complete by January 1, 2018

IV. Financial Impact

Approximately \$830 savings annually.

V. Recommendation

Finance does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.



Legislative Operating Committee
July 19, 2017

Public Use of Tribal Land Law Amendments

Submission Date: 5/17/17	Public Meeting: 6/15/17
LOC Sponsor: Tehassi Hill	Emergency Enacted: n/a Expires: n/a

Summary: *This is a request to amend the law to remove the Environmental Resource Board's Hearing Body Authority and transfer it to the Judiciary.*

5/17/17 LOC: Motion by David P. Jordan to add each of these to the Active Files List as a high priority, assign Tehassi Hill as the sponsor, approve the public meeting packet, in addition to the Tribal Environmental Response law for June 15, 2017; seconded by Fawn Billie. Motion carried unanimously.

6/15/17: Public meeting held.

Next Steps:

- Accept the public meeting comments.
- Approve the Public Use of Tribal Land Law Amendments adoption packet and forward to the OBC for consideration.



TO: Legislative Operating Committee (LOC)
FROM: Krystal John, Staff Attorney, Oneida Law Office
DATE: July 19, 2017
RE: Public Use of Tribal Land Law Amendments: Public Meeting Comment Review

On June 15, 2017 a public meeting was held regarding the Public Use of Tribal Land Law Amendments. There were no oral or written comments received during the public meeting on June 15, 2017, or during the public meeting comment period ending on June 29, 2017; therefore no additional revisions were made to the draft.



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING
Environmental Resource Board's Authority Transfer**
Business Committee Conference Room-2nd Floor Norbert Hill Center
June 15, 2017 12:15 p.m.

Present: Brandon Stevens, Candice Skenandore, Clorissa Santiago, Leyne Orosco, Cathy Bachhuber, Chad Wilson, Laura Manthe, Eugene Schubert.

Brandon Stevens: Greetings. The time is 12:25 p.m. and today's date is Thursday June 15, 2017. I will now call the public meeting to order for the following laws:

- All-Terrain Vehicle
- On-Site Waste Disposal Ordinance
- Public Use of Tribal Land
- Tribal Environmental Response
- Water Resource Ordinance
- Well Abandonment
- Hunting, Fishing, and Trapping

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding these legislative proposals. The public meeting is not a question and answer period. All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Thursday June 29, 2017.

In attendance for today is just myself, Brandon Stevens. And I will impose a time limit for all speakers pursuant to section 16.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons.

Revisions were made to the identified laws which transfer the Environmental Resource Board's hearing authority to the Judiciary. In addition, the Hunting, Fishing, and Trapping law has an additional amendment which clarifies that non-member Indians and non-Indians that hunt, fish, and trap on the Reservation may be subject to State requirements as well as the requirements set forth in the Hunting, Fishing, and Trapping law.

Although the amendments are the same for all laws, except for the additional change to Hunting, Fishing, and Trapping law; we will process these laws individually for the sake of this public meeting. We will begin today's public meeting for All-Terrain Vehicle law.

Okay, we have people checked in and no oral testimony is requested from anyone in attendance. Anyone want to come up that is not on the list, please do so at this time.

Okay, seeing no oral testimony for the All-Terrain Vehicle law, I will close this public meeting at 12:18 p.m.

I will now open up the public meeting for the On-Site Waste Disposal Ordinance. The public meeting for the On-Site Waste Disposal Ordinance, or, and I'll sorry. I will ask at this time if anyone would like to come up and provide oral testimony please so do, that's not on the list. Seeing none, I will close this public meeting for the On-Site Waste Disposal Ordinance at 12:19 p.m.

I will now open up the public meeting for the Public Use of Tribal Land at 12:19 p.m. I will open up the floor for oral testimony for those who have not signed in and would like to provide oral testimony. Seeing none, I will close this public meeting for the Public Use of Tribal Land at 12:19 p.m.

I will now open up the public meeting for the Tribal Environmental Response at 12:20 p.m. Open up the floor for any of those who want to provide oral testimony that are not signed in. Seeing none, I will close this public meeting for the Tribal Environmental Response at 12:20 p.m.

I will now open up the public meeting for the Water Resource Ordinance at 12:20 p.m. I'll open up the floor for any of those who would like to provide oral testimony that are not on the list. Seeing none, I will close the public meeting for the Water Resource Ordinance at 12:20 p.m.


I will now open up the public meeting for the Well Abandonment at 12:21 p.m. I'll open up the floor for any oral testimony for those who are not on the list. Seeing none, I will close the public meeting for the Well Abandonment at 12:21 p.m.

I will now open up the public meeting for the Hunting, Fishing, and Trapping . Please note that in addition to revision that transfers ERB's hearing authority to the Judiciary, an additional revision was made to provide clarity that non-member Indians and non-Indians that hunt, fish, and trap on the Reservation may be subject to State requirements as well as the requirements set forth in the Hunting, Fishing, and Trapping law. Opening up the floor for those who would like to provide oral testimony that are not signed in. Seeing none, I will close the public meeting for the Hunting, Fishing, and Trapping law at 12:22 p.m.

With no more individuals wanting to provide oral comment, I am closing the public meeting at 12:22 p.m. As a reminder the public comment period will remain open until Thursday, June 29, 2017 by close of business. Thank you.

-End of Meeting-



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson 
DATE: July 26, 2017
RE: Public Use of Tribal Land Law Amendments

Please find the following attached backup documentation for your consideration of the Public Use of Tribal Land Law Amendments:

1. Resolution: Public Use of Tribal Land Law Amendments
2. Statement of Effect: Public Use of Tribal Land Law Amendments
3. Public Use of Tribal Land Law Amendments: Legislative Analysis
4. Public Use of Tribal Land Law Amendments: Clean Draft
5. Public Use of Tribal Land Law Amendments: Redline to Current Draft
6. Public Use of Tribal Land Law Amendments: Fiscal Impact Statement

Overview

This resolution adopts amendments to the Public Use of Tribal Land Law to transfer the Environmental Resource Board's hearing authority to the Judiciary.

In accordance with the Legislative Procedures Act, a public meeting was held regarding this law on June 15, 2017 with a comment period closing on June 29, 2017. There were no comments provided. These amendments will become effective beginning in the new fiscal year on October 1, 2017.

Requested Action

Approve the Resolution: Public Use of Tribal Land Law Amendments

BC Resolution _____*Public Use of Tribal Land Law Amendments*

WHEREAS, the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and

WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

WHEREAS, the Oneida Business Committee originally adopted the Public Use of Tribal Land Law through resolution BC-05-15-14-C and thereafter amended it through resolutions BC-12-10-14-A and BC-01-13-16-C; and

WHEREAS, the Amendments to the Law transfer the Environment Resource Board's original hearing body authority and responsibilities to the Oneida Judiciary as part of an effort to standardize and streamline all of the Nation's hearing responsibilities; and

WHEREAS, a public meeting on the proposed Amendments was held on June 15, 2017 in accordance with the Legislative Procedures Act; and

NOW THEREFORE BE IT RESOLVED, that the Public Use of Tribal Land Law Amendments are hereby adopted and shall become effective on October 1, 2017.



Statement of Effect
Public Use of Tribal Land Law Amendments

Summary

This Resolution adopts Amendments to the Public Use of Tribal Land Law (the “Law”) which transfer the Environmental Resource Board’s original hearing body authority to the Oneida Judiciary.

Submitted by: Krystal L. John, Staff Attorney, Oneida Law Office

Analysis by the Legislative Reference Office

As stated above, these amendments will transfer the delegation of original hearing body authority from the Environmental Resource Board to the Oneida Judiciary. Such a transfer would implicate the Judiciary law and the Environmental Resource Board’s by-laws.

The transfer of hearing body authority would fit into the Oneida Judiciary’s subject matter jurisdiction according to the Judiciary law based on section 801.5-2, which provides that, “The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following... (a) Tribal laws which specifically authorize the Trial Court to exercise jurisdiction...” 8 O.C. 801 § 801.5-2. The amendments to the Law specifically authorize the Trial Court to exercise jurisdiction based on section 609.7-2. *Hearing and Appeals of Contested Actions*, which reads as follows:

All citations, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved. ...

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure. ...

The Environmental Resource Board’s by-laws provide the Board’s duties and responsibilities, among other things. Adoption of this law conflicts with the Board’s by-laws and the by-laws recognize the Environmental Resource Board’s original hearing body authority in section 1-4.b., which reads as follows: “The ERB shall serve as the original hearing body in matters concerning environmental and conservation laws and ordinances promulgated by the Oneida Tribe.” Accordingly, if this resolution is adopted, the Environmental Resource Board’s by-laws would need

to be amended to remove the original hearing body authority from the Board's duties and responsibilities.

A public meeting was held for these Amendments on June 15, 2017 for which the public comment period expired on June 22, 2017 in accordance with the Legislative Procedures Act. There were not any oral or written comments submitted.

Conclusion

Adoption of this Resolution would require the Environmental Resource Board's by-laws to be amended to remove the original hearing body authority from the Board's duties and responsibilities.



Hearing Authority Transfer Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: LOC	SPONSOR: Tehassi Hill	DRAFTER: Krystal L. John	ANALYST: Candice E. Skenandore
Intent of the Amendments	To further utilize the Judiciary.		
Purpose	To transfer the Environmental Resource Board (ERB) hearing authority to the Judiciary.		
Affected Entities	Trial Court, ERB		
Affected Legislation	Hunting, Fishing and Trapping law, Public Use of Tribal Land, Tribal Environmental Response, Well Abandonment Law, All-Terrain Vehicle Law, Water Resources Ordinance		
Enforcement/Due Process	ERB will no longer hold hearings; hearing will now be conducted by the Trial Court in accordance with the Rules of Civil Procedure.		
Public Meeting	A public meeting was held on June 15, 2017.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. Since 1985, ERB served as the hearing body authority over the Nation's environmental regulations. On May 2, 1990, the Oneida Business Committee established the Oneida Tribal Judicial System (aka Oneida Appeals Commission) and General Tribal Council reauthorized the Oneida Tribal Judicial System on August 19, 1991 [*See BC Resolution 05-02-90 and GTC Resolution 8-19-91-A*]. The purpose of the Oneida Appeals Commission was to enhance and protect self-governance and sovereignty as well as enhance the separation of powers between the legislative, executive and juridical responsibilities of the Nation. The Oneida Appeals Commission removed the Oneida Business Committee from initial judicial decisions [*See GTC Resolution 8-19-91-A*].
- B. In 2013, the General Tribal Council changed the structure of the Oneida Tribal Judicial System by creating an Oneida Judiciary comprised of the Tribal Court and a Court of Appeals through the adoption of the Judiciary law. The purpose of the Judiciary is to grant the Trial Court and Court of Appeals expanded subject matter jurisdiction and create a greater role for the use of mediation and/or peacemaking [*See GTC Resolution 01-07-13-B*].
- C. These proposed amendments will transfer hearing authority from ERB to the Trial Court. The following laws are amended to reflect the transfer of hearing authority:
- Hunting, Fishing and Trapping law (HTF)
 - Public Use of Tribal Land (Public Use)
 - Tribal Environmental Response (TERP)
 - Well Abandonment Law (Well Abandonment)
 - All-Terrain Vehicle Law (ATV)
 - Water Resources Ordinance (Water Resources)
 - On-Site Waste Disposal Ordinance (Waste Disposal)

SECTION 3. CONSULTATION

A. ERB and the Trial Court have been consulted in the development of this legislative analysis.

SECTION 4. PROCESS

A. These Laws have followed the process set forth in the Legislative Procedures Act (LPA) except that the public meeting was not properly noticed to all managers or directors. The LPA requires the public meeting notice, legislation, legislative analysis and fiscal impact statement, if fiscal impact statement is available, to be electronically provided to all managers or directors a minimum of ten business days before a public meeting is held [See *Legislative Procedures Act, 1 O.C. 109.8-2 (b)*]. The notice and backup documents were provided electronically to all managers or directors on Tuesday, June 13, 2017; the public meeting was held Thursday, June 15, 2017. The public meeting was properly noticed in the Kalihwisaks and was made public on the Oneida Register at least ten business days prior to the public meeting as required by the LPA [See *Legislative Procedures Act, 1 O.C. 8-2 (a & b)*]. The LOC extended the public comment period for these laws for an additional five business days, ending on Thursday, June 29, 2017.

B. A work meeting with ERB was held on Wednesday, May 17, 2017 and a work meeting with ERB and the Judiciary was held on Monday, June 12, 2017.

SECTION 5. CONTENTS OF THE LEGISLATION

A. The identified laws in Section 2.C of this analysis have been amended to state that the Trial Court is the entity authorized to conduct hearings.

SECTION 6. INTENT

A. The intent of these amendments is to further utilize the Oneida Judiciary. The LOC has already decided to transfer hearing authority from identified entities to the Judiciary. The majority of the Oneida Land Commission's and some of the Trust Enrollments Committee's hearing authority has already transferred to the Judiciary. Because the LOC is currently working on amendments the Domestic Animals law in which ERB has hearing authority, it was decided to amend all laws which grant ERB hearing authority and transfer that authority to the Judiciary.

SECTION 7. EFFECT ON EXISTING LEGISLATION

A. These amendments do not conflict with other laws or policies of the Nation.

SECTION 8. OTHER CONSIDERATIONS

A. The following table shows the type and approximate number of hearings ERB has held since 2012. Included are hearings that pertain to Domestic Animals violations; however, the Domestic Animal amendments are being processed separately in order to make further revisions. In total, ERB has held approximately 69 hearings since 2012.

64

	ATV	HFT	Waste Disposal	Public Use	TERP	Water Resources	Well Abandonment	Domestic Animal	TOTAL
2012	0	1	0	0	0	0	0	1	2
2013	0	5	0	0	0	0	0	0	5
2014	0	14	0	0	0	0	0	3	17
2015	0	0	0	1	0	0	0	6	7
2016	0	11	0	2	0	0	0	19	32
2017	0	2	0	0	0	0	0	4	6
TOTAL	0	33	0	3	0	0	0	33	69

65 **B.** Minor changes, including formatting, have been made to these laws to comply with drafting style.

66 These changes do not affect the content of these laws.

67 **C.** Please refer to the fiscal impact statement for any financial impacts.

68

69 SECTION 9. ADDITIONAL AMENDMENTS

70 **A. *Hunting, Fishing, and Trapping law (Law)*.** In additions to the amendments which transfer ERB's
 71 hearing authority to the Judiciary, additional amendments were made to the Hunting, Fishing, and
 72 Trapping law. These amendments include revising section 406.4-3 which states that this Law does
 73 not negate the jurisdiction of the State of Wisconsin in instances that involve non-member Indians
 74 and non-Indians. This means that non-member Indians and non-Indians hunting, fishing and trapping
 75 on land owned by the Nation must adhere to the Nation's license, permit and tag requirements but
 76 may also be subject to State requirements. In addition, license and permit holders cannot utilize
 77 hunting, fishing, or trapping privileges within the Reservation using a State license that would
 78 provide greater privileges than those afforded in this Law and any applicable rules [*See Hunting,*
 79 *Fishing and Trapping, 4 O.C. 406.4-3*].

80

Title 6. Property and Land – Chapter 609
PUBLIC USE OF TRIBAL LAND
Tsi> yuhw<tsya-t# tewatenhot&kwa> Ukwehuw#-ne
That of the earth one opens it up Oneida Nation

609.1. Purpose and Policy
609.2. Adoption, Amendment, Repeal
609.3. Definitions
609.4. Environmental Resource Board

609.5. Land Access Map
609.6. Trespass
609.7. Violations and Appeals

609.1. Purpose and Policy

609.1-1. *Purpose.* The purpose of this law is to prevent improper access, use and trespass to Tribal lands.

609.1-2. *Policy.* It is the policy of the Nation to limit access to Tribal lands to protect and preserve the environment and natural resources including forests, wildlife, air and waters, through appropriate uses of the land.

609.2. Adoption, Amendment, Repeal

609.2-1. This law was adopted by the Oneida Business Committee by resolution BC-05-15-14-C and amended by BC-12-10-14-A and BC-01-13-16-C.

609.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

609.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity does not affect other provisions of this law which are considered to have legal force without the invalid portions.

609.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law controls.

609.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

609.2-6. This law may not be construed to preclude the Nation from pursuing relief for criminal trespass under applicable law.

609.3. Definitions

609.3-1. This section governs the definitions of words and phrases used within this law. All words not defined herein are to be used in their ordinary and everyday sense.

(a) “Designation” means the term used to describe the type of access granted to certain Tribal lands.

(b) “Fine” means a monetary punishment issued to a person violating this law and/or the rules created pursuant to this law, which is payable to ERB or the Department within the amount of time designated by the rules.

(c) “Lease” means any lease or agreement, including business site leases, entered into by the Nation and any person to allow the use of Tribal lands.

(d) “Nation” means the Oneida Nation.

(e) “Person” means any individual, group of individuals, corporation, partnership, limited liability company, or any other form of business organization.

(f) “Penalty” means a punishment, other than a fine, imposed on a person violating this law and/or the rules created pursuant to this law and may include, but is not limited to, the confiscation of equipment, the imposition of a wildlife protection assessment (civil recovery value), and restitution.

(g) “Reservation” means all the lands and waters within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 18609 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(h) “Trespass” means the unauthorized use or entry on Tribal lands, including unauthorized uses under any law, rule, permit or lease of the Nation.

(i) “Tribal Land” means all of the Nation’s trust lands, and any land or interest in land held by the Nation in fee or in any other form on the Reservation.

609.4. Environmental Resource Board

609.4-1. The Environmental Resource Board has the duty and power to carry out the intent and purposes of this law and enforce the provisions of this law. The Environmental Resource Board, or designated staff, shall:

(a) Develop, approve and maintain the Land Access Map.

(b) Hold public hearings on proposed amendments to the Land Access Map.

(c) Determine which Tribal land will be posted and ensure the appropriate signs are posted.

(d) Implement and interpret the provisions of this law.

(e) As it deems appropriate, prescribe permissible and/or prohibited uses for Tribal land that it designates as Oneida Community Access, Oneida Tribal Member Access or Open Access, provided that such permissible and/or prohibited uses may not contradict with the Zoning and Shoreland Protection Ordinance. Upon establishment of permissible and/or prohibited uses, the Environmental Resource Board shall notify the Oneida Business Committee of the permissible and/or prohibited uses and shall post notice of such uses on the affected Tribal Land.

609.5. Land Access Map

609.5-1. *Designation of Tribal Lands.* A Land Access Map must be created which designates Tribal land as one (1) of the following:

(a) Limited Access: Lands designated as “Limited Access” are open to all persons who are granted land access permission by the Nation through a permit or lease for specified purposes. The Environmental Resource Board may choose to designate a portion of land as Limited Access in order to manage, preserve and protect that land for environmental, cultural or other significance.

(b) Oneida Community Access: Lands designated as “Oneida Community Access” are open to Tribal members, and their spouses and descendants; members of other federally recognized Indian tribes, bands or communities; authorized employees of the Nation; and persons who are accompanied at all times by a Tribal member, the spouse or descendant of a Tribal member, or an authorized employee of the Nation.

(1) A Conservation Warden or Oneida Police Officer may require a person to provide proof of eligibility to use Oneida Community Access lands.

(2) The Environmental Resource Board may choose to designate land as Oneida Community Access in order to manage, preserve and protect access to locations that have cultural or environmental significance.

(c) Oneida Tribal Member Access: Lands designated as “Oneida Tribal Member Access” are open to Tribal members only. The Environmental Resource Board may designate land as Oneida Tribal Member Access to protect the land for Tribal member use due to the historical, spiritual, cultural and/or environmental significance of the land.

(d) Open: Lands designated as “Open Access” are generally open to all persons for the land’s designated use and enjoyment. The Environmental Resource Board may designate land as Open Access where such designation is deemed beneficial to the Nation and where such designation does not pose significant risk of damage to the Nation’s policies and/or the land’s cultural or environmental preservation.

609.5-2. Notwithstanding the restrictions of 609.5-1, nothing in this law may be construed as preventing the following persons from entering Tribal land, regardless of the land designation:

- (a) Employees of the Nation who are performing their job duties;
- (b) Those persons who are performing grant or contractual obligations related to the Tribal land and on behalf of the Nation;
- (c) Emergency personnel who are providing, or attempting to provide, services; and
- (d) Those persons who have been granted access to the land by the Environmental Resource Board.

609.5-3. *Development of the Land Access Map.* The Environmental Resource Board shall develop the Land Access Map in coordination with the Oneida Environmental Health and Safety Division, the Oneida Division of Land Management, Geographic Land Information Systems and other such designated agencies of the Nation. The Environmental Resource Board shall adopt the initial Land Access Map.

609.5-4. *General Land Designation.* Unless otherwise designated, Tribal land is designated as limited access.

609.5-5. *Amending the Land Access Map.* The Environmental Resource Board may, from time to time, in the manner hereafter set forth, amend the Land Access Map, provided that due consideration must be made for the intent and purposes of the designation.

(a) Amendments may be proposed by any person by filing an application with the Environmental Resource Board in such format and accompanied by such information as required by the Board.

(b) *Public Hearing.* The Environmental Resource Board shall hold a public hearing on each application to amend the Land Access Map.

(1) The Environmental Resource Board shall set a date for the public hearing and meet the notice requirements of the public hearing as soon as possible after the filing of the application is complete.

(A) *Notice.* Not less than ten (10) business days and not more than thirty (30) business days prior to the public hearing, notice, including the time, place and purpose of the public hearing, must be:

- (i) published in the Nation’s newspaper; and
- (ii) mailed to all owners of land located within twelve hundred (1,200) feet of the outer boundaries of the land that is the subject of the public hearing.

(B) Any person who cannot attend the public hearing may be represented by an agent, advocate or attorney at the public hearing.

(C) In addition to accepting oral comments at the public meeting, the Environmental Resource Board shall also accept written comments, which must be submitted within five (5) business days of the date of the public meeting.

(D) The Environmental Resource Board shall issue a decision or recommendation regarding amendments to the Land Access Map within seven (7) business days after the public hearing is held.

(2) The Environmental Resource Board together with the Environmental Health and Safety Division shall, after holding a public hearing and reviewing any comments received, make written findings of fact and determine whether to amend the Land Access Map.

(3) The Environmental Resource Board shall make findings based upon the evidence presented to it with respect to the following matters:

(A) Existing uses of the land and buildings within the general area of the land in question.

(B) Suitability of the land in question to the uses permitted under the existing Land Access Map.

(4) The Environmental Resource Board may not amend the Land Access Map unless it finds that adopting such amendment is in the Nation's best interest and is not solely for the interest of the applicant.

(c) The Environmental Resource Board may grant or deny any application to amend the Land Access Map; however, amendments must require a two-thirds (2/3) vote of the Environmental Resource Board if a written protest against any amendment is presented to the Environmental Resource Board and is signed by:

(1) the lessees, assignees and owners of at least twenty percent (20%) of the acres of land included in such amendment; or

(2) the lessees, assignees and owners of at least twenty percent (20%) of the land immediately adjacent to the land included in such amendment, extending in a radius of twelve hundred (1,200) feet of the outer boundaries of the land.

609.6. Trespass

609.6-1. A person trespasses if the person enters or otherwise occupies Tribal land and:

(a) Refuses to leave land to which the person has no reasonable claim or right of possession when requested to do so.

(b) Enters upon such land after being noticed by the landowner or occupant that permission for the person to enter such land does not exist, or has been expressly denied or revoked. A person has been noticed that permission by the landowner or occupant for such person to enter such land does not exist if he or she has been notified publicly, by publication of the Land Access Map on the Nation's website and/or in the Nation's newspaper, or if the land is posted. Land is considered to be posted if one (1) of the following requirements is met:

(1) A sign at least eleven inches (11") square is placed in at least two (2) conspicuous places for every forty (40) acres of land to be protected. The sign shall provide an appropriate notice and the name of the person giving the notice, followed by the word "owner" if the person is the holder of legal title to the land or by the word "occupant" if the person is a lawful occupant of the land, but not the holder of legal title.

(2) Markings at least one foot (1') long and, in a contrasting color, the phrase "private land" and the name of the owner, are made in at least two (2) conspicuous places for every forty (40) acres of land.

(c) Does any of the following without proper authorization through a lease, permit or as otherwise required under applicable law:¹

- (1) Destroys land, waters, livestock, poultry, buildings, equipment, or any property without consent or permission.
- (2) Cuts or destroys any wood, timber, plant, vegetation, or crop standing on the land, or carries away any wood, timber, plant, vegetation or crop on the land.
- (3) Engages in any act, or attempted act of hunting, trapping or fishing.
- (4) Digs, takes, or carries away earth, soil, minerals, cultural resources, or any other property.
- (5) Erects, puts up, fastens, prints, or paints upon another's property, notices, advertisements, signs or other writing designed to communicate to the general public.
- (6) Parks or drives any vehicle on the land.
- (7) Permits or allows livestock or any domesticated animal to enter upon or remain upon the land.
- (8) Uses or possesses leased or sub-leased lands beyond the possessory rights granted by such lease or sub-lease.
- (9) Dumps, deposits, places, throws, burns, emits or leaves rubbish, refuse, debris, substances, or other objects upon a highway, road, air, waters or any land.

609.7. Violations, Enforcement and Appeals

609.7-1. *Citations.* Citations for the violation of this law and/or orders issued pursuant to this law may include fines, penalties and conditional and other orders in accordance with the citation schedule applicable to this law. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. The issuance of a citation or fine under any other law relating to the same or any other matter does not preclude the issuance of a citation under this law.

(a) Any order issued pursuant to this law that is not complied with may be physically enforced by Oneida Police Officers or Oneida Conservation Wardens at the Owner's expense.

(b) The Oneida Police Department, by means of Oneida Police Officers and Oneida Conservation Wardens, is authorized to take any appropriate action to prevent or remove a violation of this Law.

609.7-2. *Hearing and Appeals of Contested Actions.* All citations, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for

¹ Current Tribal laws that authorize conduct described in 609.6-1(c): Protection and Management of Archeological and Historical Resources; Oneida Tribal Regulation of Domestic Animals Ordinance; Tribal Environmental Response Law; Wood Cutting Ordinance; Recycling and Solid Waste Disposal; Hunting, Fishing and Trapping Law; All-Terrain Vehicle Law; Zoning and Shoreland Protection Law.

which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service*. Community service may be substituted for monetary fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10) of the fine.

(b) *Allocation of Citation Revenue*. All citations shall be paid to the Environmental Resource Board or its designee, the proceeds of which shall be contributed to General Fund.

(c) *Appealing the Decision of the Judiciary Trial Court*. Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) *Pursuing Payment of a Citation*. The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching the judgment to Tribal member's per capita payment pursuant to the Per Capita law.

End.

Adopted – BC-05-15-14-C
Emergency Amended – BC-07-23-14-C
Amended – BC-12-10-14-A
Emergency Amended – BC 07-08-15-C
Amended – BC-01-13-16-C

Title 6. Property and Land – Chapter 609
PUBLIC USE OF TRIBAL LAND
Tsi> yuhw<tsya-t# tewatenhot&kwa> Ukwehuw#-ne
That of the earth one opens it up Oneida Nation

609.1. Purpose and Policy
609.2. Adoption, Amendment, Repeal
609.3. Definitions
609.4. Environmental Resource Board

609.5. Land Access Map
609.6. Trespass
609.7. Violations and Appeals

609.1. Purpose and Policy

609.1-1. *Purpose.* The purpose of this ~~Law~~law is to prevent improper access, use and ~~Trespass~~trespass to Tribal ~~Lands~~lands.

609.1-2. *Policy.* It is the policy of the ~~Tribe~~Nation to limit access to Tribal ~~Lands~~lands to protect and preserve the environment and natural resources including forests, wildlife, air and waters, through appropriate uses of the land.

609.2. Adoption, Amendment, Repeal

609.2-1. This ~~Law~~law was adopted by the Oneida Business Committee by resolution BC-05-15-14-C and amended by BC-12-10-14-A and BC-01-13-16-C.

609.2-2. This ~~Law~~law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

609.2-3. Should a provision of this ~~Law~~law or the application thereof to any ~~Person~~person or circumstances be held as invalid, such invalidity does not affect other provisions of this ~~Law~~law which are considered to have legal force without the invalid portions.

609.2-4. In the event of a conflict between a provision of this ~~Law~~law and a provision of another law, the provisions of this ~~Law~~law controls.

609.2-5. This ~~Law~~law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~Nation.

609.2-6. This ~~Law~~law may not be construed to preclude the ~~Tribe~~Nation from pursuing relief for criminal ~~Trespass~~trespass under applicable law.

609.3. Definitions

609.3-1. This section governs the definitions of words and phrases used within this ~~Law~~law. All words not defined herein are to be used in their ordinary and everyday sense.

(a) “Designation” means the term used to describe the type of access granted to certain Tribal ~~Lands~~lands.

(b) “Fine” means a monetary punishment issued to a person violating this ~~Law~~law and/or the ~~Rules~~rules created pursuant to this ~~Law~~law, which is payable to ERB or the Department within the amount of time designated by the ~~Rules~~rules.

(c) “Lease” means any lease or agreement, including business site leases, entered into by the ~~Tribe~~Nation and any ~~Person~~person to allow the use of Tribal ~~Lands~~lands.

~~(d)~~ “Nation” means the Oneida Nation.

~~(e)~~ “Person” means any individual, group of individuals, corporation, partnership, limited liability company, or any other form of business organization.

~~(f)~~ “Penalty” means a punishment, other than a ~~Fine~~fine, imposed on a person violating this ~~Law~~law and/or the ~~Rules~~rules created pursuant to this ~~Law~~law and may include, but

is not limited to, the confiscation of equipment, the imposition of a ~~Wildlife~~wildlife protection assessment (civil recovery value), and restitution.

(~~fg~~) “Reservation” means all the lands and waters within the exterior boundaries of the Reservation of the Oneida ~~Tribe of Indians of Wisconsin~~Nation, as created pursuant to the 18609 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(~~gh~~) “Trespass” means the unauthorized use or entry on Tribal ~~Lands~~lands, including unauthorized uses under a ~~Tribal~~any law, ~~rule~~, permit or ~~Lease~~.

(~~h~~) “Tribal” or “Tribe” means ~~lease of~~ the ~~Oneida Tribe of Indians of Wisconsin~~Nation.

(i) “Tribal Land” means all ~~Tribal~~of the Nation’s trust lands, and any land or interest in land held by the ~~Oneida Tribe~~Nation in fee or in any other form on the Reservation.

609.4. Environmental Resource Board

609.4-1. The Environmental Resource Board has the duty and power to carry out the intent and purposes of this ~~Law~~law and enforce the provisions of this ~~Law~~law. The Environmental Resource Board, or designated staff, shall:

(a) Develop, approve and maintain the Land Access Map.

(b) Hold public hearings on proposed amendments to the Land Access Map.

(c) ~~Hear and decide, as the original hearing body, contested cases that may arise under this Law.~~

(d) ~~Impose hearing costs and restitution against the Person for damages caused by a violation of this Law.~~

(~~e~~) Determine which Tribal ~~Land~~land will be posted and ensure the appropriate signs are posted.

(~~fd~~) Implement and interpret the provisions of this ~~Law~~law.

(~~ge~~) As it deems appropriate, prescribe permissible and/or prohibited uses for Tribal ~~Land~~land that it designates as Oneida Community Access, Oneida Tribal Member Access or Open Access, provided that such permissible and/or prohibited uses may not contradict with the Zoning and Shoreland Protection Ordinance. Upon establishment of permissible and/or prohibited uses, the Environmental Resource Board shall notify the Oneida Business Committee of the permissible and/or prohibited uses and shall post notice of such uses on the affected Tribal Land.

609.5. Land Access Map

609.5-1. *Designation of Tribal Lands.* A Land Access Map must be created which designates Tribal ~~Land~~land as one (1) of the following:

(a) Limited Access: Lands designated as “Limited Access” are open to all ~~Persons~~persons who are granted land access permission by the ~~Tribe~~Nation through a permit or ~~Lease~~lease for specified purposes. The Environmental Resource Board may choose to designate a portion of land as Limited Access in order to manage, preserve and protect that land for environmental, cultural or other significance.

(b) Oneida Community Access: Lands designated as “Oneida Community Access” are open to Tribal members, and their spouses and descendants; members of other federally recognized Indian tribes, bands or communities; authorized employees of the ~~Tribe~~Nation; and ~~Persons~~persons who are accompanied at all times by a Tribal member, the spouse or descendant of a Tribal member, or an authorized employee of the ~~Tribe~~Nation.

(1) A Conservation Warden or Oneida Police Officer may require a ~~Person~~person to provide proof of eligibility to use Oneida Community Access lands.

(2) The Environmental Resource Board may choose to designate land as Oneida Community Access in order to manage, preserve and protect access to locations that have cultural or environmental significance.

(c) Oneida Tribal Member Access: Lands designated as “Oneida Tribal Member Access” are open to Tribal members only. The Environmental Resource Board may designate land as Oneida Tribal Member Access to protect the land for Tribal member use due to the historical, spiritual, cultural and/or environmental significance of the land.

(d) Open: Lands designated as “Open Access” are generally open to all ~~Persons~~persons for the land’s designated use and enjoyment. The Environmental Resource Board may designate land as Open Access where such ~~Designation~~designation is deemed beneficial to the ~~Tribe~~Nation and where such ~~Designation~~designation does not pose significant risk of damage to the ~~Nation’s~~ policies ~~of the Tribe~~ and/or the land’s cultural or environmental preservation.

609.5-2. Notwithstanding the restrictions of 609.5-1, nothing in this ~~Law~~law may be construed as preventing the following ~~Persons~~persons from entering Tribal ~~Land~~land, regardless of the land ~~Designation~~designation:

- (a) Employees of the ~~Tribe~~Nation who are performing their job duties;
- (b) Those ~~Persons~~persons who are performing grant or contractual obligations related to the Tribal ~~Land~~land and on behalf of the ~~Tribe~~Nation;
- (c) Emergency personnel who are providing, or attempting to provide, services; and
- (d) Those ~~Persons~~persons who have been granted access to the land by the Environmental Resource Board.

609.5-3. *Development of the Land Access Map.* The Environmental Resource Board shall develop the Land Access Map in coordination with the Oneida Environmental Health and Safety Division, the Oneida Division of Land Management, Geographic Land Information Systems and other such designated agencies of the ~~Tribe~~Nation. The Environmental Resource Board shall adopt the initial Land Access Map.

609.5-4. *General Land Designation.* Unless otherwise designated, Tribal ~~Land~~land is designated as ~~Limited Access~~limited access.

609.5-5. *Amending the Land Access Map.* The Environmental Resource Board may, from time to time, in the manner hereafter set forth, amend the Land Access Map, provided that due consideration must be made for the intent and purposes of the ~~Designation~~designation.

(a) Amendments may be proposed by any ~~Person~~person by filing an application with the Environmental Resource Board in such format and accompanied by such information as required by the Board.

(b) *Public Hearing.* The Environmental Resource Board shall hold a public hearing on each application to amend the Land Access Map.

(1) The Environmental Resource Board shall set a date for the public hearing and meet the notice requirements of the public hearing as soon as possible after the filing of the application is complete.

(A)*Notice.* Not less than ten (10) business days and not more than thirty (30) business days prior to the public hearing, notice, including the time, place and purpose of the public hearing, must be:

- (i) published in the ~~Tribal~~Nation’s newspaper; and

(ii) mailed to all owners of land located within twelve hundred (1,200) feet of the outer boundaries of the land that is the subject of the public hearing.

(B) Any ~~Person~~person who cannot attend the public hearing may be represented by an agent, advocate or attorney at the public hearing.

(C) In addition to accepting oral comments at the public meeting, the Environmental Resource Board shall also accept written comments, which must be submitted within five (5) business days of the date of the public meeting.

(D) The Environmental Resource Board shall issue a decision or recommendation regarding amendments to the Land Access Map within seven (7) business days after the public hearing is held.

(2) The Environmental Resource Board together with the Environmental Health and Safety Division shall, after holding a public hearing and reviewing any comments received, make written findings of fact and determine whether to amend the Land Access Map.

(3) The Environmental Resource Board shall make findings based upon the evidence presented to it with respect to the following matters:

(A) Existing uses of the land and buildings within the general area of the land in question.

(B) Suitability of the land in question to the uses permitted under the existing Land Access Map.

(4) The Environmental Resource Board may not amend the Land Access Map unless it finds that adopting such amendment is in the ~~Tribal~~Nation's best interest and is not solely for the interest of the applicant.

(c) The Environmental Resource Board may grant or deny any application to amend the Land Access Map; however, amendments must require a two-thirds (2/3) vote of the Environmental Resource Board if a written protest against any amendment is presented to the Environmental Resource Board and is signed by:

(1) the lessees, assignees and owners of at least twenty percent (20%) of the acres of land included in such amendment; or

(2) the lessees, assignees and owners of at least twenty percent (20%) of the land immediately adjacent to the land included in such amendment, extending in a radius of twelve hundred (1,200) feet of the outer boundaries of the land.

609.6. Trespass

609.6-1. A ~~Person~~person ~~Trespasses~~trespasses if the ~~Person~~person enters or otherwise occupies Tribal ~~Land~~land and:

(a) Refuses to leave land to which the ~~Person~~person has no reasonable claim or right of possession when requested to do so.

(b) Enters upon such land after being noticed by the landowner or occupant that permission for the ~~Person~~person to enter such land does not exist, or has been expressly denied or revoked. A ~~Person~~person has been noticed that permission by the landowner or occupant for such ~~Person~~person to enter such land does not exist if he or she has been notified publicly, by publication of the Land Access Map on the ~~Tribal~~Nation's website and/or in the ~~Tribal~~Nation's newspaper, or if the land is posted. Land is considered to be posted if one (1) of the following requirements is met:

- (1) A sign at least eleven ~~(11)~~ inches (11") square is placed in at least two (2) conspicuous places for every forty (40) acres of land to be protected. The sign shall provide an appropriate notice and the name of the ~~Person~~person giving the notice, followed by the word "owner" if the ~~Person~~person is the holder of legal title to the land or by the word "occupant" if the ~~Person~~person is a lawful occupant of the land, but not the holder of legal title.
- (2) Markings at least one ~~(1)~~ foot (1') long and, in a contrasting color, the phrase "private land" and the name of the owner, are made in at least two (2) conspicuous places for every forty (40) acres of land.
- (c) Does any of the following without proper authorization through a ~~Lease~~lease, permit or as otherwise required under applicable law:¹
- (1) Destroys land, waters, livestock, poultry, buildings, equipment, or any property without consent or permission.
 - (2) Cuts or destroys any wood, timber, plant, vegetation, or crop standing on the land, or carries away any wood, timber, plant, vegetation or crop on the land.
 - (3) Engages in any act, or attempted act of hunting, trapping or fishing.
 - (4) Digs, takes, or carries away earth, soil, minerals, cultural resources, or any other property.
 - (5) Erects, puts up, fastens, prints, or paints upon another's property, notices, advertisements, signs or other writing designed to communicate to the general public.
 - (6) Parks or drives any vehicle on the land.
 - (7) Permits or allows livestock or any domesticated animal to enter upon or remain upon the land.
 - (8) Uses or possesses ~~Leased~~leased or sub-~~Leased~~leased lands beyond the possessory rights granted by such ~~Lease~~lease or sub-~~Lease~~lease.
 - (9) Dumps, deposits, places, throws, burns, emits or leaves rubbish, refuse, debris, substances, or other objects upon a highway, road, air, waters or any land.

609.7. Violations, Enforcement and Appeals

609.7-1. ~~Issuance of a Citation. Any Person who violates any provision~~ Citations. Citations for the violation of this ~~Law is guilty of a civil infraction,law~~ and ~~may be/or orders~~ issued ~~apursuant to this law may include fines, penalties and conditional and other orders in accordance with the~~ citation, ~~in writing, by a Conservation Warden or Oneida Police Officer.~~ schedule applicable to this law. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. The issuance of a citation or ~~Fine~~fine under any other law relating to the same or any other matter does not preclude the issuance of a citation under this ~~Law~~law.

~~(a) The Oneida Business Committee, upon recommendation of the Environmental Resource Board, may adopt a citation schedule.~~

¹ Current Tribal laws that authorize conduct described in 609.6-1(c): Protection and Management of Archeological and Historical Resources; Oneida Tribal Regulation of Domestic Animals Ordinance; Tribal Environmental Response Law; Wood Cutting Ordinance; Recycling and Solid Waste Disposal; Hunting, Fishing and Trapping Law; All-Terrain Vehicle Law; Zoning and Shoreland Protection Law.

(a) Any order issued pursuant to this law that is not complied with may be physically enforced by Oneida Police Officers or Oneida Conservation Wardens at the Owner's expense.

(b) The ~~citation must state that the Environmental Resource Board may, in addition to the citation~~ Oneida Police Department, by means of Oneida Police Officers and associated Fine, impose hearing costs and Penalties against the Person for Oneida Conservation Wardens, is authorized to take any appropriate action to prevent or remove a violation of this Law.

609.7-2. ~~Citation Hearing~~ and Appeals of Contested Actions. All citations, orders and declarations issued pursuant to this ~~Law must~~ law shall include a ~~Prehearing~~ pre-hearing date with the Judiciary Trial Court which ~~must~~ shall be set for the next scheduled monthly ~~Prehearing~~ prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation ~~must~~ shall appear at the ~~Prehearing~~ prehearing, at which time the ~~Environmental Resource Board~~ Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The ~~Environmental Resource Board~~ Judiciary shall schedule a ~~Hearing~~ hearing as expeditiously as possible, provided that it ~~must~~ shall be scheduled within ninety (90) days of the date of the ~~Prehearing~~ prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested ~~Hearings~~ hearings, the ~~Environmental Resource Board~~ Judiciary may also make conditional orders at the ~~Prehearing~~ prehearing which are effective until the matter is resolved.

(a) ~~The Environmental Resource Board shall conduct Prehearings and Hearings in accordance with its bylaws and any other applicable regulations, standard operating procedures, Rules, laws or policies governing Tribal administrative hearings.~~

(b) ~~Community Service~~. Community service may be substituted for ~~Fines~~ monetary fines at the ~~Environmental Resource Board's~~ Judiciary's discretion, provided that, if so substituted, the ~~Board~~ Judiciary shall use the rate of one (1) hour per ten dollars (\$10) of the ~~Fine~~ fine.

(c) ~~(b) Allocation of Citation Revenue~~. All ~~Fines and Penalties issued by~~ citations ~~must~~ shall be paid to the Environmental Resource Board or its designee, the proceeds of which ~~must~~ shall be contributed to General Fund.

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) Pursuing Payment of a Citation. The Environmental Resource Board may pursue payment from parties who have failed to ~~makes~~ make the required payments through the garnishment process contained in the Garnishment ~~Law~~ law and/or by attaching the judgment to a Tribal ~~Member's~~ member's per capita payment pursuant to the Per Capita ~~Law~~ law.

(e) ~~Community Service~~. Community service may be substituted for monetary Fines and Penalty assessments at ERB's discretion, provided that if so substituted, ERB shall use the rate of one (1) hour per ten dollars (\$10) of the Fine or Penalty assessment.

(f) Any person wishing to contest ERB's determination related to a contested citation may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure, provided that the appeal must be filed within thirty (30) days of the date of the Environmental Resource Board's determination.

266 | ~~609.7 3. Appeals from the Environmental Resource Board Decision. Any party of interest~~
267 | ~~may appeal a decision of the Environmental Resource Board to the Tribe's judicial system.~~

268
269 *End.*

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Adopted – BC-05-15-14-C
Emergency Amended – BC-07-23-14-C
Amended – BC-12-10-14-A
Emergency Amended – BC 07-08-15-C
Amended – BC-01-13-16-C

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

DATE: June 7, 2017

FROM: Rae Skenandore, Project Manager

TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

RE: **Fiscal Impact of the transfer of the Environmental Resource Board's Hearing Authority to the Oneida Judiciary**

I. Estimated Fiscal Impact Summary

Law: Domestic Animal		Draft 19
Hunting, Fishing and Trapping law (HTF)		Draft 2
Public Use of Tribal Land (Public Use)		Draft 1
Tribal Environmental Response (TERP)		Draft 1
Well Abandonment Law (Well Abandonment)		Draft 1
All-Terrain Vehicle Law (ATV)		Draft 1
Water Resources Ordinance (Water Resources)		Draft 1
On-Site Waste Disposal Ordinance (Waste Disposal)		Draft 1
Implementing Agency		
Oneida Police Department (OPD)		
Conservation		
Environmental Resource Board (ERB)		
Emergency Management		
Environmental Health and Safety Division		
Comprehensive Health Division		
Oneida Judiciary		
Estimated time to comply		January 1, 2018
Estimated Impact	Current Fiscal Year	10 Year Estimate
ERB stipend savings	\$830	\$8,300
Total Estimated Savings	\$830	\$8,300
Revenue and cost considerations		
Fee Schedules should be removed from the various Laws		
Uncertainties and Unknowns		
None		

II. Background

A. Legislative History

The Oneida Business Committee created the Environmental Resource Board through Resolution BC-02-22-85-B. GTC Resolution 01-07-13-B established the Oneida Judiciary.

B. Summary of Content

1. The Domestic Animal amendments are being processed separately in order to make further revisions. However, it is included here because there are no additional fiscal impacts due to the amendments.
2. All Laws are being amended to state that the Trial Court is the entity authorized to conduct hearings.
3. Other minor changes, including formatting, have been made to these Laws to comply with drafting style. These changes do not affect the content of these Laws.

C. Methodology and Assumptions

1. A “Fiscal Impact Statement” means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.
2. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.
3. The analysis was completed based on the information provided as of the date of this memo.

III. Agency

The hearing authority will simply be transferred from ERB to the Judiciary. Historical hearing stipends paid to the Board were \$750 in 2017, \$1,200 in 2016, and \$700 in 2015. Transferring the hearing authority to the Judiciary would result in an average savings of approximately \$830 annually. The Judiciary does not anticipate any additional costs as this will simply be absorbed into their existing duties. ERB has stated that they expect the transition of the hearing authority to be complete by January 1, 2018

IV. Financial Impact

Approximately \$830 savings annually.

V. Recommendation

Finance does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.



Legislative Operating Committee
July 19, 2017

On-site Waste Disposal Law Amendments

Submission Date: 5/17/17	Public Meeting: 6/15/17
LOC Sponsor: Tehassi Hill	Emergency Enacted: n/a Expires: n/a

Summary: *This is a request to amend the law to remove the Environmental Resource Board's Hearing Body Authority and transfer it to the Judiciary.*

5/17/17 LOC: Motion by David P. Jordan to add each of these to the Active Files List as a high priority, assign Tehassi Hill as the sponsor, approve the public meeting packet, in addition to the Tribal Environmental Response law for June 15, 2017; seconded by Fawn Billie. Motion carried unanimously.

6/15/17: Public meeting held.

Next Steps:

- Accept the public meeting comments.
- Approve the On-Site Waste Disposal Law Amendments adoption packet and forward to the OBC for consideration.



TO: Legislative Operating Committee (LOC)
FROM: Krystal John, Staff Attorney, Oneida Law Office
DATE: July 19, 2017
RE: On-site Waste Disposal Law Amendments: Public Meeting Comment Review

On June 15, 2017 a public meeting was held regarding the On-site Waste Disposal Law Amendments. There were no oral or written comments received during the public meeting on June 15, 2017, or during the public meeting comment period ending on June 29, 2017; therefore no additional revisions were made to the draft.



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING**

Environmental Resource Board's Authority Transfer

Business Committee Conference Room-2nd Floor Norbert Hill Center
June 15, 2017 12:15 p.m.

Present: Brandon Stevens, Candice Skenandore, Clorissa Santiago, Leyne Orosco, Cathy Bachhuber, Chad Wilson, Laura Manthe, Eugene Schubert.

Brandon Stevens: Greetings. The time is 12:25 p.m. and today's date is Thursday June 15, 2017. I will now call the public meeting to order for the following laws:

- All-Terrain Vehicle
- On-Site Waste Disposal Ordinance
- Public Use of Tribal Land
- Tribal Environmental Response
- Water Resource Ordinance
- Well Abandonment
- Hunting, Fishing, and Trapping

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding these legislative proposals. The public meeting is not a question and answer period. All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Thursday June 29, 2017.

In attendance for today is just myself, Brandon Stevens. And I will impose a time limit for all speakers pursuant to section 16.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons.

Revisions were made to the identified laws which transfer the Environmental Resource Board's hearing authority to the Judiciary. In addition, the Hunting, Fishing, and Trapping law has an additional amendment which clarifies that non-member Indians and non-Indians that hunt, fish, and trap on the Reservation may be subject to State requirements as well as the requirements set forth in the Hunting, Fishing, and Trapping law.

Although the amendments are the same for all laws, except for the additional change to Hunting, Fishing, and Trapping law; we will process these laws individually for the sake of this public meeting. We will begin today's public meeting for All-Terrain Vehicle law.

Okay, we have people checked in and no oral testimony is requested from anyone in attendance. Anyone want to come up that is not on the list, please do so at this time.

Okay, seeing no oral testimony for the All-Terrain Vehicle law, I will close this public meeting at 12:18 p.m.

I will now open up the public meeting for the On-Site Waste Disposal Ordinance. The public meeting for the On-Site Waste Disposal Ordinance, or, and I'll sorry. I will ask at this time if anyone would like to come up and provide oral testimony please so do, that's not on the list. Seeing none, I will close this public meeting for the On-Site Waste Disposal Ordinance at 12:19 p.m.

I will now open up the public meeting for the Public Use of Tribal Land at 12:19 p.m. I will open up the floor for oral testimony for those who have not signed in and would like to provide oral testimony. Seeing none, I will close this public meeting for the Public Use of Tribal Land at 12:19 p.m.

I will now open up the public meeting for the Tribal Environmental Response at 12:20 p.m. Open up the floor for any of those who want to provide oral testimony that are not signed in. Seeing none, I will close this public meeting for the Tribal Environmental Response at 12:20 p.m.

I will now open up the public meeting for the Water Resource Ordinance at 12:20 p.m. I'll open up the floor for any of those who would like to provide oral testimony that are not on the list. Seeing none, I will close the public meeting for the Water Resource Ordinance at 12:20 p.m.

I will now open up the public meeting for the Well Abandonment at 12:21 p.m. I'll open up the floor for any oral testimony for those who are not on the list. Seeing none, I will close the public meeting for the Well Abandonment at 12:21 p.m.

I will now open up the public meeting for the Hunting, Fishing, and Trapping . Please note that in addition to revision that transfers ERB's hearing authority to the Judiciary, an additional revision was made to provide clarity that non-member Indians and non-Indians that hunt, fish, and trap on the Reservation may be subject to State requirements as well as the requirements set forth in the Hunting, Fishing, and Trapping law. Opening up the floor for those who would like to provide oral testimony that are not signed in. Seeing none, I will close the public meeting for the Hunting, Fishing, and Trapping law at 12:22 p.m.

With no more individuals wanting to provide oral comment, I am closing the public meeting at 12:22 p.m. As a reminder the public comment period will remain open until Thursday, June 29, 2017 by close of business. Thank you.

-End of Meeting-



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson *BS*
DATE: July 26, 2017
RE: On-Site Waste Disposal Law Amendments

Please find the following attached backup documentation for your consideration of the On-Site Waste Disposal Law Amendments:

1. Resolution: On-Site Waste Disposal Law Amendments
2. Statement of Effect: On-Site Waste Disposal Law Amendments
3. On-Site Waste Disposal Law Amendments: Legislative Analysis
4. On-Site Waste Disposal Law Amendments: Clean Draft
5. On-Site Waste Disposal Law Amendments: Redline to Current Draft
6. On-Site Waste Disposal Law Amendments: Fiscal Impact Statement

Overview

This resolution adopts amendments to the Public Use of Tribal Land Law to transfer the Environmental Resource Board's hearing authority to the Judiciary.

In accordance with the Legislative Procedures Act, a public meeting was held regarding this law on June 15, 2017 with a comment period closing on June 29, 2017. There were no comments provided. These amendments will become effective beginning in the new fiscal year on October 1, 2017.

Requested Action

Approve the Resolution: Public Use of Tribal Land Law Amendments

BC Resolution _____*On-Site Waste Disposal Law Amendments*

WHEREAS, the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and

WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

WHEREAS, the Oneida Business Committee originally adopted the On-Site Waste Disposal Ordinance through resolution BC-10-28-88-A; and

WHEREAS, the Amendments to the Ordinance transfer the Environment Resource Board's original hearing body authority and responsibilities to the Oneida Judiciary as part of an effort to standardize and streamline all of the Nation's hearing responsibilities; and

WHEREAS, a public meeting on the proposed Amendments was held on June 15, 2017 in accordance with the Legislative Procedures Act; and

NOW THEREFORE BE IT RESOLVED, that the On-Site Waste Disposal Law Amendments are hereby adopted and shall become effective on October 1, 2017.



Statement of Effect

On-Site Waste Disposal Law Amendments

Summary

This Resolution adopts Amendments to the On-Site Waste Disposal Law (the “Law”) which transfer the Environmental Resource Board’s original hearing body authority to the Oneida Judiciary.

Submitted by: Krystal L. John, Staff Attorney, Oneida Law Office

Analysis by the Legislative Reference Office

As stated above, these amendments will transfer the delegation of original hearing body authority from the Environmental Resource Board to the Oneida Judiciary. Such a transfer would implicate the Judiciary law and the Environmental Resource Board’s by-laws.

The transfer of hearing body authority would fit into the Oneida Judiciary’s subject matter jurisdiction according to the Judiciary law based on section 801.5-2, which provides that, “The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following... (a) Tribal laws which specifically authorize the Trial Court to exercise jurisdiction...” *Judiciary*, 8 O.C. 801 § 801.5-2. These amendments to the Law specifically authorize the Trial Court to exercise jurisdiction based on section 407.7-6. *Contested Action Hearings*, which reads as follows:

All citations, penalties, forfeitures, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved. ...

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure. ...

The Environmental Resource Board’s by-laws provide the Board’s duties and responsibilities, among other things. Adoption of this law conflicts with the Board’s by-laws and the by-laws recognize the Environmental Resource Board’s original hearing body authority in section 1-4.b., which reads as follows: “The ERB shall serve as the original hearing body in matters concerning environmental and conservation laws and ordinances promulgated by the Oneida Tribe.” Accordingly, if this resolution is adopted, the Environmental Resource Board’s by-laws would need

to be amended to remove the original hearing body authority from the Board's duties and responsibilities.

A public meeting was held for these Amendments on June 15, 2017 for which the public comment period expired on June 22, 2017 in accordance with the Legislative Procedures Act. There were not any oral or written comments submitted.

Conclusion

Adoption of this Resolution would require the Environmental Resource Board's by-laws to be amended to remove the original hearing body authority from the Board's duties and responsibilities.



Hearing Authority Transfer Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: LOC	SPONSOR: Tehassi Hill	DRAFTER: Krystal L. John	ANALYST: Candice E. Skenandore
Intent of the Amendments	To further utilize the Judiciary.		
Purpose	To transfer the Environmental Resource Board (ERB) hearing authority to the Judiciary.		
Affected Entities	Trial Court, ERB		
Affected Legislation	Hunting, Fishing and Trapping law, Public Use of Tribal Land, Tribal Environmental Response, Well Abandonment Law, All-Terrain Vehicle Law, Water Resources Ordinance		
Enforcement/Due Process	ERB will no longer hold hearings; hearing will now be conducted by the Trial Court in accordance with the Rules of Civil Procedure.		
Public Meeting	A public meeting was held on June 15, 2017.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. Since 1985, ERB served as the hearing body authority over the Nation's environmental regulations. On May 2, 1990, the Oneida Business Committee established the Oneida Tribal Judicial System (aka Oneida Appeals Commission) and General Tribal Council reauthorized the Oneida Tribal Judicial System on August 19, 1991 [*See BC Resolution 05-02-90 and GTC Resolution 8-19-91-A*]. The purpose of the Oneida Appeals Commission was to enhance and protect self-governance and sovereignty as well as enhance the separation of powers between the legislative, executive and juridical responsibilities of the Nation. The Oneida Appeals Commission removed the Oneida Business Committee from initial judicial decisions [*See GTC Resolution 8-19-91-A*].
- B. In 2013, the General Tribal Council changed the structure of the Oneida Tribal Judicial System by creating an Oneida Judiciary comprised of the Tribal Court and a Court of Appeals through the adoption of the Judiciary law. The purpose of the Judiciary is to grant the Trial Court and Court of Appeals expanded subject matter jurisdiction and create a greater role for the use of mediation and/or peacemaking [*See GTC Resolution 01-07-13-B*].
- C. These proposed amendments will transfer hearing authority from ERB to the Trial Court. The following laws are amended to reflect the transfer of hearing authority:
- Hunting, Fishing and Trapping law (HTF)
 - Public Use of Tribal Land (Public Use)
 - Tribal Environmental Response (TERP)
 - Well Abandonment Law (Well Abandonment)
 - All-Terrain Vehicle Law (ATV)
 - Water Resources Ordinance (Water Resources)
 - On-Site Waste Disposal Ordinance (Waste Disposal)

SECTION 3. CONSULTATION

A. ERB and the Trial Court have been consulted in the development of this legislative analysis.

SECTION 4. PROCESS

A. These Laws have followed the process set forth in the Legislative Procedures Act (LPA) except that the public meeting was not properly noticed to all managers or directors. The LPA requires the public meeting notice, legislation, legislative analysis and fiscal impact statement, if fiscal impact statement is available, to be electronically provided to all managers or directors a minimum of ten business days before a public meeting is held [See *Legislative Procedures Act, 1 O.C. 109.8-2 (b)*]. The notice and backup documents were provided electronically to all managers or directors on Tuesday, June 13, 2017; the public meeting was held Thursday, June 15, 2017. The public meeting was properly noticed in the Kalihwisaks and was made public on the Oneida Register at least ten business days prior to the public meeting as required by the LPA [See *Legislative Procedures Act, 1 O.C. 8-2 (a & b)*]. The LOC extended the public comment period for these laws for an additional five business days, ending on Thursday, June 29, 2017.

B. A work meeting with ERB was held on Wednesday, May 17, 2017 and a work meeting with ERB and the Judiciary was held on Monday, June 12, 2017.

SECTION 5. CONTENTS OF THE LEGISLATION

A. The identified laws in Section 2.C of this analysis have been amended to state that the Trial Court is the entity authorized to conduct hearings.

SECTION 6. INTENT

A. The intent of these amendments is to further utilize the Oneida Judiciary. The LOC has already decided to transfer hearing authority from identified entities to the Judiciary. The majority of the Oneida Land Commission's and some of the Trust Enrollments Committee's hearing authority has already transferred to the Judiciary. Because the LOC is currently working on amendments the Domestic Animals law in which ERB has hearing authority, it was decided to amend all laws which grant ERB hearing authority and transfer that authority to the Judiciary.

SECTION 7. EFFECT ON EXISTING LEGISLATION

A. These amendments do not conflict with other laws or policies of the Nation.

SECTION 8. OTHER CONSIDERATIONS

A. The following table shows the type and approximate number of hearings ERB has held since 2012. Included are hearings that pertain to Domestic Animals violations; however, the Domestic Animal amendments are being processed separately in order to make further revisions. In total, ERB has held approximately 69 hearings since 2012.

64

	ATV	HFT	Waste Disposal	Public Use	TERP	Water Resources	Well Abandonment	Domestic Animal	TOTAL
2012	0	1	0	0	0	0	0	1	2
2013	0	5	0	0	0	0	0	0	5
2014	0	14	0	0	0	0	0	3	17
2015	0	0	0	1	0	0	0	6	7
2016	0	11	0	2	0	0	0	19	32
2017	0	2	0	0	0	0	0	4	6
TOTAL	0	33	0	3	0	0	0	33	69

65 **B.** Minor changes, including formatting, have been made to these laws to comply with drafting style.

66 These changes do not affect the content of these laws.

67 **C.** Please refer to the fiscal impact statement for any financial impacts.

68

69 SECTION 9. ADDITIONAL AMENDMENTS

70 **A. *Hunting, Fishing, and Trapping law (Law)*.** In additions to the amendments which transfer ERB's
71 hearing authority to the Judiciary, additional amendments were made to the Hunting, Fishing, and
72 Trapping law. These amendments include revising section 406.4-3 which states that this Law does
73 not negate the jurisdiction of the State of Wisconsin in instances that involve non-member Indians
74 and non-Indians. This means that non-member Indians and non-Indians hunting, fishing and trapping
75 on land owned by the Nation must adhere to the Nation's license, permit and tag requirements but
76 may also be subject to State requirements. In addition, license and permit holders cannot utilize
77 hunting, fishing, or trapping privileges within the Reservation using a State license that would
78 provide greater privileges than those afforded in this Law and any applicable rules [*See Hunting,*
79 *Fishing and Trapping, 4 O.C. 406.4-3*].

80

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Title 4. Environment and Natural Resources - Chapter 407

ON-SITE WASTE DISPOSAL

Tsi? Yeyakotyetáhkwa Olihwa'ke

The matters concerning where the garbage is kept

407.1.	Introduction	407.5.	Permits and Applications
407.2.	Adoption, Amendment and Repeal	407.6.	Inspections
407.3.	Definitions	407.7.	Administration and Enforcement
407.4.	General Requirements		

407.1. Introduction

401.1-1. *Applicability.* This law shall apply to all Oneida Tribal Entities, the Oneida Nation itself, and members of the Oneida Nation within the exterior boundaries of the Oneida Nation Reservation.

407.1-2. *Purpose.* The purpose of this law is to establish regulations to ensure that private on-site sewage treatment systems will fulfill Oneida Tribal goals for improving environmental health and safety. The regulations herein will set forth procedures for administration of the program; general requirements for proper siting, design, installation, inspection, and maintenance of the systems; limitations of private systems; and enforcement mechanisms and procedures. The ultimate intent of this law is to support the Oneida belief of taking care of Mother Earth. As unforeseen events may arise which are not specifically addressed in this law, this stated intent, along with the following basic principles, should define a course of action for unforeseen events.

(a) NEED-Every building intended for human habitation or occupancy shall be provided with a properly functioning system for treatment and disposal of domestic waste.

(b) PUBLIC SEWERS-When public sewers become available to any building intended for human habitation or occupancy, the use of the private sewage system shall be discontinued within that period of time required by order, but not exceed one (1) year. The owner shall be required to connect to public sewers sooner than the one (1) year date if the system meets the definition of a failing system. When funding for the connection is available, the owner shall be required to connect sooner than the one (1) year date, and the connection shall be made from the private sewage system and be connected to the public sewers sooner than the one (1) year date if the system meets the definition of a failing system. When funding for the connection sooner than the one (1) year date, and the connection shall be made according to the contractor's construction schedule. The building sewer shall be disconnected from the private sewage system and be connected to the public sewer. All abandoned treatment tanks and seepage pits shall have the contents pumped and disposed of in accordance with chapter NR 113, Wisconsin Administrative Code. The top or the entire tank shall be removed and the remaining portion of the tank or excavation shall be immediately filled with clean, suitable soil material.

(c) DISCHARGES/FAILING SYSTEMS-Every private sewage system shall be designed, located and constructed to prevent ponding of effluent within the soil absorption system or any discharge or sewage into drain tiles, onto the ground surface, into the structure served, or into the surface waters or groundwater within the exterior

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boundaries or adjacent to the Oneida Nation Reservation including zones of seasonal soil saturation.

(d) MAINTENANCE-Every private sewage system shall be adequately maintained.

(e) NUISANCE-Every private sewage system shall be designed and constructed to adequately dispose of all the wastewater generated in the structure or facility it is serving.

407.2. Adoption, Amendment and Repeal

407.2-1. This law was adopted by the [Oneida Business Committee or Oneida General Tribal Council] by resolution BC-10-28-88-A and amended by resolution _____.

407.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

407.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

407.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

407.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

407.3. Definitions

407.3-1. For the purposes of this law, the following definitions shall apply. All other words shall be defined according to dictionary reference.

(a) “Approved” means accepted or ratified by the Environmental Health and Safety Division.

(b) “As-Built Plan” means a final plan of any system as installed.

(c) “Availability of Public Sewers” means when a public sewer line either passes in front of a lot line or comes within two hundred feet (200’) of a lot line, availability of the public sewers for servicing buildings on the lot is established.

(d) “Bedrock” means the rocks that underlie soil materials or are at the earth’s surface. Bedrock is encountered when the weathered in-place consolidated material, larger than 2 mm in size, is greater than fifty percent (50%) by volume.

(e) “Building” means -a structure having walls and a roof erected or set upon an individual foundation or slab-constructed base designed or used for the housing, shelter, enclosure or support of any kind, which is intended for human habitation or occupancy. A mobile home is included in this definition. Each structure abutting another structure which does not have an ingress-egress doorway through the basement foundation walls, or structures with separate exterior or exterior abutting walls, or public use structures separated by an unpierced firewall, shall be considered as separate or individual building.

(f) “Cesspool” means a covered excavation in the ground which receives sewage or other organic matter and solids, permitting the liquids to seep into the soil cavities. Cesspools are prohibited.

(g) “Cleanout”- means a plug or cover made of material approved by the Department,

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joined by means of a screw thread to an opening in a pipe, which can be removed for the purpose of cleaning or examining the interior of the pipe.

(h) “Cleanwater Wastes” means cooling water and condensate drainage from refrigeration compressors and air-conditioning equipment, water used for impurities have been reduced below a minimum concentration considered harmful, and cooled condensate from steam heating systems or other equipment.

(i) “Color” means the moist color of the soil based on Munsell soil color charts.

(j) “Community On-Site Waste Disposal System” means an on-site waste disposal system servicing more than one (1) building being served. A community sewage system may be owned by the property owners, the Nation, or special purpose district.

(k) “Conventional Soil Absorption System” means a system that employs gravity flow from the septic or other treatment tank and applies effluent to the soil through the use of a seepage trench, bed or pit.

(l) “Department” means the Oneida Tribal Environmental Health and Safety Division.

(m) “Detailed Soil Map” means a map prepared by or for a state or federal agency participating in the national cooperative soil survey showing soil series, type and phases at a scale of not more than 2,000 feet to the inch and includes related explanatory information.

(n) “Dosing Tank” means a tank used for the collection of sewage effluent from a septic or solids tank. The effluent is pumped from the dosing tank to a soil absorption field.

(o) “Dwelling Unit” means one (1) or more rooms with provisions for living, sanitary and sleeping facilities which are used or intended to be used by one (1) person or by two (2) or more persons maintaining a common household.

(p) “Effluent” means liquid discharge from a septic or other treatment tank.

(q) “Existing” means prior to the adoption date of this law.

(r) “Experimental System” means an on-site wastewater treatment system designed to overcome site limitation which would preclude the installation of any of the standard soil absorption systems defined in this law. Not all sites are suitable for experimental systems.

(s) “Failing Private Sewage System” means a failing private sewage system is one (1) which causes or results in any or the following conditions:

(1) The failure to accept sewage discharges resulting in the back up of sewage into the structure served by the private sewage system.

(2) The discharge of sewage to the surface of the group or to a drain tile.

(3) The discharge of sewage to any waters within the exterior boundaries or adjacent to the Oneida Nation Reservation.

(4) The introduction of effluent into zones of saturation which adversely affects the operation of a private sewage system.

(5) The ponding of effluent within the soil absorption system.

(t) “Grease Interceptor” means a watertight tank which is installed underground for the collection and retention of grease from cooking of food processing and which is accessible for periodic removal of the contents.

(u) “High Groundwater” means zones of soil saturation which include: Perched water

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tables, shallow regional groundwater tables or aquifers, or zones that are seasonally, periodically or permanently saturated. Unless otherwise proven, the presence of soil mottles indicates the level of seasonal saturation.

(v) “Holding Tank” means an approved watertight receptacle for the collection and holding of sewage, which requires pumping by a licensed sanitary hauler.

(w) “Indoor Plumbing” means one (1) plumbing fixture constitutes an indoor plumbing system.

(x) “In-Ground Pressure Distribution System” means a pressurized soil absorption system placed entirely within the natural soil and based on the mound system design.

(y) “Legal Description” means inaccurate Metes and Bounds description, a claim number, a lot and block number in a recorded subdivision, a recorded assessor’s plat or public land survey description to the nearest forty (40) acres in 1/4-1/4 sections (ie: NW 1/4 of the NE 1/4, Section 10, T24N-R18E).

(z) “Mobile Home” means a transportable structure mounted on a chassis and designed to be used with or without a permanent foundation as a dwelling as a dwelling unit. The phrase “without a permanent foundation” indicates that the support system is constructed with the intent that the mobile home thereon may be moved from time to time at the convenience of the owner.

(aa) “Modified Mound System” means a soil absorption system which utilized pressured distribution of the effluent and sandy fill materials to overcome sites with specific limiting conditions. The limiting conditions are:

(1) Depth to seasonal high groundwater of 24 to 54 inches with percolation rates of 0 to 180 minutes per inch.

(2) Depth to seasonal high groundwater of 12 to 54 inches with percolation rates of 0 to 120 minutes per inch.

(bb) “Mound System” means a system which utilized pressurized distribution of the effluent and sandy fill conditions are:

(1) Depth to fractured bedrock of twenty-four inches (24”) to fifty-four inches (54”) with percolation rates of zero (0) to sixty (60) minutes per inch

(2) Depth to seasonal high groundwater levels of twenty-four inches (24”) to fifty-four inches (54”) with percolation rates between zero (0) and one hundred twenty (120) minutes per inch.

(cc) “Nuisance” means -any source of filth, odor or probable cause of sickness, as is described in Wisconsin Statue 146.14

(dd) “Oneida Nation” means Oneida Nation, a federally recognized Indian government and a Treaty Tribe recognized by laws of the United States.

(ee) “On-Site Waste Disposal System” means a sewage treatment disposal system serving a single building with a septic tank and soil absorption field located on the same parcel as the building. This term also means an alternative substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one (1) building, or a system located on a different parcel than the building, or a system located on a different parcel than the building. A private sewage system may be owned by the property owner

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or by a special purpose district.

(ff) “Percolation Test” means the method used for testing soil absorption qualities, as described in ILHR 83,09(5), Wisconsin Administrative Code. All soil Wisconsin-licensed Certified Soil Testers.

(gg) “Permeability” means the ease with which liquid move through the soil. One (1) of the soil qualities listed Certified Soil Testers.

(hh) “Plumber” means a person licensed by the State of Wisconsin as a Master Plumber or Master Plumber Restricted Sewer Services, as described in Wisconsin State Statute 145.01

(ii) “Pressure Distribution System” means a soil absorption system that employs a pump or automatic siphon and small diameter distribution pipping with small diameter perforations to introduce effluent into the soil. Plan review and departmental approval is required for each system of this type. Approval will only be given on a case by case basis. Approval shall only be given on an individual basis.

(jj) “Privy” means a structure that is not connected to a plumbing system, which is used by persons for the deposition of human body wastes.

(kk) “Privy-Pit” means a privy with earthen sidewalls and/or bottom. The privy shall be so constructed as to be insect and rodent proof as described in ILHR 53.63, Wisconsin Administrative Code

(ll) “Privy-Vault” means a privy with watertight vault consisting of one (1) of the following:

(1) concrete sidewalls and bottom(poured in place)

(2) a prefabricated concrete tank

(3) an asphalt coated steel tank

(A) The tank shall be constructed insect and rodent proof per ILHR 52.63 Wisconsin administrative Code.

(mm) “Public Sewers” means a wastewater treatment system which utilizes collection of the sewage through underground sewer pipes, which all flow to one (1) collection station, where the wastewater is then treated. Public sewers provide service to more than one (1) residence, and each residence is charged a fee for wastewater collection and treatment.

(nn) “Seepage Bed” means an excavated area larger than five feet (5’) in width which contains a bedding of aggregate and has more than one (1) distribution line.

(oo) “Seepage Pit” means an underground receptacle so constructed as to permit disposal of effluent or clear wastes by soil absorption through its flood and walls.

(pp) “Septic Tank” means a tank which receives and partially treats sewage, through processes of sedimentation, oxygenation, flotation and bacterial action so as to separate solids from liquid in the sewage, and discharges and public buildings.

(qq) “Sewage” means the liquid and water carried wastes created in and conducted away from residences, industrial establishments and public buildings.

(rr) “Soil” means the unconsolidated material over bedrock.

(ss) “Soil Absorption” means any sewage treatment system which has a solid separation tank and utilizes distribution of the sewage effluent to unsaturated soil for treatment.

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Systems included in this definition are: conventional septic's, mounds, in-ground pressure distribution, at-grade, etc.

(tt) "Soil Boring" means an observation pit dug by hand or backbone, a hole dug by auguring or a soil core taken intact and undisturbed with a probe.

(uu) "Soil Mottles" means spots or streaks of contrasting soil colors usually caused by soil saturation for some period of a normal year. Soil mottles are used as indicators of the seasonal high groundwater level.

(vv) "Soil Saturation" means the state when all the pores in a soil are filled with water. Water will flow from saturated soil into a bore hole.

(ww) "Topsoil" means the undisturbed surface horizon of a soil often characterized by a clack or dark grayish brown color due to a higher content of organic matter.

(xx) "Tribal Vendor's Permit" means a permit issued by the Environmental Health and Safety Division for the installation of a private sewage system.

(yy) "Vent Cap" means an approved appurtenance used for covering the vent terminal of a soil absorption system, to avoid closure by mischief or debris, and still permit circulation of air within the system.

(zz) "Workmanship" means work of such character that will fully secure the results sought in all the sections of this law as intended for the safety, welfare and health protection of all individuals.

407.4. General Requirements

407.4-1.

(a) Every building or structure intended for human habitation or occupancy, within the scope of applicability of this law, shall have a Tribally-approved on-site private sewage treatment system or be connected to a public sewer system. Such systems shall be approved on-site private sewage treatment system or be connected to a public sewer system. Such systems shall be approved only if no public sewers are available to service said buildings. Unless specifically approved by the Nation, the private sewage system to each building. A private sewage system may be owned by the property owner or by a special purpose district. The use of a community on-site waste disposal system or a system on a different parcel than the structure shall be subject to the same permit requirements and procedures as for systems serving public buildings. The private sewage system for newly constructed buildings shall be installed, inspected and approved before the building can be occupied.

(b) The type of on-site waste disposal system approved for use on a site shall be dependent upon site conditions. Approvable types of on-site waste disposal systems are:

- (1) Conventional soil absorption systems
- (2) In ground pressure distribution systems
- (3) Mound systems
- (4) Modified mound systems
- (5) At-grade systems
- (6) Holding tanks

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(7) Privies (pit and vault)

Approvable systems are not limited to this list, but systems not included on this list may only be approved by the Environmental Health and Safety Division on an individual basis.

(c) Additional restrictions

(1) Domestic waste-all water carried wastes derived from ordinary living uses shall enter the septic or treatment tank or be discharged to a public or municipal treatment system.

(2) Water supply-all new buildings intended for human habitation or occupancy shall be provided with a well and water supply system.

(3) Cesspools-cesspools are prohibited.

(4) Clear water-The discharge of surface, rain and other clear water into a private sewage system is prohibited.

(5) Water shortener and iron filter backwash-Water softener or iron filter discharge may be directed to the private sewage system, a separate below ground surface soil absorption system or to the ground surface if a nuisance is not created.

(6) Floodplain-On-site waste disposal systems for new buildings will not be approved for construction within the floodplain. Existing buildings may have a system approved in the flood fringe subject to Departmental approval on an individual basis. All systems shall be flood-proofed to a height of at least two feet (2') above the one hundred (100) year flood elevation.

(d) Holding Tanks

(1) Holding tanks will not be approved to service any new residential construction. Holding tanks shall only be approved under the following circumstances:

(A) As a temporary method of waste containment until public sewers are available, not to exceed two (2) years from the date of installation. Extended use of the holding tanks beyond the two (2) year period will require a permit for the Environmental Health and Safety Division. The holding tanks shall be disconnected and a connection shall be made upon availability of the public sewer system, and the tanks properly abandoned in the manner as is described in ILHR 83, Wisconsin Administrative Code.

(B) As a replacement system for existing filing soil absorption systems. Holding tanks shall be approved only if no other soil absorption system can be approved for the site.

(C) As an interim measure when there are delays in funding from outside funding agencies. The site must have received written approval for an on-site soil absorption system, and funding must have been appropriated to cover all installation costs. The system must be completed as soon as the funding is made available.

(D) As an interim measure for construction reason. If an approved soil absorption system is being constructed, and progress on construction is halted severe weather (ie, winter frost conditions), then holding tanks may

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be installed and used only until construction of the soil absorption system can be permitted. The existing residence must be constructed and occupied prior to adoption of this law.

(E) For an existing residence where no other soil absorption system can be permitted. The existing residence must be constructed and occupied prior to adoption of this law.

(F) For new construction of commercial buildings only where no other soil absorption system can be permitted.

(e) Privies

(1) Privies are prohibited for all new residential construction.

(2) Privies may be permitted only when the existing building served by the privy is not provided with an indoor plumbing system. One (1) plumbing fixture constituted indoor plumbing.

(3) All privies must meet the site requirements as described in IRHR 83.10, Wisconsin Administrative Code.

(4) When system upgrade becomes available or indoor plumbing is installed, then privy must be properly abandoned, and the building must be connected to an approved on-site waste disposal system or a public sewer system.

(5) All chemical, gas electrical, composting and other non-water using toilets must comply with all requirements of privies.

(f) Public Sewer Connection

(1) When public sewers become available to any buildings intended for human habitation or occupancy, the use of the private sewage system shall be discontinued within that period of time required by order, but not to exceed one (1) year. The building sewer shall be disconnected from the private sewage systems and be connected to the public sewer.

(2) The owner shall be required to connect to public sewers sooner than the one (1) year date if the existing private sewage system meets the definition of a failing system.

(3) When funding for the connection is available, the owner shall be required to connect to the public sewer sooner than the one (1) year date. The connection shall be made according of the contractor's construction schedule.

(4) All abandoned treatment tanks and seepage pits shall have the contents pumped and disposed of in the same manner as is designated in Chapter NR 113, Wisconsin Administrative Code. The top or entire tank shall be removed and the remaining portion of the tank or excavation shall be immediately filled with clean, suitable soil material.

(g) Failing systems

(1) When a failing or malfunctioning private sewage system is encountered, the sewage disposal system shall be corrected or its use discontinued within that period of time required by departmental order, with a maximum time limit of one (1) year. A failing system is identified when one (1) or more of the following

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conditions apply:

(A) The failure of the private sewage system to accept sewage discharges and or there is back-up of the sewage to the structure the system services.

(B) The discharge of sewage to the surface of the ground or to a drain tile.

(C) The discharge of sewage to any waters within the exterior boundaries or adjacent to the operation of private sewage system.

(D) The introduction of effluent into zones of saturation which adversely affects the operation of private sewage system.

(E) The ponding of effluent within the soil absorption system.

(h) Incorporation of provisions by reference

(1) This chapter incorporates by reference the following rules, regulations and laws, as set forth in the Wisconsin Statutes and the Wisconsin Administrative Code governing the location, construction and use of the private sewage systems.

(A) State Statutes: 59.065, 59.07(51), 144, 145, 146.13, 146.14, and 968.10

(B) Wisconsin Administrative Codes: NR 113; ILHR 82 and ILHR 83.

(2) These rules, regulations and laws shall be available upon request from the Environmental Health and Safety Division.

(3) These rules, regulations, and laws shall be used for purposes of this law only, and shall apply until amended or renumbered and then shall apply as amended or renumbered.

(4) References in these codes as to the responsibilities of the "State", "Department", "Department of Natural Resources", and "County" shall be directed to the "Oneida Nation" and to the "Oneida Environmental Health and Safety Division".

(i) Administration

(1) The Oneida Tribal Environmental Specialist shall be responsible for the administration of this law. The Environmental Specialist may delegate responsibilities to personnel employed by or assigned to assist the Environmental Specialist.

(j) Powers and Duties

(1) In administering this law, the Environmental Specialist shall have the following powers and duties:

(A) Perform duties, and delegate duties as may be required, to personnel assigned to or employed to assist the Environmental Specialist, to assure full and complete compliance with this law.

(B) Provide assistance to applicants preparing permit applications, and advise said applicants regarding provisions of this law.

(C) Review and approve plans for private on-site sewage treatment systems.

(D) Issue permits and perform site inspections for compliance with this law.

(E) Keep records of all permits issued, inspections made, work approved and other official actions.

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(F) Report violations of this law or other land use regulations to the Tribal office designated by the Oneida Business Committee, as provided for in the Administrative Procedures Act.

(G) Have access to any premises for the purposes of performing said duties between 8:00 a.m. and 8:00 p.m. or at other times set by mutual agreement between the property owner or their agent and the Environmental Specialist. Application for permit is considered, for the purposes of this law, as the owner's consent to enter the premises.

(H) Upon reasonable cause or question as to proper compliance, revoke any Tribal sanitary permit and issue cease and desist orders requiring the cessation of any construction, alteration or use of a building which is in violation of the provisions of this law, until compliance with this law is obtained.

(I) Issue and enforce orders to plumbers, property owners, their agents or contractors of the responsible party, to assure proper owners, their agents or contractors of the responsible party, to assure proper compliance with all provisions of this law. The Environmental Specialist may delegate this authority to the Tribal office designated by the Oneida Business committee, as provided for in the Administrative Procedures Act.

(2) Violations of this law which occur on leased land will be reported to the Oneida Land Office and the Oneida Land Office and the Oneida Law Office because said violations may constitute violations of the Tribal Land Lease.

(k) Repeal and effective date

(1) Tribal sanitary permits are obtained through the Oneida Environmental Health and Safety Division. Completed application shall be submitted for review to the Oneida tribal environmental Specialist. The permit shall be reviewed and processed with two (2) weeks of receiving the completed application package, except in the case of modified mound an experimental systems which may take longer to review.

(2) Every on-site waste disposal system installed, expanded, modified, or enlarged after the adoption date of this law shall require a Tribal Sanitary Permit.

(3) When a change of ownership occurs, the owner of system shall have the system inspected by a State of Wisconsin Licensed Plumber, Registered Sanitarian or other person accepted by the Environmental Health and Safety Division.

(4) A Tribal sanitary permit shall be obtained by the property owner, his/her agent or contractor, in the name of the property owner, prior to the construction of any building which requires a private sewage system. Any property owner, his/her agent or contractor, who starts construction on a building, prior to obtaining a Tribal sanitary permit, is in violations and may be subject to the penalties provided in this law.

(5) Before any private sewage system may be installed, enlarged, altered, modified or additions constructed, a Tribal sanitary permit must first be obtained by the

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property owner, his/her agent or contractor. Failure to comply with this requirement constitutes a violation of this law. Violations which occur on leased land may also constitute violations of the Tribal land lease.

(6) A Tribal sanitary permit shall be obtained prior to constructing or erecting a privy.

(7) If any part of a system has failed, the entire system shall be evaluated for compliance with existing codes.

407.5. Permits and Applications

407.5-1.

(a) Permit Codes

(1) The permit card issued by the Environmental Specialist to the property owner or his/her agent shall serve as the Tribal sanitary permit.

(2) The permit card shall be displayed at the site in such a manner that it will be visible from a road abutting the lot during all construction phases.

(3) The permit card may not be removed until the private sewage system has been installed, inspected and approved by the Environmental Specialist or a Tribally-authorized inspector.

(4) Failure to display the permit card shall be considered a violation of this section and may subject the property owner, his/her agent or contractor, to penalty provisions of this law.

(b) Application Requirements

(1) The Tribal sanitary permit application shall include the following information which shall be furnished by the applicant on forms provided by the Tribal Environmental Health and Safety Division, along with all applicable fees:

(A) Names and address of the applicant (owner of the site) and the plumber employed (when applicable).

(B) Legal description of the subject site by claim number, lot block and recorded subdivision or by metes and bounds. All legal descriptions must also include a plot 1/4-1/4 section description to the nearest forty (40) acres (i.e.: NW 1/4 of the SE 1/4, Section 12, T23N-R19E).

(C) All lot dimensions.

(D) Driving directions to the site

(E) Building use (single, family, duplex, multi-family, commercial, industrial, and Tribal roll number).

(F) Plot plan. Detailed plot plan dimensions are drawn to scale showing the lot size; the location of all septic tanks; holding tanks or other treatment tanks; building sewers—sanitary and storm; wells; water mains or water service; streams and lakes; dosing or pumping chambers; distribution boxes; effluent systems; dual disposal systems; replacement system areas; and the location of the building served. Adjoining properties shall be checked to insure that the site location distances and dimensions shall be

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shown on the detailed plot plan.

(G) Reference points. A vertical elevation reference point and a horizontal reference point.

(H) Soil boring and percolation test data related to the undisturbed and finished grade elevations, vertical elevation reference point and horizontal reference point. Surface elevations, vertical elevation reference point and horizontal point. Surface elevations shall be given for all soil borings. All soil borings and percolation tests shall be performed by a State of Wisconsin Certified Soil Tester.

(I) Occupancy. The maximum number of bedrooms in the residence shall be indicated. The number of employees(full time and part time on an 8-hour shift), estimated number of customers in an 8-hour shift, number of washing machines and disposition of commercial/retail buildings.

(J) Other specifications. Complete specifications for pumps and controls including dose volume, elevation differences (vertical lift), pipe frictionless, pump performance curve, pump model manufacturer, and all piping information.

(K) Any other information deemed necessary by the Environmental Health and Safety Division.

(2) Pit privy permit applications shall be accompanied by soil data provided by a State of Wisconsin-license certified tester to a depth of three feet (3') below the proposed pit bottom. Soil data is not required when making application for a vault privy. The property owner shall be furnished with a copy of the Tribal privy construction requirements when the permit for a privy is issued.

(3) The Tribal Environmental Health and Safety Division reserves the right to refuse incomplete or incorrect permit applications or to delay issuance until corrected or completed applications are received.

(c) Permit Expiration

(1) Sanitary permits for private sewage systems, which have not been installed, shall expire two (2) years after the date of issuance. Permits may be renewed following written application to the Environmental Health and Safety Division by the proper owner, his/her agent or contractor, prior to the expiration date of the original permit.

(2) There shall be a fee for the renewal of a permit.

(3) The renewal shall be based on Oneida Sanitary Ordinance requirements in effect to the time of renewal.

(4) Changed requirements may impede the renewal.

(5) The property owner, his/her agent, or contractor, shall return the original permit card and receive a new card when the permit is renewed.

(6) All permits issued prior to the effective date of this law shall expire two (2) years from issue date unless renewed.

(7) If a permit has expired and the owner wants to build on the site, a new sanitary

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permit must be obtained, and the site shall be subject to the currently existing requirements, including any revisions made during the elapsed time period.

(d) Permit Replacement/Transfer

(1) If a sanitary permit is lost or destroyed, a replacement permit may be obtained from the Environmental Health and Safety Division. The land owner shall submit a written request, along with the permit replacement fee, to the Environmental Health and Safety Division, and a new sanitary permit shall be issued prior to installation of the system shall be subject to the following:

(A) The new property owner shall submit a written request to the Environmental Health and Safety Division to transfer the permit.

(B) The sanitary permit card shall be returned to the Department so that a new permit card may be issued.

(C) Transfer of ownership shall not affect the expiration date or renewal requirements. Any changes other than transfer of ownership shall require a new permit.

(D) The new property owner shall submit the permit transfer fee to the Environmental Health and Safety Division.

(e) Building alteration permits

(1) A tribal building alteration permit shall be required when an existing private sewage system is intended to serve a building which is to be remodeled such that there will be an increase in the wastewater load from that building or where the building is to be rebuilt or replaced with a new or different use or building.

(2) Prior to issuing a building alteration permit, the existing private sewage system shall be examined. No permits will be issued unless the following conditions are met:

(A) The system is functioning properly regarding the condition of the system shall be provided.

(B) The systems will be capable of handling the proposed wastewater load from the building to be served.

(C) The system will meet all minimum setback requirements of ILHR 83.

(3) Soil boring data to a depth of three feet (3') below the bottom of the existing system shall be reported by a State of Wisconsin Certified Soil Tester. For all soil absorption systems, a replacement system site shall be located for future use.

(4) Alteration of a building serviced by existing holding tanks will require an updated Holding Tank Agreement, one (1) which meets the requirements of this law. A copy of this completed agreement shall be attached to the permit.

(5) All systems shall be inspected by the Tribal inspector at the time of system and/or building alteration to ensure that proper materials and methods are being used.

(6) Reconnecting to an undersized system shall be allowed only if an affidavit for the use of the undersized system is recorded in the Oneida Nation Register of Deeds and an adequate area exists for a replacement system.

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(7) When a change in the use of a building or premises is contemplated, the Environmental Health and Safety Division shall be contacted as to whether it shall be necessary to obtain a sanitary permit or a building alteration permit.

(f) Change of plumbers

(1) A Tribal building alteration permit shall be required when an existing private sewage system is intended to serve a building which is to be remodeled such that there will be an increase in the wastewater load from the that building or where the building which is to be remodeled such that there will be an increase in the wastewater load from that building or where the building is to be rebuilt or replaced with a new or different use or building.

(2) Prior to issuing a building alteration permit, the existing private sewage system shall be examined. No permits will be issued unless the following conditions are met:

(A) The system is functioning properly, pursuant to this law. A State of Wisconsin Licensed Plumber's statement regarding the condition of the system shall be provided.

(B) The system will be capable of handling the proposed wastewater load from the building to be served.

(C) The systems will be capable of handling the proposed wastewater load from the building to be served.

(3) Soil boring data to a depth of three feet (3') below the bottom of the existing system shall be reported by a State of Wisconsin Certified Soil Tester. For all soil absorption systems, a replacement system site shall be located for future use.

(4) Alteration of a building received by existing holding tanks will require an updated Holding Tank Agreement, one (1) which meets their requirements of this law. A copy of this completed agreement shall be attached to the permit.

(5) All systems shall be inspected by the Tribal inspector at the time of system and/or building alteration to insure that proper materials and methods are being used.

(6) Reconnecting to an undersized system shall be allowed only if an affidavit for the use of the undersized system is recorded in the Oneida Nation Register of Deeds and an adequate area exists for a replacement system.

(7) When a change in the use of a building or premises is contemplated, the Environmental Health and Safety Division shall be contacted as to whether it shall be necessary to obtain a sanitary permit or a building alteration permit.

(g) Change of Plumbers

(1) When an owner wishes to change plumbers, the owner must complete a Tribal Change of Plumbers Form, signed by the new plumber. The form must be submitted to the Environmental Health and Safety Division, along with the applicable fees.

(2) The change of plumbers shall take place prior to the installation of the private sewage system.

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(h) Modified Mound and Experimental System Permits

(1) Sanitary permits of modified mounds and experimental systems shall only be approved for existing buildings. Not all sites are suitable for modified mounds and experimental systems.

(2) Sanitary permits for modified mounds and experimental systems shall be approved by the Environmental Health and Safety Division only on an individual basis.

(3) Modified mounds and experimental system sanitary permit applications are subject to all requirements of a regular sanitary permit, in addition to any additional requirements deemed necessary by the Environmental Health and Safety Division. Additional information may include, but is not limited to: more frequent inspections, additional soil borings, groundwater monitoring or contour maps.

(i) Site Evaluation

(1) A site evaluation may be necessary to determine the suitability of a lot for a private sewage system. Site evaluations will be made at the discretion of the Environmental Specialist. The evaluation shall take place within ten (10) working days of becoming aware of question of suitability and will be made prior to the issuance of the sanitary permit. The site evaluation will result in one (1) of the following:

(A) Issuance of the permit, provided all information on the application is correct and complete.

(B) Holding the application pending clarification of information or new information by the owner, the plumber or the certified Soil Tester.

(C) Denial of the permit if the site does not meet all the provisions of this law.

(2) Soil test pits shall be constructed which allow adequate visual observations of the soil provide in place. This is best accomplished by the construction of backhoe pits. The test pits shall be left in such a manner that will permit access to them for the evaluation of the soil protection were provided. Bore holes shall be either fenced or closed within five (5) days of the date of inspection.

(3) Site evaluations shall be done prior to issuance of permits for a mound system.

(j) Permit Denial

(1) When an on-site evaluation of a proposed private sewage system or pit privy reveals that the site is compliance with the requirements of this law, the permit application shall be approved. Written justification of the denial must be supplied to the owner of the Environmental Health and Safety Division within five (5) working days of the decision.

(k) Holding Tank Agreements

(1) Prior to the issuance of a sanitary permit for the installation of a holding tank, the owner of the holding tank, or his/her agent, shall sign and register a Holding Tank Agreement with the Oneida Nation or a State of Wisconsin Licensed Plumber. The purpose of the agreement is to ensure that the holding tank

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wastewater will be properly disposed of.

(2) Holding tank owner shall sign a servicing Contract with the Oneida Utilities for sewage disposal and must comply with the following requirements:

(A) The holding tank owner shall sign a Servicing contract with the Oneida Utilities for regularly scheduled servicing of the holding tank by the Tribally-licensed septic tank pumper. Copies of the servicing contract shall be attached to the holding tank agreement.

(B) The holding tanks shall be chained and locked at all times, and the chain, lock and lock keys shall be the property of the Oneida Utilities, to prevent unauthorized removal of the holding tank wastewater.

(C) The Oneida Utilities shall keep a log of the holding tank servicing dates, owner's names and servicing locations, gallons serviced, and disposal locations for all owner's names and servicing locations, gallons serviced, and disposal locations for all holding tanks on registered Servicing Contracts. This log shall be sent to the Environmental Health and Safety Division by the 15th of every month, for the previous month's activities.

(3) Holding tanks owners who contract with a Non-tribal Septic Tank Pumping Service must comply with the following requirements:

(A) The holding tank owner shall sign a Servicing Contract with the Non-tribal Septic Tank Pumping Service for regularly scheduled servicing of the holding tanks copies of the Servicing contract shall be attached to the Holding Tank Agreement.

(B) The holding tanks shall be chained and locked at all times.

(C) All Non-Tribal Septic Tank Pumping Services must meet the following requirements:

(i) The Septic Tank Pumper must have a valid State of Wisconsin license, and must meet all requirements of NR 113, Wisconsin Administrative Code.

(ii) The Septic Tank Pumper must follow all of the Nation's disposal requirements.

(D) The Non-tribal Septic Tank Plumber shall keep a log of the holding servicing dates, owners names, and servicing locations, gallons serviced, an disposal locations of all holding tanks on registered servicing contacts. This log shall be sent to the Environmental Health and Safety Division by the 15th of every month, for the previous month's activities.

(4) The signed Holding Tank Agreement shall be binding upon the owner, the heirs of the owner and assignees of the owner, or the authorized agent.

(5) Removal of the holding tank wastewater by persons other than those employed by the Oneida Utilities, or those State of Wisconsin-licensed Septic Tank Plumbers approved by the Environmental Health and Safety Division, shall constitute a violation of this law. Such violations which occur on Tribally-leased land shall

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constitute a violation of the Tribal land lease.

(l) Maintenance Program

(1) All soil absorption system tanks shall be pumped by a Tribally-licensed or State of Wisconsin-licensed septic tank pumper within two (2) years of the date of installation and at least once every two (2) years thereafter, unless upon inspection the tank is found to have less than one third (1/3) of the volume occupied by sludge and scum.

(2) All private sewage systems installed after the date of adoption of this law shall be inspected once every two (2) years for system compliance and tank integrity. Additional inspections, or inspections of systems installed prior to the date of law adoption, may be performed upon request by the system owner.

(3) Inspection of a private sewage shall be conducted by a Registered Sanitarian, the Tribal Environmental Specialist, a Master Plumber, a Journeyman Plumber or a Registered Plumber licensed by the State. Inspections may also be performed by training program and have received authorization from the Nation. Re-certification of the authorized tribal employees shall be required on a yearly basis, and shall be provided by the Environmental Health and Safety Division. The inspections shall be performed at the same time as the tank pumping.

(4) The owner of said soil absorption system shall submit information as to the condition of the system and tank, and the date of pumping, to the Tribal Environmental Health and Safety Division within ten (10) days of the date of inspection of the tank is made by an authorized Tribal employee.

(5) The owner of a holding tank shall sign and register a Holding Tank Agreement, as specified in section 407.5-1(i) of this law, and shall be subject to all requirements stated in section 407.4-1(d)(1).

(6) Non-tribal Septic Tank Pumpers who are approved by the Environmental Health and Safety Division to service on-site waste disposal systems must comply with the following requirements:

(A) The Septic Tank Pumpers must have a valid State of Wisconsin license, and must meet all requirements of NR 113, Wisconsin Administrative Code.

(B) The Septic Tank Pumper must obtain a Tribal Vendor's Permit prior to servicing any tanks.

(C) The Septic Tank Pumper must follow all of the Nation's disposal and reporting requirements.

(m) Permit fees shall be set and periodically amended by the Oneida Business Committee. Fees may be reduced by fifty percent (50%) if the inspections are performed by Indian Health Service agents. All fees must accompany permit application. Fees are payable by check to the "Oneida Nation". No out-of-state checks will be accepted. Failure to pay permit fees constitutes a violation of this law. Applicable fees are as follows:

(1) Private Residential Building Sanitary Permit:

(A) Conventional soil absorption systems: \$20.00

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706	(B) In-ground pressure distribution system:	\$20.00
707	(C) Holding tanks:	\$20.00
708	(D) Mound systems, modified mound systems, at gate systems and	
709	experimental systems:	\$50.00
710	(2) Public and Commercial Building Sanitary Permits:	
711	(A) Conventional soil absorption systems:	\$45.00
712	(B) In-ground pressure distribution systems:	\$45.00
713	(C) Holding tanks:	\$90.00
714	(D) Mound systems, modified mound systems, at grade systems an	
715	experimental systems:	\$150.00
716	(3) Other Fees:	
717	(A) Sanitary renewal:	\$5.00
718	(B) Change of Plumber fee:	\$5.00
719	(C) Privy permits:	\$5.00
720	(D) Building alteration permit fees:	
721	Private Residential building	\$20.00
722	Public and Commercial buildings	\$45.00

407.6-1. Inspections**407.6-1. General**

(a) All private sewage shall be inspected after construction and before backfilling. The inspections shall be performed within the following work day excluding Saturdays, Sundays, and holidays after receiving notice from the licensed plumber responsible for the installation.

(b) A Tribal Site Inspection form shall be completed by the Environmental specialist or Tribal inspector. A copy of the report shall be sent to the system owner.

407.6-2. Notice for inspection.

(a) The plumber employed to install the system shall notify the Environmental Specialist in person, by telephone or in writing when the on-site waste disposal system is ready for inspection.

(b) The owner shall be notified of regular inspections within twenty-four (24) hours of the inspection. If the owner cannot be reached within the twenty-four (24) hour period, the inspection shall continue as scheduled. No prior notification shall be required for compliance inspections for holding tanks.

407.6-3. Preparation for inspection

(a) When an on-site waste disposal system is ready for inspection, the plumber employed to install the system shall make such arrangements as will enable the Environmental Health and Safety Division inspector to inspect all parts of the system.

(b) The plumber shall have present the proper apparatus and equipment for conducting the inspection and shall furnish such assistance as may be necessary in making a proper inspection.

407.6-4. Holding Tank Inspections

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(a) All site constructed holding tanks shall be inspected after the forms have been set and reinforcing is in place; but before any concrete has been poured. Concrete may be poured only after it has been determined that the tank, as formed, complies with the plans as approved by the Department.

(b) This inspection shall not eliminate the need for an inspection after the installation has been completed.

407.6-5. Privy Inspections

(a) All privies installed shall be inspected for compliance with this law. The home owner or his agent shall notify the Environmental Health and Safety Division for inspection immediately after the privy has been constructed.

(b) Privies may be inspected periodically after the initial inspection.

407.6-6. Mound Inspections

(a) All mound systems shall be inspected during construction by an inspector certified by the Nation. The plumber installing the mound shall notify the Environmental Specialist twenty-four (24) hours in advance of the installation. Four (4) inspections of the system shall be made during the first year of the mound operation in accordance with Tribal guidelines. Annual inspections may be made after the first year of operation, and may be more frequent if deemed necessary by the Environmental Specialist.

407.6-7. Re-inspections

(a) The Environmental Specialist may require additional inspections other than the inspection prior to backfilling, or if the initial inspection disclosed that the installation was incomplete at the time the installer indicated it would be complete, or if the system was not in conformance with the requirements stated in this law.

407.6-8. As-built Plans

(a) All on-site waste disposal systems installed, enlarged, modified, or expanded after the adoption date of this law shall require as-built plans to be registered with the Environmental Health and Safety Division.

(b) The plumber employed to install the system shall submit the as-built plans to the Environmental Health and Safety Division within five (5) days of the installation of the system.

(c) The as-built plans shall include all dimensions described in Section 407.5-1(b)(1)(F), of this law. It shall also include the location of all manhole risers installed as part of the system for which the as-built is being developed. The manhole covers and other portions of the system shall be located from two (2) permanent points (i.e., corners of the building served).

407.6-9. Covering of Work

(a) No part of the private sewage system may be backfilled until it has been inspected and approved. If any part is covered before being inspected and approved it shall be uncovered at the discretion of the Environmental Health and Safety Division inspector or Indian Health Service Inspector.

407.6-10. Defects in Materials and Workmanship

(a) If inspection discloses defective material, design, siting or unworkmanlike construction which does not conform to the requirements of this law, the nonconforming parts shall be

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removed, replaced and re-inspected.

407.7. Administration and Enforcement

407.7-1. Variances

(a) A request for a variance to the conditions or requirements of this law may be made to the Environmental Specialist. The Environmental Specialist shall not have the authority to approve any variance request. The Environmental Resource Board shall issue written approval or denial of any variances requested.

(b) Parties disagreeing with the determination of the Environmental Resource Board may contest the decision by filing a complaint to the Judiciary in accordance with section 407.7-5.

407.7-2. Violations

(a) Any person who violates any provision of this law is subject to penalties and forfeitures provided for by this law and any resultant rules. Actions which constitute a violation are described in, but not limited to, the following:

(1) Installing a new on-site waste disposal system without first obtaining a Tribal Sanitary Permit.

(2) Modifying, altering, enlarging or constructing additions to an existing on-site waste disposal system without first obtaining a Tribal Sanitary Permit or a Building Alteration Permit.

(3) Servicing or removing sewage from an on-site waste disposal system tank without a valid State of Wisconsin or Tribal license.

(4) Failing to obey any requirement of an Administrative Enforcement Order.

(5) Failing to properly display the Sanitary Permit card.

(6) Failing to disconnect a failing private on-site waste disposal system within the Order. Building served by disconnected failing on-site systems shall be reconnected to public sewer systems.

(7) Failing to connect a building served by a private on-site waste disposal system to a public sewer system within the time allotted by section 407-4.1(f) of this law, or the date stated in the Order.

(8) Installing, modifying, altering, enlarging or making additions to any part of an on-site waste disposal system without a valid State Plumbing License. Privies are exempt from this requirement.

(9) Failing to pay Tribal permit fees

(10) Failure to correct a failing on-site waste disposal system within three (3) months of an Administrative Order. A failing on-site waste disposal system constitutes a threat to public health.

(11) Failure to maintain a system through regularly scheduled pumping, pursuant to holding tank agreement and maintenance program of this law. Failing to maintain a holding tank through regularly scheduled pumping constitutes a threat to public health.

407.7-3. Administrative Orders

(a) The Environmental Specialist may issue an Administrative Enforcement Order when a

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violation of any provision of this law occurs, to provide the owner or agent the opportunity to bring their action into compliance with the provisions of this law.

(b) The Order shall be given to the party responsible for the violation and shall state the nature of the violation, possible penalties for failure to correct, and shall state the right to contested the matter with the Oneida Judiciary.

407.7-4. Penalties

(a) The Environmental Resource Board is hereby granted administrative rulemaking authority to establish penalties for violations of this law. Except as provided in section 407.5-5(b), forfeitures for violations shall amount to not less than ten dollars (\$10) and not greater than fifty dollars (\$50) per violation. Each day such violation continues constitutes a separate offense.

(b) Forfeitures for violations which constitute a threat to public health shall not be less than fifty dollars (\$50) and not more than two hundred dollars (\$200) per violation. Each day such violation continues constitutes a separate offense.

407.7-5. Appeal Permit Decision. Any person wishing to contest a decision of the Department related to a permit may appeal such action by filing a complaint with the Judiciary Trial Court naming the Department.

407.7-6. Contested Action Hearings. All citations, penalties, forfeitures, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service*. Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) *Allocation of Citation Revenue*. All fines and penalties issued by citations are payable to the Environmental Resource Board or its designee, the proceeds of which the Environmental Resource Board shall contribute to the Nation's general fund.

(c) *Appealing the Decision of the Judiciary Trial Court*. Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) *Pursuing Payment of a Citation*. The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

407.7-7. Severability

(d) Conflict with Federal Law. Should any part of this ordinance be found to be in conflict with federal requirements which are required in order that the Oneida Nation receive

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federal funds, the conflicting section of this law is to be considered inoperative only for purposes of that particular funding and that inoperative only for purposes of that particular funding and that particular conflict. Such conflict shall not affect the operation of the remainder of this law in its application to those agencies or departments directly affected.

407.7-8. Waiver of liability

(a) This law shall not create a liability on the part of or a cause of action against the Nation, or any employee thereof, for any private on-site sewage treatment system which may not function as designed. There shall be no liability of warranty for any site which is approved or denied. The issuance of a sanitary permit and the formal inspection of such a system does not warrant the system's function, nor is there a guarantee that the system is free of defects or that all aspects of the system comply with the requirements or this ordinance.

Adopted - BC-10-28-88-A

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Title 4. Environment and Natural Resources - Chapter 407

ON-SITE WASTE DISPOSAL **ORDINANCE**

Tsi? Yeyakotyetáhkwa Olihwa'ke

The matters concerning where the garbage is kept

407.1. Introduction
407.2. Adoption, Amendment and Repeal
407.3. Definitions
407.4. General Requirements

407.5. Permits and Applications
407.6. Inspections
407.7. Administration and Enforcement

407.407.1. Introduction
407.2. General Requirements

407.3. Permits and Applications
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407.1. Introduction.1. Introduction

401.1-1. Applicability. This **Ordinance**law shall apply to all Oneida Tribal Entities, the Oneida **Tribe**Nation itself, and members of the Oneida **Tribe of Indians of Wisconsin**Nation within the exterior boundaries of the Oneida **Tribe of Indians of Wisconsin**Nation Reservation.

407.1-2. Purpose. The purpose of this **Ordinance**law is to establish regulations to ensure that private on-site sewage treatment systems will fulfill Oneida Tribal goals for improving environmental health and safety. The regulations herein will set forth procedures for administration of the program; general requirements for proper siting, design, installation, inspection, and maintenance of the systems; limitations of private systems; and enforcement mechanisms and procedures. The ultimate intent of this **ordinance**law is to support the Oneida belief of taking care of Mother Earth. As unforeseen events may arise which are not specifically addressed in this **ordinance**law, this stated intent, along with the following basic principles, should define a course of action for unforeseen events.

(a) **NEED**-Every building intended for human habitation or occupancy shall be provided with a properly functioning system for treatment and disposal of domestic waste.

(b) **PUBLIC SEWERS**-When public sewers become available to any building intended for human habitation or occupancy, the use of the private sewage system shall be discontinued within that period of time required by order, but not exceed one **(1)** year. The owner shall be required to connect to public sewers sooner than the one **(1)** year date if the system meets the definition of a failing system. When funding for the connection is available, the owner shall be required to connect sooner than the one **(1)** year date, and the connection shall be made from the private sewage system and be connected to the public sewers sooner than the one **(1)** year date if the system meets the definition of a failing system. When funding for the connection sooner than the one **(1)** year date, and the connection shall be made according to the contractor's construction schedule. The building sewer shall be disconnected from the private sewage system and be connected to the public sewer. All abandoned treatment tanks and seepage pits shall have the contents pumped and disposed of in accordance with chapter NR 113, Wisconsin Administrative Code. The top or the entire tank shall be removed and the remaining portion of the tank

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or excavation shall be immediately filled with clean, suitable soil material.

(c) DISCHARGES/FAILING SYSTEMS-Every private sewage system shall be designed, located and constructed to prevent ponding of effluent within the soil absorption system or any discharge or sewage into drain tiles, onto the ground surface, into the structure served, or into the surface waters or groundwater within the exterior boundaries or adjacent to the Oneida ~~Tribe of Indians of Wisconsin~~ Nation Reservation including zones of seasonal soil saturation.

(d) MAINTENANCE-Every private sewage system shall be adequately maintained.

(e) NUISANCE-Every private sewage system shall be designed and constructed to adequately dispose of all the wastewater generated in the structure or facility it is serving.

~~407.1-3. This Ordinance is adopted 2.~~ Adoption, Amendment and implemented through Repeal

~~407.2-1. This law was adopted by the authority granted [Oneida Business Committee or Oneida General Tribal Council] by resolution BC-10-28-88-A and amended by resolution~~

~~407.2-2. This law may be amended or repealed by the Oneida ~~Tribe of Indians of Wisconsin~~ Business Committee and/or Oneida General Tribal Council pursuant to the Oneida procedures set out in the Legislative Procedures Act.~~

~~407.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.~~

~~407.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.~~

~~407.2-5. This law is adopted under authority of the Constitution, Part 4, Section of the Oneida Nation.~~

407.3. Definitions

~~407.3-1.(F).~~

~~407.1-4.~~ For the purposes of this ordinance law, the following definitions shall apply. All other words shall be defined according to dictionary reference.

(a) ~~APPROVED~~ "Approved" means accepted or ratified by the Environmental Health Department and Safety Division.

(b) ~~AS-BUILT PLAN~~ "As-Built Plan" means a final plan of any system as installed.

(c) ~~AVAILABILITY OF PUBLIC SEWERS~~ "Availability of Public Sewers" means when a public sewer line either passes in front of a lot line or comes within ~~200~~ two hundred feet (200') of a lot line, availability of the public sewers for servicing buildings on the lot is established.

(d) ~~BEDROCK~~ "Bedrock" means the rocks that underlie soil materials or are at the earth's surface. Bedrock is encountered when the weathered in-place consolidated material, larger than ~~2mm~~ 2 mm in size, is greater than ~~fifty percent (50%)~~ by volume.

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(e) ~~BUILDING~~ "Building" means -a structure having walls and a roof erected or set upon an individual foundation or slab-constructed base designed or used for the housing, shelter, enclosure or support of any kind, which is intended for human habitation or occupancy. A mobile home is included in this definition. Each structure abutting another structure which does not have an ingress-egress doorway through the basement foundation walls, or structures with separate exterior or exterior abutting walls, or public use structures separated by an unpierced firewall, shall be considered as separate or individual building.

(f) ~~CESSPOOL~~ "Cesspool" means a covered excavation in the ground which receives sewage or other organic matter and solids, permitting the liquids to seep into the soil cavities. Cesspools are prohibited.

(g) ~~CLEANOUT~~ "Cleanout" means a plug or cover made of material approved by the Department, joined by means of a screw thread to an opening in a pipe, which can be removed for the purpose of cleaning or examining the interior of the pipe.

(h) ~~CLEANWATER WASTES~~ (h) "Cleanwater Wastes" means cooling water and condensate drainage from refrigeration compressors and air-conditioning equipment, water used for impurities have been reduced below a minimum concentration considered harmful, and cooled condensate from steam heating systems or other equipment.

(i) ~~COLOR~~ "Color" means the moist color of the soil based on Munsell soil color charts.

(j) ~~COMMUNITY ON-SITE WASTE DISPOSAL SYSTEM~~ "Community On-Site Waste Disposal System" means an on-site waste disposal system servicing more than one (1) building being served. A community sewage system may be owned by the property owners, the TribeNation, or special purpose district.

(k) ~~CONVENTIONAL SOIL ABSORPTION SYSTEM~~ (k) "Conventional Soil Absorption System" means a system that employs gravity flow from the septic or other treatment tank and applies effluent to the soil through the use of a seepage trench, bed or pit.

(l) ~~DEPARTMENT~~ "Department" means the Oneida Tribal Environmental Health Department and Safety Division.

(m) ~~DETAILED SOIL MAP~~ (m) "Detailed Soil Map" means a map prepared by or for a state or federal agency participating in the national cooperative soil survey showing soil series, type and phases at a scale of not more than 2,000 feet to the inch and includes related explanatory information.

(n) ~~DOSING TANK~~ "Dosing Tank" means a tank used for the collection of sewage effluent from a septic or solids tank. The effluent is pumped from the dosing tank to a soil absorption field.

(o) ~~DWELLING UNIT~~ "Dwelling Unit" means one (1) or more rooms with provisions for living, sanitary and sleeping facilities which are used or intended to be used by one (1) person or by two (2) or more persons maintaining a common household.

(p) ~~EFFLUENT~~ "Effluent" means liquid discharge from a septic or other treatment tank.

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(q) ~~EXISTING~~ “Existing” means prior to the adoption date of this ordinance law.

(~~r~~) ~~EXPERIMENTAL SYSTEM~~ (r) “Experimental System” means an on-site wastewater treatment system designed to overcome site limitation which would preclude the installation of any of the standard soil absorption systems defined in this ordinance law. Not all sites are suitable for experimental systems.

(s) ~~FAILING PRIVATE SEWAGE SYSTEM~~ “Failing Private Sewage System” means a failing private sewage system is one (1) which causes or results in any or the following conditions:

(1) ~~1~~ The failure to accept sewage discharges resulting in the back up of sewage into the structure served by the private sewage system.

(2) ~~2~~ The discharge of sewage to the surface of the group or to a drain tile.

(3) ~~3~~ The discharge of sewage to any waters within the exterior boundaries or adjacent to the Oneida Tribe of Indians of Wisconsin Nation Reservation.

(4) The introduction of effluent into zones of saturation which adversely affects the operation of a private sewage system.

(5) ~~5~~ The ponding of effluent within the soil absorption system.

(~~t~~) ~~GREASE INTERCEPTOR~~ (t) “Grease Interceptor” means a watertight tank which is installed underground for the collection and retention of grease from cooking of food processing and which is accessible for periodic removal of the contents.

(~~u~~) ~~HIGH GROUNDWATER ZONES~~ (u) “High Groundwater” means zones of soil saturation which include: Perched water tables, shallow regional groundwater tables or aquifers, or zones that are seasonally, periodically or permanently saturated. Unless otherwise proven, the presence of soil mottles indicates the level of seasonal saturation.

(v) ~~HOLDING TANK~~ “Holding Tank” means an approved watertight receptacle for the collection and holding of sewage, which requires pumping by a licensed sanitary hauler.

(w) ~~INDOOR PLUMBING ONE~~ “Indoor Plumbing” means one (1) plumbing fixture constitutes an indoor plumbing system.

(~~x~~) ~~IN GROUND PRESSURE DISTRIBUTION SYSTEM~~ (x) “In-Ground Pressure Distribution System” means a pressurized soil absorption system placed entirely within the natural soil and based on the mound system design.

(~~y~~) ~~LEGAL DESCRIPTION~~ (y) “Legal Description” means inaccurate Metes and Bounds description, a claim number, a lot and block number in a recorded subdivision, a recorded assessor's plat or public land survey description to the nearest forty (40) acres in 1/4-1/4 sections (ie: NW 1/4 of the NE 1/4, Section 10, T24N-R18E).

(z) ~~MOBILE HOME~~ “Mobile Home” means a transportable structure mounted on a chassis and designed to be used with or without a permanent foundation as a dwelling as a dwelling unit. The phrase “without a permanent foundation” indicates that the support system is constructed with the intent that the mobile home thereon may be moved from time to time at the convenience of the owner.

(~~aa~~) ~~MODIFIED MOUND SYSTEM~~ (aa) “Modified Mound System” means a soil absorption system which utilized pressured distribution of the effluent and sandy fill

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materials to overcome sites with specific limiting conditions. The limiting conditions are:

(1) Depth to seasonal high groundwater of 24 to 54 inches with percolation rates of 0 to 180 minutes per inch.

(2-) Depth to seasonal high groundwater of 12 to 54 inches with ~~percolatin~~percolation rates of 0 to 120 minutes per inch.

(bb) ~~MOUND SYSTEM~~ "Mound System" means a system which utilized pressurized distribution of the effluent and sandy fill conditions are:

(1) Depth to fractured bedrock of ~~24 to 54~~twenty-four inches (~~24"~~) to fifty-four inches (54") with percolation rates of ~~zero~~ (0) to ~~sixty~~ (60) minutes per inch

(2) Depth to seasonal high groundwater levels of ~~24 to 54~~twenty-four inches (~~24"~~) to fifty-four inches (54") with percolation rates between ~~zero~~ (0 ~~to~~) and one hundred twenty (120) minutes per inch.

(cc) ~~NUISANCE~~ "Nuisance" means -any source of filth, odor or probable cause of sickness, as is described in Wisconsin Statue 146.14

(dd) ~~ONEIDA TRIBE~~ "Oneida Tribe of Indians of Wisconsin is Nation" means Oneida Nation, a federally recognized Indian government and a Treaty Tribe recognized by laws of the United States.

(~~ee~~) ~~ON-SITE WASTE DISPOSAL SYSTEM~~ (~~ee~~) "On-Site Waste Disposal System" means a sewage treatment disposal system serving a single building with a septic tank and soil absorption field located on the same parcel as the building. This term also means an alternative substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one (1) building, or a system located on a different parcel than the building, or a system located on a different parcel than the building. A private sewage system may be owned by the property owner or by a special purpose district.

(ff) ~~PERCOLATION TEST~~ "Percolation Test" means the method used for testing soil absorption qualities, as described in ILHR 83,09(5), Wisconsin Administrative Code. All soil Wisconsin-licensed Certified Soil Testers.

(gg) ~~PERMEABILITY~~ "Permeability" means the ease with which liquid move through the soil. One (1) of the soil qualities listed Certified Soil Testers.

(hh) ~~PLUMBER~~ "Plumber" means a person licensed by the State of Wisconsin as a Master Plumber or Master Plumber Restricted Sewer Services-, as described in Wisconsin State Statute 145.01

(~~ii~~) ~~PRESSURE DISTRIBUTION SYSTEM~~ (~~ii~~) "Pressure Distribution System" means a soil absorption system that employs a pump or automatic siphon and small diameter distribution pipping with small diameter perforations to introduce effluent into the soil. Plan review and departmental approval is required for each system of this type. Approval will only be given on a case by case basis. Approval shall only be given on an individual basis.

(jj) ~~PRIVY~~ "Privy" means a structure that is not connected to a plumbing system, which is used by persons for the deposition of human body wastes.

(kk) ~~PRIVY PIT~~ "Privy-Pit" means a privy with earthen sidewalls and/or bottom. The privy shall be so constructed as to be insect and rodent proof as described in ILHR

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53.63, Wisconsin Administrative Code

(ll) ~~PRIVY VAULT~~ "Privy-Vault" means a privy with watertight vault consisting of one (1) of the following:

(1) concrete sidewalls and bottom(poured in place)

(2) a prefabricated concrete tank

(3) an asphalt coated steel tank

(A) The tank shall be constructed insect and rodent proof per ILHR 52.63 Wisconsin administrative Code.

(mm) ~~PUBLIC SEWERS~~ "Public Sewers" means a wastewater treatment system which utilizes collection of the sewage through underground sewer pipes, which all flow to one (1) collection station, where the wastewater is then treated. Public sewers provide service to more than one (1) residence, and each residence is charged a fee for wastewater collection and treatment.

(nn) ~~SEEPAGE BED~~ "Seepage Bed" means an excavated area larger than ~~5~~five feet (5') in width which contains a bedding of aggregate and has more than one (1) distribution line.

(oo) ~~SEEPAGE PIT~~ "Seepage Pit" means an underground receptacle so constructed as to permit disposal of effluent or clear wastes by soil absorption through its flood and walls.

(pp) ~~SEPTIC TANK~~ "Septic Tank" means a tank which receives and partially treats sewage, through processes of sedimentation, oxygenation, flotation and bacterial action so as to separate solids from liquid in the sewage, and discharges and public buildings.

(qq) ~~SEWAGE~~ "Sewage" means the liquid and water carried wastes created in and conducted away from residences, industrial establishments and public buildings.

(rr) ~~SOIL~~ "Soil" means the unconsolidated material over bedrock.

(ss) ~~SOIL ABSORPTION~~ "Soil Absorption" means any sewage treatment system which has a solid separation tank and utilizes distribution of the sewage effluent to unsaturated soil for treatment. Systems included in this ~~definitions~~definition are: conventional septic's, mounds, in-ground pressure distribution, at-grade, etc.

(tt) ~~SOIL BORING~~ "Soil Boring" means an observation pit dug by hand or backbone, a hole dug by auguring or a soil core taken intact and undisturbed with a probe.

(uu) ~~SOIL MOTTLES~~ "Soil Mottles" means spots or streaks of contrasting soil colors usually caused by soil saturation for some period of a normal year. Soil mottles are used as indicators of the seasonal high groundwater level.

(vv) ~~SOIL SATURATION~~ "Soil Saturation" means the state when all the pores in a soil are filled with water. Water will flow from saturated soil into a bore hole.

(ww) ~~TOPSOIL~~ "Topsoil" means the undisturbed surface horizon of a soil often characterized by a clack or dark grayish brown color due to a higher content of organic matter.

(xx) ~~TRIBAL VENDOR'S PERMIT~~ "Tribal Vendor's Permit" means a permit issued by the Environmental Health ~~Department~~and Safety Division for the installation of a private sewage system.

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(yy) ~~VENT CAP~~ “Vent Cap” means an approved appurtenance used for covering the vent terminal of a soil absorption system, to avoid closure by mischief or debris, and still permit circulation of air within the system.

(zz) ~~WORKMANSHIP~~ “Workmanship” means work of such character that will fully secure the results sought in all the sections of this ~~ordinance~~ law as intended for the safety, welfare and health protection of all individuals.

~~407.2.4.~~ General requirements. Requirements

~~407.2.4-1.~~

(a) Every building or structure intended for human habitation or occupancy, within the scope of applicability of this ~~ordinance~~ law, shall have a Tribally-approved on-site private sewage treatment system or be connected to a public sewer system. Such systems shall be approved on-site private sewage treatment system or be connected to a public sewer system. Such systems shall be approved only if no public sewers are available to service said buildings. Unless specifically approved by the ~~Tribe~~ Nation, the private sewage system to each building. A private sewage system may be owned by the property owner or by a special purpose district. The use of a community on-site waste disposal system or a system on a different parcel than the structure shall be subject to the same permit requirements and procedures as for systems serving public buildings. The private sewage system for newly constructed buildings shall be installed, inspected and approved before the building can be occupied.

(b) The type of on-site waste disposal system approved for use on a site shall be dependent upon site conditions. ~~Approvable~~ Approvable types of on-site waste disposal systems are:

- (1) Conventional soil absorption systems
- (2) In ground pressure distribution systems
- (3) Mound systems
- (4) Modified mound systems
- (5) At-grade systems
- (6) Holding tanks
- (7) Privies (pit and vault)

~~Approvable~~ Approvable systems are not limited to this list, but systems not included on this list may only be approved by the Environmental Health ~~Department~~ and Safety Division on an individual basis.

(c) Additional restrictions

- (1) Domestic waste-all water carried wastes derived from ordinary living uses shall enter the septic or treatment tank or be discharged to a public or municipal treatment system.
- (2) Water supply-all new buildings intended for human habitation or occupancy shall be provided with a well and water supply system.
- (3) Cesspools-cesspools are prohibited.
- (4) Clear water-The discharge of surface, rain and other clear water into a private

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sewage system is prohibited.

(5) Water shortener and iron filter backwash-Water softener of iron filter discharge may be directed to the private sewage system, a separate below ground surface soil absorption system or to the ground surface if a nuisance is not created.

(6) Floodplain-On-site waste disposal systems for new buildings will not be approved for construction within the floodplain. Existing buildings may have a system approved in the flood fringe subject to Departmental approval on an individual basis. All systems shall be flood-proofed to a height of at least two ~~(2)~~ feet (2') above the one hundred (100) year flood elevation.

(d) Holding Tanks

(1) Holding tanks will not be approved to service any new residential construction. Holding tanks shall only be approved under the following circumstances:

(A) As a temporary method of waste containment until public sewers are available, not to exceed two (2) years from the date of installation. Extended use of the holding tanks beyond the two (2) year period will require a permit for the Environmental Health Department and Safety Division. The holding tanks shall be disconnected and a connection shall be made upon availability of the public sewer system, and the tanks properly abandoned in the manner as is described in ILHR 83, Wisconsin Administrative Code.

(B) As a replacement system for existing filing soil absorption systems. Holding tanks shall be approved only if no other soil absorption system can be approved for the site.

(C) As an interim measure when there are delays in funding from outside funding agencies. The site must have received written approval for an on-site soil absorption system, and funding must have been appropriated to cover all installation costs. The system must be completed as soon as the funding is made available.

(D) As an interim measure for construction reason. If an approved soil absorption system is being constructed, and progress on construction is halted severe weather (ie, winter frost conditions), then holding tanks may be installed and used only until construction of the soil absorption system can be permitted. The existing residence must be constructed and occupied prior to adoption of this ordinance law.

(E) For an existing residence where no other soil absorption system can be permitted. The existing residence must be constructed and occupied prior to adoption of this ordinance law.

(F) For new construction of commercial buildings only where no other soil absorption system can be permitted.

(e) Privies

(1) Privies are prohibited for all new residential construction.

(2) Privies may be permitted only when the existing building served by the privy is

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not provided with an indoor plumbing system. One (1) plumbing fixture constituted indoor plumbing.

(3) All privies must meet the site requirements as described in IRHR 83.10, Wisconsin Administrative Code.

(4) When system upgrade becomes available or indoor plumbing is installed, then privy must be properly abandoned, and the building must be connected to an approved on-site waste disposal system or a public sewer system.

(5) All chemical, gas electrical, composting and other non-water using toilets must comply with all requirements of privies.

(f) Public Sewer Connection

(1) When public sewers become available to any buildings intended for human habitation or occupancy, the use of the private sewage system shall be discontinued within that period of time required by order, but not to exceed one (1) year. The building sewer shall be disconnected from the private sewage systems and be connected to the public sewer.

(2) The owner shall be required to connect to public sewers sooner than the one (1) year date if the existing private sewage system meets the definition of a failing system.

(3) When funding for the connection is available, the owner shall be required to connect to the public sewer sooner than the one (1) year date. The connection shall be made according of the contractor's construction schedule.

(4) All abandoned treatment tanks and seepage pits shall have the contents pumped and disposed of in the same manner as is designated in Chapter NR 113, Wisconsin Administrative Code. The top or entire tank shall be removed and the remaining portion of the tank or excavation shall be immediately filled with clean, suitable soil material.

(g) Failing systems

(1) When a failing or malfunctioning private sewage system is encountered, the sewage disposal system shall be corrected or its use discontinued within that period of time required by departmental order, with a maximum time limit of one (1) year. A failing system is identified when one (1) or more of the following conditions apply:

(A) The failure of the private sewage system to accept sewage discharges and or there is back-up of the sewage to the structure the system services.

(B) The discharge of sewage to the surface of the ground or to a drain tile.

(C) The discharge of sewage to any waters within the exterior boundaries or adjacent to the operation of private sewage system.

(D) The introduction of effluent into zones of saturation which adversely affects the operation of private sewage system.

(E) The ponding of effluent within the soil absorption system.

(h) Incorporation of provisions by reference

(1) This chapter incorporates by reference the following rules, regulations and

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laws, as set forth in the Wisconsin Statutes and the Wisconsin Administrative Code governing the location, construction and use of the private sewage systems.

(A) State Statutes: 59.065, 59.07(51), 144, 145, 146.13, 146.14, and 968.10

(B) Wisconsin Administrative Codes: NR 113; ILHR 82 and ILHR 83.

(2) These rules, regulations and laws shall be available upon request from the Environmental Health ~~Department~~ and Safety Division.

(3) These rules, regulations, and laws shall be used for purposes of this ~~ordinance~~ law only, and shall apply until amended or renumbered and then shall apply as amended or renumbered.

(4) References in these codes as to the responsibilities of the "State", "Department", "Department of Natural Resources", and "County" shall be directed to the "Oneida ~~Tribal~~ Nation" and to the "Oneida ~~Tribal~~ Environmental Health Department and Safety Division".

(i) Administration

(1) The Oneida Tribal Environmental Specialist shall be responsible for the administration of this ~~ordinance~~ law. The Environmental Specialist may delegate responsibilities to personnel employed by or assigned to assist the Environmental Specialist.

(j) Powers and Duties

(1) In administering this ~~ordinance~~ law, the Environmental Specialist shall have the following powers and duties:

(A) Perform duties, and delegate duties as may be required, to personnel assigned to or employed to assist the Environmental Specialist, to assure full and complete compliance with this ~~ordinance~~ law.

(B) Provide assistance to applicants preparing permit applications, and advise said applicants regarding provisions of this ~~ordinance~~ law.

(C) Review and approve plans for private on-site sewage treatment systems.

(D) Issue permits and perform site inspections for compliance with this ~~ordinance~~ law.

(E) Keep records of all permits issued, inspections made, work approved and other official actions.

(F) Report violations of this ~~ordinance~~ law or other land use regulations to the Tribal office designated by the Oneida Business Committee, as provided for in the Administrative Procedures Act.

(G) Have access to any premises for the purposes of performing said duties between 8:00 a.m. and 8:00 p.m. or at other times set by mutual agreement between the property owner or their agent and the Environmental Specialist. Application for permit is considered, for the purposes of this ~~ordinance~~ law, as the owner's consent to enter the premises.

(H) Upon reasonable cause or question as to proper compliance, revoke any Tribal sanitary permit and issue cease and desist orders requiring the

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cessation of any construction, alteration or use of a building which is in violation of the provisions of this ~~ordinance~~law, until compliance with this ~~ordinance~~law is obtained.

(I) Issue and enforce orders to plumbers, property owners, their agents or contractors of the responsible party, to assure proper owners, their agents or contractors of the responsible party, to assure proper compliance with all provisions of this ~~ordinance~~law. The Environmental Specialist may delegate this authority to the Tribal office designated by the Oneida Business committee, as provided for in the Administrative Procedures Act.

(2) Violations of this ~~ordinance~~law which occur on leased land will be reported to the Oneida Land Office and the Oneida Land Office and the Oneida Law Office because said violations may constitute violations of the Tribal Land Lease.

(k) Repeal and effective date

(1) Tribal sanitary permits are obtained through the Oneida Environmental Health ~~Department~~and Safety Division. Completed application shall be submitted for review to the Oneida tribal environmental Specialist. The permit shall be reviewed and processed with two (2) weeks of receiving the completed application package, except in the case of modified mound an experimental systems which may take longer to review.

(2) Every on-site waste disposal system installed, expanded, modified, or enlarged after the adoption date of this ~~ordinance~~law shall require a Tribal Sanitary Permit.

(3) When a change of ownership occurs, the owner of system shall have the system inspected by a State of Wisconsin Licensed Plumber, Registered Sanitarian or other person accepted by the Environmental Health ~~Department~~and Safety Division.

(4) A Tribal sanitary permit shall be obtained by the property owner, his/her agent or contractor, in the name of the property owner, prior to the construction of any building which requires a private sewage system. Any property owner, his/her agent or contractor, who starts construction on a building, prior to obtaining a Tribal sanitary permit, is in violations and ~~my~~may be subject to the penalties provided in this ~~ordinance~~law.

(5) Before any private sewage system may be installed, enlarged, altered, modified or additions constructed, a Tribal sanitary permit must first be obtained by the property owner, his/her agent or contractor. Failure to comply with this requirement constitutes a violation of this ~~ordinance~~law. Violations which occur on leased land may also constitute violations of the Tribal land lease.

(6) A Tribal sanitary permit shall be obtained prior to constructing or erecting a privy.

(7) If any part of a system has failed, the entire system shall be evaluated for compliance with existing codes.

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407.3-5. Permits and Applications.

407.35-1.

(a) Permit Codes

(1) The permit card issued by the Environmental Specialist to the property owner or his/her agent shall serve as the Tribal sanitary permit.

(2) The permit card shall be displayed at the site in such a manner that it will be visible from a road abutting the lot during all construction phases.

(3) The permit card may not be removed until the private sewage system has been installed, inspected and approved by the Environmental Specialist or a Tribally-authorized inspector.

(4) Failure to display the permit card shall be considered a violation of this section and may subject the property owner, his/her agent or contractor, to penalty provisions of this ordinance law.

(b) Application Requirements

(1) The Tribal sanitary permit application shall include the following information which shall be furnished by the applicant on forms provided by the Tribal Environmental Health Department and Safety Division, along with all applicable fees:

(A) Names and address of the applicant (owner of the site) and the plumber employed (when applicable).

(B) Legal description of the subject site by claim number, lot block and recorded subdivision or by metes and bounds. All legal descriptions must also include a plot 1/4-1/4 section description to the nearest forty (40) acres (ie: i.e.: NW 1/4 of the SE 1/4, Section 12, T23N-R19E).

(C) All lot dimensions.

(D) Driving directions to the site

(E) Building use (single, family, duplex, multi-family, commercial, industrial, and Tribal roll number).

(F) Plot plan. Detailed plot plan dimensions are drawn to scale showing the lot size; the location of all septic tanks; holding tanks or other treatment tanks; building sewers—sanitary and storm; wells; water mains or water service; streams and lakes; dosing or pumping chambers; distribution boxes; effluent systems; dual disposal systems; replacement system areas; and the location of the building served. Adjoining properties shall be checked to insure that the site location distances and dimensions shall be shown on the detailed plot plan.

(G) Reference points. A vertical elevation reference point and a horizontal reference point.

(H) Soil boring and percolation test data related to the undisturbed and finished grade elevations, vertical elevation reference point and horizontal reference point. Surface elevations, vertical elevation reference point and horizontal point. Surface elevations shall be given for all soil borings. All

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soil borings and percolation tests shall be performed by a State of Wisconsin Certified Soil Tester.

(I) Occupancy. The maximum number of bedrooms in the ~~resideee~~residence shall be indicated. The number of employees(full time and part time on an 8-hour shift), estimated number of customers in an 8-hour shift, number of washing machines and disposition of commercial/retail buildings.

(J) Other specifications. Complete specifications for pumps and controls including dose volume, elevation differences (vertical lift), pipe frictionless, pump performance curve, pump model manufacturer, and all piping information.

(K) Any other information deemed necessary by the Environmental Health ~~Department~~and Safety Division.

- (2) Pit privy permit applications shall be accompanied by soil data provided by a State of Wisconsin ~~licence Certified~~license certified tester to a depth of ~~3~~three feet ~~(3')~~ below the proposed pit bottom. Soil data is not required when making application for a vault privy. The property owner shall be furnished with a copy of the Tribal privy construction requirements when the permit for a privy is issued.
- (3) The Tribal Environmental Health ~~Department~~and Safety Division reserves the right to refuse incomplete or incorrect permit applications or to delay issuance until corrected or completed applications are received.

(c) Permit Expiration

- (1) Sanitary permits for private sewage systems, which have not been installed, shall expire ~~two~~ (2) years after the date of issuance. Permits may be renewed following written application to the Environmental Health ~~Department~~and Safety Division by the proper owner, his/her agent or contractor, prior to the expiration date of the original permit.
- (2) There shall be a fee for the renewal of a permit.
- (3) The renewal shall be based on Oneida Sanitary Ordinance requirements in effect to the time of renewal.
- (4) Changed ~~ordinance~~ requirements may impede the renewal.
- (5) The property owner, his/her agent, or contractor, shall return the original permit card and receive a new card when the permit is renewed.
- (6) All permits issued prior to the effective date of this ~~ordinance~~law shall expire ~~two~~ (2) years from issue date unless renewed.
- (7) If a permit has expired and the owner wants to build on the site, a new sanitary permit must be obtained, and the site shall be subject to the currently existing ~~ordinance~~requirements, including any revisions made during the elapsed time period.

(d) Permit Replacement/Transfer

- (1) If a sanitary permit is lost or destroyed, a replacement permit may be obtained from the Environmental Health ~~Department~~and Safety Division. The land owner

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shall submit a written request, along with the permit replacement fee, to the Environmental Health ~~Department~~and Safety Division, and a new sanitary permit shall be issued prior to installation of the system shall be subject to the following:

(A) The new property owner shall submit a written request to the Environmental Health ~~Department~~and Safety Division to transfer the permit.

(B) The sanitary permit card shall be returned to the Department so that a new permit card may be issued.

(C) Transfer of ownership shall not affect the expiration date or renewal requirements. Any changes other than transfer of ownership shall require a new permit.

(D) The new property owner shall submit the permit transfer fee to the Environmental Health ~~Department~~and Safety Division.

(e) Building alteration permits

(1) A tribal building alteration permit shall be required when an existing private sewage system is intended to serve a building which is to be remodeled such that there will be an increase in the wastewater load from that building or where the building is to be rebuilt or replaced with a new or different use or building.

(2) Prior to issuing a building alteration permit, the existing private sewage system shall be examined. No permits will be issued unless the following conditions are met:

(A) The system is functioning properly regarding the condition of the system shall be provided.

(B) The systems will be capable of handling the proposed wastewater load from the building to be served.

(C) The system will meet all minimum setback requirements of ILHR 83.

(3) Soil boring data to a depth of ~~3~~three feet (~~3'~~3') below the bottom of the existing system shall be reported by a State of Wisconsin Certified Soil Tester. For all soil absorption systems, a replacement system site shall be located for future use.

(4) Alteration of a building serviced by existing holding tanks will require an updated Holding ~~tank~~Tank Agreement, one (~~1~~1) which meets ~~there~~the requirements of this ~~ordinance~~law. A copy ~~o~~of this completed agreement shall be attached to the permit.

(5) All systems shall be inspected by the Tribal inspector at the time of system and/or building alteration to ~~insure~~ensure that proper materials and methods are being used.

(6) Reconnecting to an undersized system shall be allowed only if an affidavit for the use of the undersized system is recorded in the Oneida ~~Land Office~~Nation Register of Deeds and an adequate area exists for a replacement system.

(7) When a change in the use of a building or premises is contemplated, the Environmental Health ~~Department~~and Safety Division shall be contacted as to whether it shall be necessary to obtain a sanitary permit or a building alteration

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permit.

(f) Change of plumbers

(1) A Tribal building alteration permit shall be required when an existing private sewage system is intended to serve a building which is to be remodeled such that there will be an increase in the wastewater load from the that building or where the building which is to be remodeled such that there will be an increase in the wastewater load from that building or where the building is to be rebuilt or replaced with a new or different use or building.

(2) Prior to issuing a building alteration permit, the existing private sewage system shall be examined. No permits will be issued unless the following conditions are met:

(A) The system is functioning properly, pursuant to this ~~ordinance~~law. A State of Wisconsin Licensed Plumber's statement regarding the condition of the system shall be provided.

(B) The system will be capable of handling the proposed wastewater load from the building to be served.

(C) The systems will be capable of handling the proposed wastewater load from the building to be served.

(3) Soil boring data to a depth of ~~3~~three feet (3') below the bottom of the ~~existing~~existing system shall be reported by a State of Wisconsin Certified Soil Tester. For all soil absorption systems, a replacement system site shall be located for future use.

(4) Alteration of a building received by existing holding tanks will require an updated Holding Tank Agreement, one (1) which meets their requirements of this ~~ordinance~~law. A copy ~~erof~~ this completed agreement shall be attached to the permit.

(5) All systems shall be inspected by the Tribal inspector at the time of system and/or building alteration to insure that proper materials and methods are being used.

(6) Reconnecting to an undersized system shall be allowed ~~on ly~~only if an affidavit for the use of the undersized system is recorded in the Oneida ~~Land Office~~Nation Register of Deeds and an adequate area exists for a replacement system.

(7) When a change in the use of a building or premises is contemplated, the Environmental Health ~~department~~and Safety Division shall be contacted as to whether it shall be necessary to obtain a sanitary permit or a building alteration permit.

(g) Change of Plumbers

(1) When an owner wishes to change plumbers, the owner must complete a Tribal Change of Plumbers Form, signed by the new plumber. The form must be submitted to the Environmental Health ~~Department~~and Safety Division, along with the applicable fees.

(2) The change of plumbers shall take place prior to the installation of the private

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sewage system.

(h) Modified Mound and Experimental System Permits

(1) Sanitary permits of modified mounds and experimental systems shall only be approved for existing buildings. Not all sites are suitable for modified mounds and experimental systems.

(2) Sanitary permits for modified mounds and experimental systems shall be approved by the Environmental Health ~~Department~~ and Safety Division only on an individual basis.

(3) Modified mounds and experimental system sanitary permit applications are subject to all requirements of a regular sanitary permit, in addition to any additional requirements deemed necessary by the Environmental Health ~~Department~~ and Safety Division. Additional information may include, but is not limited to: more frequent inspections, additional soil borings, groundwater monitoring or contour maps.

(i) Site Evaluation

(1) A site evaluation may be necessary to determine the suitability of a lot for a private sewage system. Site evaluations will be made at the discretion of the Environmental Specialist. The evaluation shall take place within ~~ten~~ (10) working days of becoming aware of question of suitability and will be made prior to the issuance of the sanitary permit. The site evaluation will result in one (1) of the following:

(A) Issuance of the permit, provided all information on the application is correct and complete.

(B) Holding the application pending clarification of information or new information by the owner, the plumber or the certified Soil Tester.

(C) Denial of the permit if the site does not meet all the provisions of this ~~ordinance~~ law.

(2) Soil test pits shall be constructed which allow adequate visual observations of the soil provide in place. This is best accomplished by the construction of backhoe pits. The test pits shall be left in such a manner that will permit access to them for the evaluation of the soil protection were provided. Bore holes shall be either fenced or closed within five (5) days of the date of inspection.

(3) Site evaluations shall be done prior to issuance of permits for a mound system.

(j) Permit Denial

(1) When an on-site evaluation of a proposed private sewage system or pit privy reveals that the site is compliance with the requirements of this ~~ordinance~~ law, the permit application shall be ~~denied~~ approved. Written justification of the denial must be supplied to the owner of the Environmental Health ~~Department~~ and Safety Division within five (5) working days of the decision.

(k) Holding Tank Agreements

(1) Prior to the issuance of a sanitary permit for the installation of a holding tank, the owner of the holding tank, or his/her agent, shall sign and register a Holding

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Tank Agreement with the Oneida ~~tribe~~Nation or a State of Wisconsin Licensed Plumber. The purpose of the agreement is to ensure that the holding tank wastewater will be properly disposed of.

(2) Holding tank owner shall sign a servicing Contract with the Oneida Utilities for sewage disposal and must comply with the following requirements:

(A) The holding tank owner shall sign a Servicing contract with the Oneida Utilities for regularly scheduled servicing of the holding tank by the Tribally-licensed septic tank pumper. Copies of the servicing contract shall be attached to the holding tank agreement.

(B) The holding tanks shall be chained and locked at all times, and the chain, lock and lock keys shall be the property of the Oneida Utilities, to prevent unauthorized removal of the holding tank wastewater.

(C) The Oneida Utilities shall keep a log of the holding tank servicing dates, owner's names and servicing locations, gallons serviced, and disposal locations for all owner's names and servicing locations, gallons serviced, and disposal locations for all holding tanks on registered Servicing Contracts. This log shall be sent to the Environmental Health Department and Safety Division by the 15th of every month, for the previous month's activities.

(3) Holding tanks owners who contract with a Non-tribal Septic Tank Pumping Service must comply with the following requirements:

(A) The holding tank owner shall sign a Servicing Contract with the Non-tribal Septic Tank Pumping Service for regularly scheduled servicing of the holding tanks copies of the Servicing contract shall be attached to the Holding Tank Agreement.

(B) The holding tanks shall be chained and locked at all times.

(C) All Non-Tribal Septic Tank Pumping Services must meet the following requirements:

(i) The Septic Tank Pumper must have a valid State of Wisconsin license, and must meet all requirements of NR 113, Wisconsin Administrative Code.

(ii) The Septic Tank Pumper must follow all of the Nation's disposal requirements ~~of the tribal ordinances~~.

(D) The Non-tribal Septic Tank Plumber shall keep a log of the holding servicing dates, owners names, and servicing locations, gallons serviced, an disposal locations of all holding tanks on registered servicing contacts. This log shall be sent to the Environmental Health Department and Safety Division by the 15th of every month, for the previous month's activities.

(4) The signed Holding Tank Agreement shall be binding upon the owner, the heirs of the owner and assignees of the owner, or the authorized agent.

~~(5) The Holding Tank Agreement shall be binding upon the owner, the heirs of the owner and assignees of the owner, or the authorized agent.~~

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~~(6)~~ (5) Removal of the holding tank wastewater by persons other than those employed by the Oneida Utilities, or those State of Wisconsin-licensed Septic Tank Plumbers approved by the Environmental Health ~~Department and Safety Division~~, shall constitute a violation of this ~~ordinance~~ law. Such violations which occur on Tribally-leased land shall constitute a violation of the Tribal land lease.

(l) Maintenance Program

(1) All soil absorption system tanks shall be pumped by a Tribally-licensed or State of Wisconsin-licensed septic tank pumper within ~~two~~ (2) years of the date of installation and at least once every ~~two~~ (2) years thereafter, unless upon inspection the tank is found to have less than ~~one third~~ (1/3) of the volume occupied by sludge and scum.

(2) All private sewage systems installed after the date of adoption of this ~~ordinance~~ law shall be inspected once every ~~two~~ (2) years for system compliance and tank integrity. Additional inspections, or inspections of systems installed prior to the date of ~~ordinance~~ law adoption, may be performed upon request by the system owner.

(3) Inspection of a private sewage shall be conducted by a Registered Sanitarian, the Tribal Environmental Specialist, a Master Plumber, a Journeyman Plumber or a Registered Plumber licensed by the State. Inspections may also be performed by training program and have received authorization from the ~~Tribe~~ Nation. Re-certification of the authorized tribal employees shall be required on a yearly basis, and shall be provided by the Environmental Health ~~Department and Safety Division~~. The inspections shall be performed at the same time as the tank pumping.

(4) The owner of said soil absorption system shall submit information as to the condition of the system and tank, and the date of pumping, to the Tribal Environmental Health ~~Department and Safety Division~~ within ~~ten~~ (10) days of the date of inspection ~~of the tank is made by an authorized Tribal employee.~~

~~(5) of the tank is made by an authorized Tribal employee.~~

~~(6)~~ (5) The owner of a holding tank shall sign and register a Holding Tank Agreement, as specified in ~~Section~~ section 407.35-1(i) of this ~~ordinance~~ law, and shall be subject to all requirements stated in ~~Section~~ section 407.24-1(d)(1).

~~(7)~~ (6) Non-tribal Septic Tank Pumpers who are approved by the Environmental Health ~~Department and Safety Division~~ to service on-site waste disposal systems must comply with the following requirements:

(A) The Septic Tank Pumpers must have a valid State of Wisconsin license, and must meet all requirements of NR 113, Wisconsin Administrative Code.

(B) The Septic Tank Pumper must obtain a Tribal Vendor's Permit prior to servicing any tanks.

(C) The Septic Tank Pumper must follow all ~~of the Nation's~~ disposal and reporting requirements ~~of the Tribal ordinances.~~

(m) Permit ~~Fees~~ fees shall be set and periodically amended by the Oneida Business

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Committee. Fees may be reduced by fifty percent (50-%%) if the inspections are performed by Indian Health Service agents. All fees must accompany permit application. Fees are payable by check to the "Oneida ~~Tribe of Indians of Wisconsin~~ Nation". No out-of-state checks will be accepted. Failure to pay permit fees constitutes a violation of this ordinance~~law~~. Applicable fees are as follows:

- | | |
|---|----------|
| (1) Private Residential Building Sanitary Permit: | |
| (A) Conventional soil absorption systems: | \$20.00 |
| (B) In-ground pressure distribution system: | \$20.00 |
| (C) Holding tanks: | \$20.00 |
| (D) Mound systems, modified mound systems, at grade systems and experimental systems: | \$50.00 |
| (2) Public and Commercial Building Sanitary Permits: | |
| (A) Conventional soil absorption systems: | \$45.00 |
| (B) In-ground pressure distribution systems: | \$45.00 |
| (C) Holding tanks: | \$90.00 |
| (D) Mound systems, modified mound systems, at grade systems and experimental systems: | \$150.00 |
| (3) Other Fees: | |
| (A) Sanitary renewal: | \$5.00 |
| (B) Change of Plumber fee: | \$5.00 |
| (C) Privy permits: | \$5.00 |
| (D) Building alteration permit fees: | |
| Private Residential building | \$20.00 |
| Public and Commercial buildings | \$45.00 |

407.46-1. Inspections

407.46-1. General

(a) All private sewage shall be inspected after construction ~~by~~and before ~~back-~~filing~~backfilling~~. The inspections shall be performed within the following work day excluding Saturdays, Sundays, and holidays after receiving notice from the licensed plumber responsible for the installation.

(b) A Tribal Site Inspection form shall be completed by the Environmental specialist ~~efor~~for Tribal inspector. A copy of the report shall be sent to the system owner.

407.46-2. Notice for inspection.

(a) The plumber employed to install the system shall notify the Environmental Specialist in person, by telephone or in writing when the on-site waste disposal system is ready for inspection.

(b) The owner shall be notified of regular inspections within twenty-four (24) hours of the inspection. If the owner ~~can not~~cannot be reached within the twenty-four (24) hour period, the inspection shall continue as scheduled. No prior notification shall be required for compliance inspections for holding tanks.

407.46-3. Preparation for inspection

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(a) When an on-site waste disposal system is ready for inspection, the plumber employed to install the system shall make such arrangements as will enable the Environmental Health ~~Department~~ and Safety Division inspector to inspect all parts of the system.

(b) The plumber shall have present the proper apparatus and equipment for conducting the inspection and shall furnish such assistance as may be necessary in making a proper inspection.

407.~~6-4-4~~. Holding Tank Inspections

(a) All site constructed holding tanks shall be inspected after the forms have been set and reinforcing is in place; but before any concrete has been poured. Concrete may be poured only after it has been determined that the tank, as formed, complies with the plans as approved by the Department.

(b) This inspection shall not eliminate the need for an inspection after the installation has been completed.

407.~~46-5~~. Privy Inspections

(a) All privies installed shall be inspected for compliance with this ~~ordinance~~ law. The home owner or his agent shall notify the Environmental Health ~~Department~~ and Safety Division for inspection immediately after the privy has been constructed.

(b) Privies may be inspected periodically after the initial inspection.

407.~~4-5-6-6~~. Mound Inspections

(a) All mound systems shall be inspected during construction by an inspector certified by the ~~tribe~~ Nation. The plumber installing the mound shall notify the Environmental Specialist ~~twenty-four~~ (24) hours in advance of the installation. Four ~~(4)~~ inspections of the system shall be made during the first year of the mound operation in accordance with Tribal guidelines. Annual inspections may be made after the first year of operation, and may be more frequent if deemed necessary by the Environmental Specialist.

407.~~4-6-7~~. Re-inspections

(a) The Environmental Specialist may require additional inspections other than the inspection prior to backfilling, or if the initial inspection disclosed that the installation was incomplete at the time the installer indicated it would be complete, or if the system was not in conformance with the requirements stated in this ~~ordinance~~ law.

407.~~4-7-6-8~~. As-built ~~plans~~ Plans

(a) All on-site waste disposal systems installed, enlarged, modified, or expanded after the adoption date of this ~~ordinance~~ law shall require as-built plans to be registered with the Environmental Health ~~Department~~ and Safety Division.

(b) The plumber employed to install the system shall submit the as-built plans to the Environmental Health ~~Department~~ and Safety Division within five ~~(5)~~ days of the installation of the system.

(c) The as-built plans shall include all dimensions described in Section 407.~~35-1~~(b)(1)(F), of this ~~ordinance~~ law. It shall also include the location of all manhole risers installed as part of the system for which the as-built is being developed. The manhole covers and other portions of the system shall be located from two ~~(2)~~ permanent points (~~ie, i.e.~~ corners of the building served).

407.~~4-8-6-9~~. Covering of Work

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(a) No part of the private sewage system may be backfilled until it has been inspected and approved. If any part is covered before being inspected and approved it shall be uncovered at the discretion of the Environmental Health ~~Department~~ and Safety Division inspector or Indian Health Service Inspector.

~~407.4-9~~ 6-10. Defects in ~~materials~~ Materials and ~~workmanship~~ Workmanship

(a) If inspection discloses defective material, design, siting or unworkmanlike construction which does not conform to the requirements of this ~~ordinance~~ law, the ~~unconforming~~ nonconforming parts shall be removed, replaced and ~~reinspected~~ re-inspected.

~~407.5-7.~~ Administration and Enforcement

~~407.5-1 Administrative Procedures Act~~
~~Administrative Procedures Act, in times, penalties and appeal procedures are established by the~~

~~407.5-2~~ Variances

(a) A request for a variance to the conditions or requirements of this ~~ordinance~~ law may be made to the Environmental Specialist. The Environmental Specialist shall not have the authority to approve any variance request. ~~A variance request shall constitute a contested case. Procedural requirements for contested cases shall be followed~~ The Environmental Resource Board shall issue written approval or denial of any variances requested.

~~(b) The hearing body, as designated by the Administrative Procedures Act, shall hear the facts of the case and may either approve, deny, or request additional information, by in any case must act upon the variance request within the time frame set by the Administrative Procedure Act. Considerations relating to effect on public health, and tribal goals may be considered during the variance hearing.~~

407.5-3 (b) Parties disagreeing with the determination of the Environmental Resource Board may contest the decision by filing a complaint to the Judiciary in accordance with section 407.7-5.

~~407.7-2.~~ Violations

(a) Any person who violates any provision of this ~~ordinance~~ law is subject to penalties and forfeitures provided for by this ~~ordinance and the Administrative Procedure Act~~ law and any resultant rules. Actions which constitute a violation are described in, but not limited to, the following:

- (1) Installing a new on-site waste disposal system without first obtaining a Tribal Sanitary Permit.
- (2) Modifying, altering, enlarging or constructing additions to an existing on-site waste disposal system without first obtaining a Tribal Sanitary Permit or a Building Alteration Permit.
- (3) Servicing or removing sewage from an on-site waste disposal system tank without a valid State of Wisconsin or Tribal license.
- (4) Failing to obey any requirement of an Administrative Enforcement Order.
- (5) Failing to properly display the Sanitary Permit card.
- (6) Failing to disconnect a failing private on-site waste disposal system within the Order. Building served by disconnected failing on-site systems shall be

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reconnected to public sewer systems.

(7) Failing to connect a building served by a private on-site waste disposal system to a public sewer system within the time allotted by ~~Section~~section 407-~~24~~.1(f) of this ~~ordinance~~law, or the date stated in the Order.

(8) Installing, modifying, altering, enlarging or making additions to any part of an on-site waste disposal system without a valid State Plumbing License. Privies are exempt from this requirement.

(9) Failing to pay Tribal permit fees

(10) Failure to correct a failing on-site waste disposal system within three ~~(3)~~ months of an Administrative Order. A failing on-site waste disposal system constitutes a threat to public health.

(11) Failure to maintain a system through regularly scheduled pumping, pursuant to holding tank agreement and maintenance program of this ~~ordinance~~law. Failing to maintain a holding tank through regularly scheduled pumping constitutes a threat to public health.

~~(b) Any violation that results in a contested case shall comply with the procedures designated in the Administrative Procedures Act.~~

407.~~5-4~~7-3. Administrative Orders

(a) The Environmental Specialist may issue an Administrative Enforcement Order when a violation of any provision of this ~~ordinance~~law occurs, to provide the owner or agent the opportunity to bring their action into compliance with the provisions of this ~~ordinance~~law.

(b) The Order shall be given to the party responsible for the violation and shall state the nature of the violation, possible penalties for failure to correct, and shall state the ~~rights~~right to ~~file a~~ contested ~~case~~the matter with the Oneida Judiciary.

407.~~5-5~~7-4. Penalties

(a) ~~All~~The Environmental Resource Board is hereby granted administrative rulemaking authority to establish penalties ~~will be determined by the Tribal entity charged with enforcement for violations of tribal requirements for fines, penalties and appeals, this law.~~ Except as provided ~~by the Administrative Procedures Act. Forfeitures in section 407.5-~~5(b), forfeitures for violations shall amount to not less than ~~\$ten dollars (\$10.00)~~ and not greater than ~~\$fifty dollars (\$50.00)~~ per violation. Each day such violation continues constitutes a separate offense.

(b) Forfeitures for violations which constitute a threat to public health shall not be less than ~~\$fifty dollars (\$50.00)~~ and not more than ~~\$two hundred dollars (\$200.00)~~ per violation. Each day such violation continues constitutes a separate offense.

407.5-6 Appeals

~~(a) Appeals shall be pursuant to the Administrative Procedures Act~~

407.5-7 Severability

~~(a) Should a provision of this ordinance or the application thereof to any person or circumstance be held as invalid, such invalidity shall not affect other provisions.~~

~~(b) Repeal. All other Oneida Tribal laws, rules or regulations which are consistent with this ordinance and are held subject to this ordinance are hereby repealed, but such shall not affect pending proceedings.~~

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~~(c) Effective Date. This ordinance shall take effect 10 days after the date of formal approval by the Oneida Business Committee.~~

407.7-5. Appeal Permit Decision. Any person wishing to contest a decision of the Department related to a permit may appeal such action by filing a complaint with the Judiciary Trial Court naming the Department.

407.7-6. Contested Action Hearings. All citations, penalties, forfeitures, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) Community Service. Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) Allocation of Citation Revenue. All fines and penalties issued by citations are payable to the Environmental Resource Board or its designee, the proceeds of which the Environmental Resource Board shall contribute to the Nation's general fund.

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) Pursuing Payment of a Citation. The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

407.7-7. Severability

(d) Conflict with Federal Law. Should any part of this ordinance be found to be in conflict with federal requirements which are required in order that the Oneida ~~Tribe~~Nation receive federal funds, the conflicting section of this ~~ordinance~~law is to be considered inoperative only for purposes of that particular funding and that inoperative only for purposes of that particular funding and that particular conflict. Such conflict shall not affect the operation of the remainder of this ~~ordinance~~law in its application to those agencies or departments directly affected.

~~(e) Compliance with Ordinance. Nothing in this ordinance shall be held to diminish constitutional right of any person or to limit or repeal additional requirements imposed by or otherwise recognized by law. All requirements or privileges relating to evidence or procedures shall apply equally to agencies and persons. Every agency or commission is granted authority to comply with the requirements of this ordinance. Subsequent tribal law shall not supersede or modify this ordinance or its applicability to any agency unless it is done so expressly by tribal law.~~

For OBC Consideration (Draft 1) redline to current
2017 07 26

407.57-8 Amendments

(a) ~~Any interested person may petition an agency and request that said agency propose that the Oneida business committee adopt, amend, or repeal this ordinance. Should this occur, the following shall apply. In addition to the following, the requirements of the Tribal Administrative Procedures Act shall apply:~~

~~(1) Within sixty (60) days thereafter, the agency shall either deny the petition in writing, (stating reason for denial) or initiate ordinance/rule making proceedings in accordance with the Administrative Procedures Act.~~

407.59. Waiver of liability

(a) This ~~ordinance~~^{law} shall not create a liability on the part of or a cause of action against the ~~Tribe~~^{Nation}, or any employee thereof, for any private on-site sewage treatment system which may not function as designed. There shall be no liability of warranty for any site which is approved or denied. The issuance of a sanitary permit and the formal inspection of such a system does not warrant the system's function, nor is there a guarantee that the system is free of defects or that all aspects of the system comply with the requirements or this ordinance.

Adopted - BC-10-28-88-A

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

DATE: June 7, 2017

FROM: Rae Skenandore, Project Manager

TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

RE: **Fiscal Impact of the transfer of the Environmental Resource Board's Hearing Authority to the Oneida Judiciary**

I. Estimated Fiscal Impact Summary

Law: Domestic Animal		Draft 19
Hunting, Fishing and Trapping law (HTF)		Draft 2
Public Use of Tribal Land (Public Use)		Draft 1
Tribal Environmental Response (TERP)		Draft 1
Well Abandonment Law (Well Abandonment)		Draft 1
All-Terrain Vehicle Law (ATV)		Draft 1
Water Resources Ordinance (Water Resources)		Draft 1
On-Site Waste Disposal Ordinance (Waste Disposal)		Draft 1
Implementing Agency		Oneida Police Department (OPD) Conservation Environmental Resource Board (ERB) Emergency Management Environmental Health and Safety Division Comprehensive Health Division Oneida Judiciary
Estimated time to comply		January 1, 2018
Estimated Impact	Current Fiscal Year	10 Year Estimate
ERB stipend savings	\$830	\$8,300
Total Estimated Savings	\$830	\$8,300
Revenue and cost considerations	Fee Schedules should be removed from the various Laws	
Uncertainties and Unknowns	None	

II. Background

A. Legislative History

The Oneida Business Committee created the Environmental Resource Board through Resolution BC-02-22-85-B. GTC Resolution 01-07-13-B established the Oneida Judiciary.

B. Summary of Content

1. The Domestic Animal amendments are being processed separately in order to make further revisions. However, it is included here because there are no additional fiscal impacts due to the amendments.
2. All Laws are being amended to state that the Trial Court is the entity authorized to conduct hearings.
3. Other minor changes, including formatting, have been made to these Laws to comply with drafting style. These changes do not affect the content of these Laws.

C. Methodology and Assumptions

1. A “Fiscal Impact Statement” means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.
2. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.
3. The analysis was completed based on the information provided as of the date of this memo.

III. Agency

The hearing authority will simply be transferred from ERB to the Judiciary. Historical hearing stipends paid to the Board were \$750 in 2017, \$1,200 in 2016, and \$700 in 2015. Transferring the hearing authority to the Judiciary would result in an average savings of approximately \$830 annually. The Judiciary does not anticipate any additional costs as this will simply be absorbed into their existing duties. ERB has stated that they expect the transition of the hearing authority to be complete by January 1, 2018

IV. Financial Impact

Approximately \$830 savings annually.

V. Recommendation

Finance does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.



Legislative Operating Committee
July 19, 2017

Tribal Environmental Response Law Amendments

Submission Date: 5/17/17	Public Meeting: 6/15/17
LOC Sponsor: Tehassi Hill	Emergency Enacted: n/a Expires: n/a

Summary: *This is a request to amend the law to remove the Environmental Resource Board's Hearing Body Authority and transfer it to the Judiciary.*

5/17/17 LOC: Motion by David P. Jordan to add each of these to the Active Files List as a high priority, assign Tehassi Hill as the sponsor, approve the public meeting packet, in addition to the Tribal Environmental Response law for June 15, 2017; seconded by Fawn Billie. Motion carried unanimously.

6/15/17: Public meeting held.

Next Steps:

- Accept the public meeting comments.
- Approve the Tribal Environmental Response Law Amendments adoption packet and forward to the OBC for consideration.



TO: Legislative Operating Committee (LOC)
FROM: Krystal John, Staff Attorney, Oneida Law Office
DATE: July 19, 2017
RE: Tribal Environmental Response Law Amendments: Public Meeting Comment Review

On June 15, 2017 a public meeting was held regarding the Tribal Environmental Response Law Amendments. There were no oral or written comments received during the public meeting on June 15, 2017, or during the public meeting comment period ending on June 29, 2017; therefore no additional revisions were made to the draft.



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING
Environmental Resource Board's Authority Transfer**
Business Committee Conference Room-2nd Floor Norbert Hill Center
June 15, 2017 12:15 p.m.

Present: Brandon Stevens, Candice Skenandore, Clorissa Santiago, Leyne Orosco, Cathy Bachhuber, Chad Wilson, Laura Manthe, Eugene Schubert.

Brandon Stevens: Greetings. The time is 12:25 p.m. and today's date is Thursday June 15, 2017. I will now call the public meeting to order for the following laws:

- All-Terrain Vehicle
- On-Site Waste Disposal Ordinance
- Public Use of Tribal Land
- Tribal Environmental Response
- Water Resource Ordinance
- Well Abandonment
- Hunting, Fishing, and Trapping

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding these legislative proposals. The public meeting is not a question and answer period. All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Thursday June 29, 2017.

In attendance for today is just myself, Brandon Stevens. And I will impose a time limit for all speakers pursuant to section 16.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons.

Revisions were made to the identified laws which transfer the Environmental Resource Board's hearing authority to the Judiciary. In addition, the Hunting, Fishing, and Trapping law has an additional amendment which clarifies that non-member Indians and non-Indians that hunt, fish, and trap on the Reservation may be subject to State requirements as well as the requirements set forth in the Hunting, Fishing, and Trapping law.

Although the amendments are the same for all laws, except for the additional change to Hunting, Fishing, and Trapping law; we will process these laws individually for the sake of this public meeting. We will begin today's public meeting for All-Terrain Vehicle law.

Okay, we have people checked in and no oral testimony is requested from anyone in attendance. Anyone want to come up that is not on the list, please do so at this time.

Okay, seeing no oral testimony for the All-Terrain Vehicle law, I will close this public meeting at 12:18 p.m.

I will now open up the public meeting for the On-Site Waste Disposal Ordinance. The public meeting for the On-Site Waste Disposal Ordinance, or, and I'll sorry. I will ask at this time if anyone would like to come up and provide oral testimony please so do, that's not on the list. Seeing none, I will close this public meeting for the On-Site Waste Disposal Ordinance at 12:19 p.m.

I will now open up the public meeting for the Public Use of Tribal Land at 12:19 p.m. I will open up the floor for oral testimony for those who have not signed in and would like to provide oral testimony. Seeing none, I will close this public meeting for the Public Use of Tribal Land at 12:19 p.m.

I will now open up the public meeting for the Tribal Environmental Response at 12:20 p.m. Open up the floor for any of those who want to provide oral testimony that are not signed in. Seeing none, I will close this public meeting for the Tribal Environmental Response at 12:20 p.m.

I will now open up the public meeting for the Water Resource Ordinance at 12:20 p.m. I'll open up the floor for any of those who would like to provide oral testimony that are not on the list. Seeing none, I will close the public meeting for the Water Resource Ordinance at 12:20 p.m.


I will now open up the public meeting for the Well Abandonment at 12:21 p.m. I'll open up the floor for any oral testimony for those who are not on the list. Seeing none, I will close the public meeting for the Well Abandonment at 12:21 p.m.

I will now open up the public meeting for the Hunting, Fishing, and Trapping . Please note that in addition to revision that transfers ERB's hearing authority to the Judiciary, an additional revision was made to provide clarity that non-member Indians and non-Indians that hunt, fish, and trap on the Reservation may be subject to State requirements as well as the requirements set forth in the Hunting, Fishing, and Trapping law. Opening up the floor for those who would like to provide oral testimony that are not signed in. Seeing none, I will close the public meeting for the Hunting, Fishing, and Trapping law at 12:22 p.m.

With no more individuals wanting to provide oral comment, I am closing the public meeting at 12:22 p.m. As a reminder the public comment period will remain open until Thursday, June 29, 2017 by close of business. Thank you.

-End of Meeting-



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson 
DATE: July 26, 2017
RE: Tribal Environmental Response Law Amendments

Please find the following attached backup documentation for your consideration of the Tribal Environmental Response Law Amendments:

1. Resolution: Tribal Environmental Response Law Amendments
2. Statement of Effect: Tribal Environmental Response Law Amendments
3. Tribal Environmental Response Law Amendments: Legislative Analysis
4. Tribal Environmental Response Law Amendments: Clean Draft
5. Tribal Environmental Response Law Amendments: Redline to Current Draft
6. Tribal Environmental Response Law Amendments: Fiscal Impact Statement

Overview

This resolution adopts amendments to the Tribal Environmental Response Law to transfer the Environmental Resource Board's hearing authority to the Judiciary.

In accordance with the Legislative Procedures Act, a public meeting was held regarding this law on June 15, 2017 with a comment period closing on June 29, 2017. There were no comments provided. These amendments will become effective beginning in the new fiscal year on October 1, 2017.

Requested Action

Approve the Resolution: Tribal Environmental Response Law Amendments

BC Resolution _____*Tribal Environmental Response Law Amendments*

WHEREAS, the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and

WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

WHEREAS, the Oneida Business Committee originally adopted the Tribal Environmental Response Law through resolution BC-09-12-12-B and thereafter amended it through resolution BC-02-25-15-C; and

WHEREAS, the Amendments to the Law transfer the Environment Resource Board's original hearing body authority and responsibilities to the Oneida Judiciary as part of an effort to standardize and streamline all of the Nation's hearing responsibilities; and

WHEREAS, a public meeting on the proposed Amendments was held on June 15, 2017 in accordance with the Legislative Procedures Act; and

NOW THEREFORE BE IT RESOLVED, that the Tribal Environmental Response Law Amendments are hereby adopted and shall become effective on October 1, 2017.



Statement of Effect

Tribal Environmental Response Law Amendments

Summary

This Resolution adopts Amendments to the Tribal Environmental Response Law Amendments (the “Law”) which transfer the Environmental Resource Board’s original hearing body authority to the Oneida Judiciary.

Submitted by: Krystal L. John, Staff Attorney, Oneida Law Office

Analysis by the Legislative Reference Office

As stated above, these amendments will transfer the delegation of original hearing body authority from the Environmental Resource Board to the Oneida Judiciary. Such a transfer would implicate the Judiciary law and the Environmental Resource Board’s by-laws.

The transfer of hearing body authority would fit into the Oneida Judiciary’s subject matter jurisdiction according to the Judiciary law based on section 801.5-2, which provides that, “The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following... (a) Tribal laws which specifically authorize the Trial Court to exercise jurisdiction...” *Judiciary*, 8 O.C. 801 § 801.5-2. These amendments to the Law specifically authorize the Trial Court to exercise jurisdiction based on section 401.10-3. *Contested Action Hearings*, which reads as follows:

All citations, penalties, orders and declarations issued pursuant to this law shall include a prehearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved. ...

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure. ...

The Environmental Resource Board’s by-laws provide the Board’s duties and responsibilities, among other things. Adoption of this law conflicts with the Board’s by-laws and the by-laws recognize the Environmental Resource Board’s original hearing body authority in section 1-4.b., which reads as follows: “The ERB shall serve as the original hearing body in matters concerning environmental and conservation laws and ordinances promulgated by the Oneida Tribe.” Accordingly, if this resolution is adopted, the Environmental Resource Board’s by-laws would need

to be amended to remove the original hearing body authority from the Board's duties and responsibilities.

A public meeting was held for these Amendments on June 15, 2017 for which the public comment period expired on June 22, 2017 in accordance with the Legislative Procedures Act. There were not any oral or written comments submitted.

Conclusion

Adoption of this Resolution would require the Environmental Resource Board's by-laws to be amended to remove the original hearing body authority from the Board's duties and responsibilities.



Hearing Authority Transfer Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: LOC	SPONSOR: Tehassi Hill	DRAFTER: Krystal L. John	ANALYST: Candice E. Skenandore
Intent of the Amendments	To further utilize the Judiciary.		
Purpose	To transfer the Environmental Resource Board (ERB) hearing authority to the Judiciary.		
Affected Entities	Trial Court, ERB		
Affected Legislation	Hunting, Fishing and Trapping law, Public Use of Tribal Land, Tribal Environmental Response, Well Abandonment Law, All-Terrain Vehicle Law, Water Resources Ordinance		
Enforcement/Due Process	ERB will no longer hold hearings; hearing will now be conducted by the Trial Court in accordance with the Rules of Civil Procedure.		
Public Meeting	A public meeting was held on June 15, 2017.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. Since 1985, ERB served as the hearing body authority over the Nation's environmental regulations. On May 2, 1990, the Oneida Business Committee established the Oneida Tribal Judicial System (aka Oneida Appeals Commission) and General Tribal Council reauthorized the Oneida Tribal Judicial System on August 19, 1991 [See BC Resolution 05-02-90 and GTC Resolution 8-19-91-A]. The purpose of the Oneida Appeals Commission was to enhance and protect self-governance and sovereignty as well as enhance the separation of powers between the legislative, executive and juridical responsibilities of the Nation. The Oneida Appeals Commission removed the Oneida Business Committee from initial judicial decisions [See GTC Resolution 8-19-91-A].
- B. In 2013, the General Tribal Council changed the structure of the Oneida Tribal Judicial System by creating an Oneida Judiciary comprised of the Tribal Court and a Court of Appeals through the adoption of the Judiciary law. The purpose of the Judiciary is to grant the Trial Court and Court of Appeals expanded subject matter jurisdiction and create a greater role for the use of mediation and/or peacemaking [See GTC Resolution 01-07-13-B].
- C. These proposed amendments will transfer hearing authority from ERB to the Trial Court. The following laws are amended to reflect the transfer of hearing authority:
- Hunting, Fishing and Trapping law (HTF)
 - Public Use of Tribal Land (Public Use)
 - Tribal Environmental Response (TERP)
 - Well Abandonment Law (Well Abandonment)
 - All-Terrain Vehicle Law (ATV)
 - Water Resources Ordinance (Water Resources)
 - On-Site Waste Disposal Ordinance (Waste Disposal)

SECTION 3. CONSULTATION

A. ERB and the Trial Court have been consulted in the development of this legislative analysis.

SECTION 4. PROCESS

A. These Laws have followed the process set forth in the Legislative Procedures Act (LPA) except that the public meeting was not properly noticed to all managers or directors. The LPA requires the public meeting notice, legislation, legislative analysis and fiscal impact statement, if fiscal impact statement is available, to be electronically provided to all managers or directors a minimum of ten business days before a public meeting is held [See *Legislative Procedures Act, 1 O.C. 109.8-2 (b)*]. The notice and backup documents were provided electronically to all managers or directors on Tuesday, June 13, 2017; the public meeting was held Thursday, June 15, 2017. The public meeting was properly noticed in the Kalihwisaks and was made public on the Oneida Register at least ten business days prior to the public meeting as required by the LPA [See *Legislative Procedures Act, 1 O.C. 8-2 (a & b)*]. The LOC extended the public comment period for these laws for an additional five business days, ending on Thursday, June 29, 2017.

B. A work meeting with ERB was held on Wednesday, May 17, 2017 and a work meeting with ERB and the Judiciary was held on Monday, June 12, 2017.

SECTION 5. CONTENTS OF THE LEGISLATION

A. The identified laws in Section 2.C of this analysis have been amended to state that the Trial Court is the entity authorized to conduct hearings.

SECTION 6. INTENT

A. The intent of these amendments is to further utilize the Oneida Judiciary. The LOC has already decided to transfer hearing authority from identified entities to the Judiciary. The majority of the Oneida Land Commission's and some of the Trust Enrollments Committee's hearing authority has already transferred to the Judiciary. Because the LOC is currently working on amendments the Domestic Animals law in which ERB has hearing authority, it was decided to amend all laws which grant ERB hearing authority and transfer that authority to the Judiciary.

SECTION 7. EFFECT ON EXISTING LEGISLATION

A. These amendments do not conflict with other laws or policies of the Nation.

SECTION 8. OTHER CONSIDERATIONS

A. The following table shows the type and approximate number of hearings ERB has held since 2012. Included are hearings that pertain to Domestic Animals violations; however, the Domestic Animal amendments are being processed separately in order to make further revisions. In total, ERB has held approximately 69 hearings since 2012.

64

	ATV	HFT	Waste Disposal	Public Use	TERP	Water Resources	Well Abandonment	Domestic Animal	TOTAL
2012	0	1	0	0	0	0	0	1	2
2013	0	5	0	0	0	0	0	0	5
2014	0	14	0	0	0	0	0	3	17
2015	0	0	0	1	0	0	0	6	7
2016	0	11	0	2	0	0	0	19	32
2017	0	2	0	0	0	0	0	4	6
TOTAL	0	33	0	3	0	0	0	33	69

65 **B.** Minor changes, including formatting, have been made to these laws to comply with drafting style.

66 These changes do not affect the content of these laws.

67 **C.** Please refer to the fiscal impact statement for any financial impacts.

68

69 SECTION 9. ADDITIONAL AMENDMENTS

70 **A. *Hunting, Fishing, and Trapping law (Law)*.** In additions to the amendments which transfer ERB's
 71 hearing authority to the Judiciary, additional amendments were made to the Hunting, Fishing, and
 72 Trapping law. These amendments include revising section 406.4-3 which states that this Law does
 73 not negate the jurisdiction of the State of Wisconsin in instances that involve non-member Indians
 74 and non-Indians. This means that non-member Indians and non-Indians hunting, fishing and trapping
 75 on land owned by the Nation must adhere to the Nation's license, permit and tag requirements but
 76 may also be subject to State requirements. In addition, license and permit holders cannot utilize
 77 hunting, fishing, or trapping privileges within the Reservation using a State license that would
 78 provide greater privileges than those afforded in this Law and any applicable rules [*See Hunting,*
 79 *Fishing and Trapping, 4 O.C. 406.4-3*].

80

Title 4. Environment and Natural Resources—Chapter 401
TRIBAL ENVIRONMENTAL RESPONSE
Latihw<tsyahal#-tu kayanl^hsla>
They clean up the earth laws

401.1. Purpose and Policy	401.7. Discharge of Hazardous Substances
401.2. Adoption, Amendment, Conflicts	401.8. Remedial Actions
401.3. Definitions	401.9. Case Closure or No Further Action
401.4. Jurisdiction	401.10. Enforcement and Penalties
401.5. Tribal Environmental Response Program (TERP)	401.11. Appeals
401.6. Environmental Quality Standards	

401.1. Purpose and Policy

401.1-1. The purpose of this law is to:

- (a) regulate the identification, investigation and remediation of discharges of hazardous substances to the environment;
- (b) identify sites where the discharge of a hazardous substance into the environment has occurred; and
- (c) eliminate contamination from and control the threat of, or actual discharge of hazardous substances.

401.1-2. It is the policy of the Nation to:

- (a) respond to discharges of hazardous substances and environmental contamination concerns; and
- (b) ensure remedial action is taken to redevelop contaminated lands and maintain the health and welfare of the environment.

401.2. Adoption, Amendment, Conflicts

401.2-1. This law is adopted by the Oneida Business Committee by resolution BC-09-12-12-B and amended by resolution BC-02-25-15-C.

401.2-2. This law may be amended pursuant to the procedures set out in Tribal law by the Oneida Business Committee or the Oneida General Tribal Council.

401.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

401.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law is intended to repeal or modify any existing law, policy, regulation, rule, resolution, or motion.

401.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

401.3. Definitions

401.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “All Appropriate Inquiries” means the process of evaluating a property’s environmental conditions and assessing the likelihood of any contamination in compliance with the All Appropriate Inquiries Final Rule at 40 CFR 312.

(b) “Contamination” or “contaminated” means the environment has been affected by a hazardous substance to the point that remedial action is necessary to restore the environment.

- (c) “Discharge” means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, releasing or dumping.
- (d) “Dispose” or “disposal” means the deposit, injection, or placing of any hazardous substance in a manner which may permit the substance to be discharged to the environment.
- (e) “Free product” means a hazardous substance that is present in the environment as a floating or sinking non-aqueous phase liquid.
- (f) “Groundwater” means any water contained beneath the ground surface.
- (g) “Hazardous substance” means any substance or combination of substances, including any waste of a solid, semi-solid, liquid or gaseous form, which may cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating reversible illness, or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to:
- (1) a substance defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 as amended, as a hazardous substance.
 - (2) those substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives.
 - (3) petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure.
- (h) “Immediate action” means a remedial action that is taken within a short period of time after the discharge of a hazardous substance or contamination occurs, or after the discovery of the discharge or contamination.
- (j) “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.
- (k) “Operator” means any person who operates a site.
- (l) “Owner” means any person who owns or who receives direct or indirect consideration from the operation of a site regardless of whether the site remains in operation and regardless of whether the person owns or receives consideration at the time contamination occurs.
- (m) “Person” means an individual, owner, operator, entity, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.
- (n) “Practicable” means remedial action is capable of being implemented, taking into account:
- (1) The technical feasibility of the remedial action, considering its long-term effectiveness, short-term effectiveness, implementability and the time it will take until restoration is achieved; and
 - (2) The economic feasibility of the remedial action, considering the cost of the remedial action compared to its technical feasibility.
- (o) “Registered pesticide” means a pesticide registered or exempted by the federal Environmental Protection Agency’s Office of Pesticide Programs.
- (p) “Remedial action” means any action taken to control, minimize or eliminate the discharge of a hazardous substance at or contamination of a site and any action taken to restore the environment to the extent practicable.
- (q) “Responsible party” means any person who, under this law, is required to:

(1) take action to prevent or abate contamination, a threat of contamination, the discharge of a hazardous substance or threat of a discharge; or

(2) reimburse a Tribal entity for the costs incurred by the entity to take action to prevent or abate contamination or threat of contamination or the discharge of a hazardous substance or threat of a discharge.

(r) “Restore” or “restoration” means to return the environment to its original condition before the discharge of a hazardous substance or contamination of the site occurred.

(s) “Site” means any area where contamination has occurred or is suspected of occurring, including a place of business that handles, transports or stores hazardous substances and is required to track such materials.

(t) “Tribal entity” means a board, committee, commission, department, division, or agency of the Nation.

401.4. Jurisdiction

401.4-1. *Personal Jurisdiction.* This law shall apply to:

(a) all Oneida Tribal members, Tribal entities, Tribal corporations and members of other federally recognized tribes;

(b) individuals and businesses leasing, occupying or otherwise using Tribal fee land and all Tribal trust lands; and

(c) individuals who have consented to the jurisdiction of the Nation or as otherwise consistent with federal law. For purposes of this subsection, an individual shall have consented to the jurisdiction of the Nation:

(1) By entering into a consensual relationship with the Nation, Tribal entities, Tribal corporations, or Tribal members, including but not limited to contracts or other agreements; or

(2) By other facts which manifest an intent to consent to the authority of the Nation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.

401.4-2. *Territorial Jurisdiction.* This law extends to all land within the exterior boundaries of the Reservation of the Nation, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, any lands added thereto pursuant to federal law and all lands held in trust for the Nation within the State of Wisconsin.

401.5. Tribal Environmental Response Program (TERP)

401.5-1. The Environmental Health and Safety Division (Division) shall create a Tribal Environmental Response Program (TERP). The purpose of the TERP shall be to address the discharge or potential discharge of a hazardous substance that has resulted in or may result in contamination of the environment.

401.5-2. Under the TERP, the Division shall:

(a) provide opportunities for public participation for the identification, restoration and reuse of contaminated sites.

(b) conduct and/or oversee assessments and investigations of sites with contamination concerns.

(c) identify potentially responsible parties to clean up contaminated sites.

(d) require appropriate remedial action be taken when contaminated sites are identified and develop a plan or ensure a plan is developed for the undertaking of those remedial actions.

(e) oversee and enforce required remedial actions.

(f) develop mechanisms for the approval, certification, and verification of remedial actions taken at a site.

(g) maintain a public record of remedial actions conducted at a contaminated site.

401.5-3. *Issuance of Administrative Orders.* The Division shall issue administrative orders, as necessary, when the discharge of a hazardous substance occurs, or when contamination, or the threat of contamination, exists. Before issuing an administrative order, the Division shall consult with other Tribal entities having expertise in the subject matter of the order. Administrative orders may include:

(a) orders to prevent the discharge of a hazardous substance.

(b) orders to allow the investigation of a site it has reason to believe is contaminated or is under threat of contamination.

(c) orders to require a responsible party to take action to prevent and/or abate contamination.

401.5-4. *Emergency Situations.* Chapter 302 of the Oneida Code of Laws, Emergency Management and Homeland Security, shall govern the response to the discharge of a hazardous substance which results in the proclamation of an emergency.

401.6. Environmental Quality Standards

401.6-1. The Division shall adopt and revise, as necessary, standards for environmental quality that are protective of public health and the environment, recognizing that different standards may be required, depending on the designated uses of the land and groundwater.

401.6-2. Before adopting or revising environmental quality standards, the Division shall publish notice in two (2) consecutive issues of the Kalihwisaks on the standards that are under consideration for adoption or revision.

(a) The notice shall contain a deadline for comments to be received from any person.

(b) The Division shall review and consider comments received before approving the new or revised standards.

401.6-3. Environmental quality standards adopted by the Division shall become effective upon Oneida Business Committee approval, except those standards that are consistent with federal standards shall be effective upon approval by the Division.

401.7. Discharge of Hazardous Substances

401.7-1. *Notification of Discharge.* Unless exempted from notifying the Division under 401.7-10, the following individuals shall notify the Division immediately of the discharge of a hazardous substance or threat of such discharge:

(a) Any person who possesses or controls a hazardous substance which is discharged;

(b) Any person who causes the discharge of a hazardous substance; and

(c) Any person who has professional knowledge that the discharge of a hazardous substance has occurred at a site, or there is a threat of such discharge.

401.7-2. *Investigation of Discharge.* When the Division is notified of or becomes aware of the discharge of a hazardous substance, or threat of such discharge, it shall identify any responsible parties and issue an administrative order for the responsible parties to have an investigation conducted of the site. The Division may also issue an administrative order requiring the responsible party take action to abate and/or prevent the discharge. The Division may specify any necessary preventative measures or remedial actions in the administrative order.

401.7-3. *Determination of Contamination.* After being issued an administrative order for an investigation, the responsible parties shall have an initial assessment conducted to determine whether the discharge of a hazardous substance has occurred and whether any

discharge has caused contamination. The initial assessment shall include sampling and/or testing of the site where the discharge of a hazardous substance has occurred.

(a) Evidence that indicates contamination of a site has occurred, or may have occurred includes, but is not limited to:

(1) visible soil contamination;

(2) presence of free product or vapors in soils, basements, sewers or utility lines, surface water or groundwater; and

(3) reports, environmental assessments or routinely gathered monitoring data that indicates contamination has occurred or may have occurred.

(b) Groundwater samples shall be collected for analysis and evaluation to determine whether the groundwater poses any public health and welfare concerns.

(c) Whether contamination exists shall be based on the level of contamination as compared to environmental quality standards adopted by the Nation.

401.7-4. The Division shall evaluate the harmfulness of the discharge of a hazardous substance based on the initial assessment and shall:

(a) publish the results of the initial assessment, along with a notice that the Division will accept comments on the results for at least thirty (30) days after the initial publication, in two (2) consecutive issues of the Kalihwisaks; and

(b) mail the results of the initial assessment, along with a notice that the Division will accept comments on the results for at least thirty (30) days after the initial publication of the results in the Kalihwisaks, to all owners of property located within one thousand two hundred (1,200) feet of the outer boundaries of the property that is the subject of the initial assessment.

401.7-5. The Division shall accept comments on the results of the initial assessment for at least thirty (30) days after the initial publication of the results in the Kalihwisaks. The Division shall compile, review and respond to all comments. Responses will be recorded and published in a document available to the public.

401.7-6. A person who possesses or controls a hazardous substance which is discharged or causes the contamination of a site shall take remedial action.

401.7-7. A person who voluntarily assumes responsibility for performance of, or payment of, remedial actions in accordance with a plan that has been approved through the TERP, shall not be subject to enforcement actions for the contamination if he or she complies with the plan.

401.7-8. Except as provided in 401.7-10, the following persons are responsible parties:

(a) The current owner and operator of the site;

(b) Any owner or operator of the site at the time the discharge or contamination occurred;

(c) Any person who arranged for the disposal or treatment of the hazardous substance, or arranged for the transportation of the hazardous substance for disposal or treatment;

(d) Any person who transports the hazardous substance and selects the disposal site; and

(e) Any person who, by any act or omission, caused or contributed to the discharge or contamination.

401.7-9. *Exemptions.* The following persons are not “responsible parties” under this law:

(a) Any person discharging in accordance with a permit or program approved under federal or Tribal law.

(b) Law enforcement officers and members of a fire department using hazardous substances in carrying out their responsibilities to protect public health, safety and welfare. However, these individuals shall notify the Division of any discharges of a hazardous substance occurring in the performance of their duties.

(c) Any person applying a registered pesticide according to the label instructions, or applying a fertilizer at or below normal and beneficial agronomic rates. These individuals are also exempted from the notification and penalty requirements of this law.

(d) Any person who can establish that the discharge or threatened discharge of a hazardous substance for which the person would be otherwise responsible was caused solely by:

- (1) An act of nature;
- (2) An act of war; or
- (3) An act or omission of a third party, including but not limited to a trespasser, other than:

(A) An employee or agent of the person asserting the defense; or

(B) Any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting the defense.

(e) Any person who is an owner, past owner, or purchaser of property and who can establish by a preponderance of the evidence that at the time the property was acquired by the person, the person had no knowledge or reason to know that the property was contaminated, or that a hazardous substance was discharged or disposed of on, in or at the property.

- (1) To establish that a person had no reason to know what the person was undertaking at the time of acquisition, All Appropriate Inquiries shall be taken into the previous ownership and uses of the property.

(f) Any person who purchases property after January 11, 2002 with knowledge that it is contaminated if:

- (1) the person did not cause the contamination on the property;
- (2) the person establishes that all disposal of hazardous substances occurred before the person acquired the property;
- (3) the person makes All Appropriate Inquiries into previous ownership and uses of the property prior to acquiring the property; and
- (4) the person is not affiliated with a party liable for any contamination.

401.7-10. Where there is an unresponsive or unknown responsible party, the Division may refer the site to the appropriate outside agency to retain contractors or consultants, and take other necessary actions to conduct remedial action or have remedial action conducted at a site.

401.8. Remedial Actions

401.8-1. A responsible party shall take immediate action to halt the discharge of a hazardous substance and to minimize the harmful effects of the discharge.

401.8-2. If, after the initial assessment, it is determined that the discharge may cause contamination or has caused contamination, the Division shall issue an administrative order to the responsible party or parties to take remedial action or have remedial action conducted on the site.

401.8-3. The Division shall determine the appropriate remedial actions, including the time frame, to be taken in the event a site is contaminated. Remedial actions may include:

- (a) the replacement and/or removal of injured plant and animal life or contaminated soil.
- (b) the treatment of contaminated soils and/or surface and/or groundwater.
- (c) adequate storage, handling and disposal methods to prevent further and/or future discharges and contamination from occurring.
- (d) the replacement or repair of faulty equipment.

(e) other remedial actions that restore the environment and/or protect the environment from the contamination, as determined by the Division.

401.8-4. Where it is determined by the Division that immediate remedial action is not being taken, but is necessary to protect the public health, safety or welfare or the environment, the Division may conduct remedial action or have remedial action conducted. Costs of any such action may be recovered from any or all responsible parties.

401.8-5. In addition to the requirements of this law, the Division shall comply with all applicable federal laws when the discharge or threat of a discharge of a hazardous substance occurs.

401.8-6. Each responsible party is strictly liable, jointly and severally, for all remedial action costs and for all damages resulting from the discharge or threatened discharge of a hazardous substance.

401.9. Case Closure or No Further Action

401.9-1. The Division may close a case concerning a site or verify that no further action is necessary, upon compliance with the applicable requirements of this law and any administrative orders issued by the Division, including the completion of remedial actions. The Division shall conduct investigations and inspections to ensure compliance with any administrative order it has issued.

401.9-2. Sampling shall be conducted at the completion of the remedial action when:

- (a) The hazardous substance discharge is in contact with groundwater.
- (b) The amount, identity or duration of the contamination is unknown.
- (c) Other site conditions indicate that sampling is necessary to confirm the adequacy of the remedial action.

401.9-3. The Division may require additional remedial actions, including monitoring, for any site, even those cases that have been closed by the Division, if information regarding site conditions indicates that contamination on or from the site poses a threat to public health, safety or welfare or the environment.

401.9-4. If additional remedial action is required for a previously closed case, the Division:

- (a) Shall indicate in writing to the responsible parties that additional remedial action is needed at the site and provide the responsible parties with information regarding the nature of the problem and type of remedial action that is needed.
- (b) May require the responsible parties to achieve compliance with the Nation's public health and environmental laws, within a time period established by the Division.

401.10. Violations, Enforcement and Appeals

401.10-1. *Compliance Orders.* If, after issuing an administrative order, the Division determines that a violation of the administrative order exists, it shall issue a compliance order which requires the responsible parties to:

- (a) Take remedial action to prevent or abate the discharge of a hazardous substance; and/or
- (b) Allow the investigation of a site believed to be contaminated or under threat of contamination.

401.10-2. *Penalty Schedule.* The Environmental Resource Board is delegated rulemaking authority to adopt a penalty schedule, upon recommendation of the Division, for violations of this law. Any person who does not comply with a compliance order issued by the Division may receive a penalty in accordance with the fine schedule. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(a) Any order issued pursuant to this law that is not complied with may be physically enforced by the Division at the Owner's expense.

(b) Any person who is a lessee of the Nation who violates any provision of this law or any compliance order issued by the Division shall have said case referred to the Division of Land Management to consider potential lease violations.

401.10-3. *Contested Action Hearings.* All citations, penalties, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) *Community Service.* Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) *Allocation of Citation Revenue.* All fines and penalties issued by citations are payable to the Environmental Resource Board or its designee, the proceeds of which the Environmental Resource Board shall contribute to the Nation's general fund.

(c) *Appealing the Decision of the Judiciary Trial Court.* Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) *Pursuing Payment of a Citation.* The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

End.

Adopted – BC-09-12-12-B
Amended – BC-02-25-15-C

Title 4. Environment and Natural Resources—Chapter 401
TRIBAL ENVIRONMENTAL RESPONSE
Latihw<tsyahal#-tu kayanl^hsla>
They clean up the earth laws

401.1. Purpose and Policy	401.7. Discharge of Hazardous Substances
401.2. Adoption, Amendment, Conflicts	401.8. Remedial Actions
401.3. Definitions	401.9. Case Closure or No Further Action
401.4. Jurisdiction	401.10. Enforcement and Penalties
401.5. Tribal Environmental Response Program (TERP)	401.11. Appeals
401.6. Environmental Quality Standards	

401.1. Purpose and Policy

401.1-1. The purpose of this law is to:

- (a) regulate the identification, investigation and remediation of discharges of hazardous substances to the environment;
- (b) identify sites where the discharge of a hazardous substance into the environment has occurred; and
- (c) eliminate contamination from and control the threat of, or actual discharge of hazardous substances.

401.1-2. It is the policy of the ~~Tribe~~Nation to:

- (a) respond to discharges of hazardous substances and environmental contamination concerns; and
- (b) ensure remedial action is taken to redevelop contaminated lands and maintain the health and welfare of the environment.

401.2. Adoption, Amendment, Conflicts

401.2-1. This law is adopted by the Oneida Business Committee by resolution BC-09-12-12-B and amended by resolution BC-02-25-15-C.

401.2-2. This law may be amended pursuant to the procedures set out in Tribal law by the Oneida Business Committee or the Oneida General Tribal Council.

401.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

401.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law is intended to repeal or modify any existing law, policy, regulation, rule, resolution, or motion.

401.2-5. This law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians~~Nation.

401.3. Definitions

401.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “All Appropriate Inquiries” means the process of evaluating a property’s environmental conditions and assessing the likelihood of any contamination in compliance with the All Appropriate Inquiries Final Rule at 40 CFR 312.

(b) “Contamination” or “contaminated” means the environment has been affected by a hazardous substance to the point that remedial action is necessary to restore the environment.

(c)–___ “Discharge” means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, releasing or dumping.

(d)–___ “Dispose” or “disposal” means the deposit, injection, or placing of any hazardous substance in a manner which may permit the substance to be discharged to the environment.

(e)–___ “Free product” means a hazardous substance that is present in the environment as a floating or sinking non-aqueous phase liquid.

(f)–___ “Groundwater” means any water contained beneath the ground surface.

(g)–___ “Hazardous substance” means any substance or combination of substances, including any waste of a solid, semi-solid, liquid or gaseous form, which may cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating reversible illness, or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to:

(1)–___ a substance defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 as amended, as a hazardous substance.

(2)–___ those substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives.

(3)–___ petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure.

(h)–___ “Immediate action” means a remedial action that is taken within a short period of time after the discharge of a hazardous substance or contamination occurs, or after the discovery of the discharge or contamination.

(j)–___ “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the TribeNation.

(k)–___ “Operator” means any person who operates a site.

(l)–___ “Owner” means any person who owns or who receives direct or indirect consideration from the operation of a site regardless of whether the site remains in operation and regardless of whether the person owns or receives consideration at the time contamination occurs.

(m)–___ “Person” means an individual, owner, operator, entity, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.

(n)–___ “Practicable” means remedial action is capable of being implemented, taking into account:

(1)–___ The technical feasibility of the remedial action, considering its long-term effectiveness, short-term effectiveness, implementability and the time it will take until restoration is achieved; and

(2)–___ The economic feasibility of the remedial action, considering the cost of the remedial action compared to its technical feasibility.

(o)–___ “Registered pesticide” means a pesticide registered or exempted by the federal Environmental Protection Agency’s Office of Pesticide Programs.

(p)–___ “Remedial action” means any action taken to control, minimize or eliminate the discharge of a hazardous substance at or contamination of a site and any action taken to restore the environment to the extent practicable.

(q)–___ “Responsible party” means any person who, under this law, is required to:

(1)–___ take action to prevent or abate contamination, a threat of contamination, the discharge of a hazardous substance or threat of a discharge; or

(2)–___ reimburse a Tribal entity for the costs incurred by the entity to take action to prevent or abate contamination or threat of contamination or the discharge of a hazardous substance or threat of a discharge.

(r)–“Restore” or “restoration” means to return the environment to its original condition before the discharge of a hazardous substance or contamination of the site occurred.

(s)–___ “Site” means any area where contamination has occurred or is suspected of occurring, including a place of business that handles, transports or stores hazardous substances and is required to track such materials.

(t)–“Tribal entity” means a board, committee, commission, department, division, or agency of the Oneida Tribe of Indians of Wisconsin Nation.

401.4. ___ Jurisdiction

401.4-1. ___ *Personal Jurisdiction*. This law shall apply to:

(a)–___ all Oneida Tribal members, Tribal entities, Tribal corporations and members of other federally recognized tribes;

(b)–___ individuals and businesses leasing, occupying or otherwise using Tribal fee land and all Tribal trust lands; and

(c)–___ individuals who have consented to the jurisdiction of the TribeNation or as otherwise consistent with federal law. For purposes of this subsection, an individual shall have consented to the jurisdiction of the TribeNation:

(1)–___ By entering into a consensual relationship with the TribeNation, Tribal entities, Tribal corporations, or Tribal members, including but not limited to contracts or other agreements; or

(2)–___ By other facts which manifest an intent to consent to the authority of the TribeNation, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.

401.4-2. ___ *Territorial Jurisdiction*. This law extends to all land within the exterior boundaries of the Reservation of the TribeNation, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, any lands added thereto pursuant to federal law and all lands held in trust for the TribeNation within the State of Wisconsin.

401.5. ___ Tribal Environmental Response Program (TERP)

401.5-1. ___ The Environmental Health and Safety Division (Division) shall create a Tribal Environmental Response Program (TERP). The purpose of the TERP shall be to address the discharge or potential discharge of a hazardous substance that has resulted in or may result in contamination of the environment.

401.5-2. ___ Under the TERP, the Division shall:

(a)–___ provide opportunities for public participation for the identification, restoration and reuse of contaminated sites.

(b)–___ conduct and/or oversee assessments and investigations of sites with contamination concerns.

(c)–___ identify potentially responsible parties to clean up contaminated sites.

(d)–___ require appropriate remedial action be taken when contaminated sites are identified and develop a plan or ensure a plan is developed for the undertaking of those remedial actions.

(e)–___ oversee and enforce required remedial actions.

(f)–develop mechanisms for the approval, certification, and verification of remedial actions taken at a site.

(g)– maintain a public record of remedial actions conducted at a contaminated site.

401.5-3.– *Issuance of Administrative Orders.* The Division shall issue administrative orders, as necessary, when the discharge of a hazardous substance occurs, or when contamination, or the threat of contamination, exists. Before issuing an administrative order, the Division shall consult with other Tribal entities having expertise in the subject matter of the order. Administrative orders may include:

(a)– orders to prevent the discharge of a hazardous substance.

(b)– orders to allow the investigation of a site it has reason to believe is contaminated or is under threat of contamination.

(c)– orders to require a responsible party to take action to prevent and/or abate contamination.

401.5-4.– *Emergency Situations.* Chapter ~~35~~302 of the Oneida Code of Laws, Emergency Management and Homeland Security, shall govern the response to the discharge of a hazardous substance which results in the proclamation of an emergency.

401.6. Environmental Quality Standards

401.6-1. The Division shall adopt and revise, as necessary, standards for environmental quality that are protective of public health and the environment, recognizing that different standards may be required, depending on the designated uses of the land and groundwater.

401.6-2. Before adopting or revising environmental quality standards, the Division shall publish notice in two (2) consecutive issues of the Kalihwisaks on the standards that are under consideration for adoption or revision.

~~(1)~~a The notice shall contain a deadline for comments to be received from any person.

~~(2)~~b The Division shall review and consider comments received before approving the new or revised standards.

401.6-3. Environmental quality standards adopted by the Division shall become effective upon Oneida Business Committee approval, except those standards that are consistent with federal standards shall be effective upon approval by the Division.

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(a)– Any person who possesses or controls a hazardous substance which is discharged;

(b)– Any person who causes the discharge of a hazardous substance; and

(c)– Any person who has professional knowledge that the discharge of a hazardous substance has occurred at a site, or there is a threat of such discharge.

401.7-2.– *Investigation of Discharge.* When the Division is notified of or becomes aware of the discharge of a hazardous substance, or threat of such discharge, it shall identify any responsible parties and issue an administrative order for the responsible parties to have an investigation conducted of the site. The Division may also issue an administrative order requiring the responsible party take action to abate and/or prevent the discharge. The Division may specify any necessary preventative measures or remedial actions in the administrative order.

401.7-3.– *Determination of Contamination.* After being issued an administrative order for an investigation, the responsible parties shall have an initial assessment conducted to determine whether the discharge of a hazardous substance has occurred and whether any

discharge has caused contamination. The initial assessment shall include sampling and/or testing of the site where the discharge of a hazardous substance has occurred.

(a) ~~___~~ Evidence that indicates contamination of a site has occurred, or may have occurred includes, but is not limited to:

(1) ~~___~~ visible soil contamination;

(2) ~~___~~ presence of free product or vapors in soils, basements, sewers or utility lines, surface water or groundwater; and

(3) ~~___~~ reports, environmental assessments or routinely gathered monitoring data that indicates contamination has occurred or may have occurred.

(b) ~~___~~ Groundwater samples shall be collected for analysis and evaluation to determine whether the groundwater poses any public health and welfare concerns.

(c) ~~___~~ Whether contamination exists shall be based on the level of contamination as compared to ~~Tribally adopted~~ environmental quality standards adopted by the Nation.

401.7-4. ~~___~~ The Division shall evaluate the harmfulness of the discharge of a hazardous substance based on the initial assessment and shall:

(a) ~~___~~ publish the results of the initial assessment, along with a notice that the Division will accept comments on the results for at least thirty (30) days after the initial publication, in two (2) consecutive issues of the Kalihwisaks; and

(b) ~~___~~ mail the results of the initial assessment, along with a notice that the Division will accept comments on the results for at least thirty (30) days after the initial publication of the results in the Kalihwisaks, to all owners of property located within one thousand two hundred (1,200) feet of the outer boundaries of the property that is the subject of the initial assessment.

401.7-5. ~~___~~ The Division shall accept comments on the results of the initial assessment for at least thirty (30) days after the initial publication of the results in the Kalihwisaks. The Division shall compile, review and respond to all comments. Responses will be recorded and published in a document available to the public.

401.7-6. ~~___~~ A person who possesses or controls a hazardous substance which is discharged or causes the contamination of a site shall take remedial action.

401.7-7. ~~___~~ A person who voluntarily assumes responsibility for performance of, or payment of, remedial actions in accordance with a plan that has been approved through the TERP, shall not be subject to enforcement actions for the contamination if he or she complies with the plan.

401.7-8. ~~___~~ Except as provided in 401.7-10, the following persons are responsible parties:

(a) ~~___~~ The current owner and operator of the site;

(b) ~~___~~ Any owner or operator of the site at the time the discharge or contamination occurred;

(c) ~~___~~ Any person who arranged for the disposal or treatment of the hazardous substance, or arranged for the transportation of the hazardous substance for disposal or treatment;

(d) ~~___~~ Any person who transports the hazardous substance and selects the disposal site; and

(e) ~~___~~ Any person who, by any act or omission, caused or contributed to the discharge or contamination.

401.7-9. ~~___~~ Exemptions. The following persons are not “responsible parties” under this law:

(a) ~~___~~ Any person discharging in accordance with a permit or program approved under federal or Tribal law.

(b) ~~___~~ Law enforcement officers and members of a fire department using hazardous substances in carrying out their responsibilities to protect public health, safety and

welfare. However, these individuals shall notify the Division of any discharges of a hazardous substance occurring in the performance of their duties.

(c) ~~Any~~ person applying a registered pesticide according to the label instructions, or applying a fertilizer at or below normal and beneficial agronomic rates. These individuals are also exempted from the notification and penalty requirements of this law.

(d) ~~Any~~ person who can establish that the discharge or threatened discharge of a hazardous substance for which the person would be otherwise responsible was caused solely by:

(1) ~~An~~ act of nature;

(2) ~~An~~ act of war; or

(3) ~~An~~ act or omission of a third party, including but not limited to a trespasser, other than:

(A) ~~An~~ employee or agent of the person asserting the defense; or

(B) ~~Any~~ person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting the defense.

(e) ~~Any~~ person who is an owner, past owner, or purchaser of property and who can establish by a preponderance of the evidence that at the time the property was acquired by the person, the person had no knowledge or reason to know that the property was contaminated, or that a hazardous substance was discharged or disposed of on, in or at the property.

(1) ~~To~~ establish that a person had no reason to know what the person was undertaking at the time of acquisition, All Appropriate Inquiries shall be taken into the previous ownership and uses of the property.

(f) ~~Any~~ person who purchases property after January 11, 2002 with knowledge that it is contaminated if:

(1) ~~the~~ person did not cause the contamination on the property;

(2) ~~the~~ person establishes that all disposal of hazardous substances occurred before the person acquired the property;

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401.8-1. ~~A~~ responsible party shall take immediate action to halt the discharge of a hazardous substance and to minimize the harmful effects of the discharge.

401.8-2. ~~If~~, after the initial assessment, it is determined that the discharge may cause contamination or has caused contamination, the Division shall issue an administrative order to the responsible party or parties to take remedial action or have remedial action conducted on the site.

401.8-3. ~~The~~ Division shall determine the appropriate remedial actions, including the time frame, to be taken in the event a site is contaminated. Remedial actions may include:

(a) ~~the~~ replacement and/or removal of injured plant and animal life or contaminated soil.

(b) ~~the~~ treatment of contaminated soils and/or surface and/or groundwater.

(c) ~~adequate storage, handling and disposal methods to prevent further and/or future discharges and contamination from occurring.~~

(d) ~~the replacement or repair of faulty equipment.~~

(e) ~~other remedial actions that restore the environment and/or protect the environment from the contamination, as determined by the Division.~~

401.8-4. ~~Where it is determined by the Division that immediate remedial action is not being taken, but is necessary to protect the public health, safety or welfare or the environment, the Division may conduct remedial action or have remedial action conducted. Costs of any such action may be recovered from any or all responsible parties.~~

401.8-5. ~~In addition to the requirements of this law, the Division shall comply with all applicable federal laws when the discharge or threat of a discharge of a hazardous substance occurs.~~

401.8-6. ~~Each responsible party is strictly liable, jointly and severally, for all remedial action costs and for all damages resulting from the discharge or threatened discharge of a hazardous substance.~~

401.9. ~~Case Closure or No Further Action~~

401.9-1. ~~The Division may close a case concerning a site or verify that no further action is necessary, upon compliance with the applicable requirements of this law and any administrative orders issued by the Division, including the completion of remedial actions. The Division shall conduct investigations and inspections to ensure compliance with any administrative order it has issued.~~

401.9-2. ~~Sampling shall be conducted at the completion of the remedial action when:~~

(a) ~~The hazardous substance discharge is in contact with groundwater.~~

(b) ~~The amount, identity or duration of the contamination is unknown.~~

(c) ~~Other site conditions indicate that sampling is necessary to confirm the adequacy of the remedial action.~~

401.9-3. ~~The Division may require additional remedial actions, including monitoring, for any site, even those cases that have been closed by the Division, if information regarding site conditions indicates that contamination on or from the site poses a threat to public health, safety or welfare or the environment.~~

401.9-4. ~~If additional remedial action is required for a previously closed case, the Division:~~

(a) ~~Shall indicate in writing to the responsible parties that additional remedial action is needed at the site and provide the responsible parties with information regarding the nature of the problem and type of remedial action that is needed.~~

(b) ~~May require the responsible parties to achieve compliance with ~~Tribal~~the Nation's public health and environmental laws, within a time period established by the Division.~~

401.10. ~~Violations, Enforcement and Penalties~~ Appeals

401.10-1. ~~Compliance Orders.~~ If, after issuing an administrative order, the Division determines that a violation of the administrative order exists, it shall issue a compliance order which requires the responsible parties to:

(a) ~~Take remedial action to prevent or abate the discharge of a hazardous substance; and/or~~

(b) ~~Allow the investigation of a site believed to be contaminated or under threat of contamination.~~

401.10-2. ~~Penalty Schedule.~~ The ~~Oneida Business Committee shall~~ Environmental Resource Board is delegated rulemaking authority to adopt a ~~fine~~ penalty schedule, upon recommendation

of the Division, for violations of this law. Any person who does not comply with a compliance order issued by the Division may receive a fine ~~penalty~~ in accordance with the fine schedule. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

~~(a) Each day a violation exists or continues shall constitute a separate offense.~~

(a) Any order issued pursuant to this law that is not complied with may be physically enforced by the Division at the Owner's expense.

~~(b) _____~~ Any person who is a lessee of the TribeNation who violates any provision of this law or any compliance order issued by the Division shall have said case referred to the Land Commission ~~Division of Land Management to consider potential lease violations.~~

401.11. Appeals

~~401.11-1. Appeal of Compliance Orders A person may appeal a compliance order issued by the Division by filing a written appeal with the Division Director within ten (10) business days after the order is issued.~~

~~(a) The Division Director shall uphold, revise or reverse the order, in writing, within five (5) business days after receiving the appeal.~~

~~(b) A person may appeal the Division Director's decision by filing a written appeal with the Environmental Resources Board within ten (10) business days after the Division Director's decision.~~

~~(1) The Environmental Resources Board shall conduct a hearing on the Division Director's decision and shall uphold, revise or reverse the decision of the Division Director.~~

~~(2) The Environmental Resources Board shall post and publish its final decision, within ten (10) business days after the hearing. The Environmental Resources Board shall include in its decision specific facts which are the basis for its decision, and shall forward the decision to the parties of the appeal.~~

~~401.11-2. Contesting the Issuance of a Fine. Any person issued a fine under this law may contest the fine by attending a hearing before the Environmental Resources Board.~~

~~(a) The fine shall specify the date, time and place of the hearing. The hearing shall take place at least five (5) days after the fine is issued.~~

~~(1) If the person does not wish to contest the fine, he or she shall pay the fine by the hearing date specified on the fine.~~

~~(b) After the hearing, the Environmental Resources Board shall determine whether the person is responsible for the fine, as was issued by the Division, and may set a new date for when the fine shall be paid.~~

~~401.11-3. Appeals from the Environmental Resources Board~~ 401.10-3. Contested Action Hearings. All citations, penalties, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

363 (a) Community Service. Community service may be substituted for fines at the
364 Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of
365 one (1) hour per ten dollars (\$10.00) of the fine.

366 (b) Allocation of Citation Revenue. All fines and penalties issued by citations are
367 payable to the Environmental Resource Board or its designee, the proceeds of which the
368 Environmental Resource Board shall contribute to the Nation's general fund.

369 (c) Appealing the Decision. ~~Any party of interest may appeal a decision of the~~
370 ~~Environmental Resources Board to the Judiciary~~ Judiciary Trial Court. Any person
371 wishing to contest the determination of the Judiciary Trial Court may appeal the
372 applicable determination to the Judiciary's Court of Appeals in accordance with the Rules
373 of Appellate Procedure.

374 (d) Pursuing Payment of a Citation. The Environmental Resource Board may pursue
375 payment from parties who have failed to make the required payments through the
376 garnishment process contained in the Garnishment law and/or by attaching a Tribal
377 law member's per capita payment pursuant to the Per Capita law.

378
379 *End.*

380
381

Adopted – BC-09-12-12-B

382 Amended – BC-02-25-15-C

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

DATE: June 7, 2017

FROM: Rae Skenandore, Project Manager

TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

RE: **Fiscal Impact of the transfer of the Environmental Resource Board's Hearing Authority to the Oneida Judiciary**

I. Estimated Fiscal Impact Summary

Law: Domestic Animal		Draft 19
Hunting, Fishing and Trapping law (HTF)		Draft 2
Public Use of Tribal Land (Public Use)		Draft 1
Tribal Environmental Response (TERP)		Draft 1
Well Abandonment Law (Well Abandonment)		Draft 1
All-Terrain Vehicle Law (ATV)		Draft 1
Water Resources Ordinance (Water Resources)		Draft 1
On-Site Waste Disposal Ordinance (Waste Disposal)		Draft 1
Implementing Agency		Oneida Police Department (OPD) Conservation Environmental Resource Board (ERB) Emergency Management Environmental Health and Safety Division Comprehensive Health Division Oneida Judiciary
Estimated time to comply		January 1, 2018
Estimated Impact	Current Fiscal Year	10 Year Estimate
ERB stipend savings	\$830	\$8,300
Total Estimated Savings	\$830	\$8,300
Revenue and cost considerations	Fee Schedules should be removed from the various Laws	
Uncertainties and Unknowns	None	

II. Background

A. Legislative History

The Oneida Business Committee created the Environmental Resource Board through Resolution BC-02-22-85-B. GTC Resolution 01-07-13-B established the Oneida Judiciary.

B. Summary of Content

1. The Domestic Animal amendments are being processed separately in order to make further revisions. However, it is included here because there are no additional fiscal impacts due to the amendments.
2. All Laws are being amended to state that the Trial Court is the entity authorized to conduct hearings.
3. Other minor changes, including formatting, have been made to these Laws to comply with drafting style. These changes do not affect the content of these Laws.

C. Methodology and Assumptions

1. A “Fiscal Impact Statement” means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.
2. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.
3. The analysis was completed based on the information provided as of the date of this memo.

III. Agency

The hearing authority will simply be transferred from ERB to the Judiciary. Historical hearing stipends paid to the Board were \$750 in 2017, \$1,200 in 2016, and \$700 in 2015. Transferring the hearing authority to the Judiciary would result in an average savings of approximately \$830 annually. The Judiciary does not anticipate any additional costs as this will simply be absorbed into their existing duties. ERB has stated that they expect the transition of the hearing authority to be complete by January 1, 2018

IV. Financial Impact

Approximately \$830 savings annually.

V. Recommendation

Finance does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.



Legislative Operating Committee
July 19, 2017

Well Abandonment Law Amendments

Submission Date: 5/17/17	Public Meeting: 6/15/17
LOC Sponsor: Tehassi Hill	Emergency Enacted: n/a Expires: n/a

Summary: *This is a request to amend the law to remove the Environmental Resource Board's Hearing Body Authority and transfer it to the Judiciary.*

5/17/17 LOC: Motion by David P. Jordan to add each of these to the Active Files List as a high priority, assign Tehassi Hill as the sponsor, approve the public meeting packet, in addition to the Tribal Environmental Response law for June 15, 2017; seconded by Fawn Billie. Motion carried unanimously.

6/15/17: Public meeting held.

Next Steps:

- Accept the public meeting comments.
- Approve the Well Abandonment Law Amendments adoption packet and forward to the OBC for consideration.



TO: Legislative Operating Committee (LOC)
FROM: Krystal John, Staff Attorney, Oneida Law Office
DATE: July 19, 2017
RE: Well Abandonment Law Amendments: Public Meeting Comment Review

On June 15, 2017 a public meeting was held regarding the Well Abandonment Law Amendments. There were no oral or written comments received during the public meeting on June 15, 2017, or during the public meeting comment period ending on June 29, 2017; therefore no additional revisions were made to the draft.



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING
Environmental Resource Board's Authority Transfer**
Business Committee Conference Room-2nd Floor Norbert Hill Center
June 15, 2017 12:15 p.m.

Present: Brandon Stevens, Candice Skenandore, Clorissa Santiago, Leyne Orosco, Cathy Bachhuber, Chad Wilson, Laura Manthe, Eugene Schubert.

Brandon Stevens: Greetings. The time is 12:25 p.m. and today's date is Thursday June 15, 2017. I will now call the public meeting to order for the following laws:

- All-Terrain Vehicle
- On-Site Waste Disposal Ordinance
- Public Use of Tribal Land
- Tribal Environmental Response
- Water Resource Ordinance
- Well Abandonment
- Hunting, Fishing, and Trapping

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding these legislative proposals. The public meeting is not a question and answer period. All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Thursday June 29, 2017.

In attendance for today is just myself, Brandon Stevens. And I will impose a time limit for all speakers pursuant to section 16.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons.

Revisions were made to the identified laws which transfer the Environmental Resource Board's hearing authority to the Judiciary. In addition, the Hunting, Fishing, and Trapping law has an additional amendment which clarifies that non-member Indians and non-Indians that hunt, fish, and trap on the Reservation may be subject to State requirements as well as the requirements set forth in the Hunting, Fishing, and Trapping law.

Although the amendments are the same for all laws, except for the additional change to Hunting, Fishing, and Trapping law; we will process these laws individually for the sake of this public meeting. We will begin today's public meeting for All-Terrain Vehicle law.

Okay, we have people checked in and no oral testimony is requested from anyone in attendance. Anyone want to come up that is not on the list, please do so at this time.

Okay, seeing no oral testimony for the All-Terrain Vehicle law, I will close this public meeting at 12:18 p.m.

I will now open up the public meeting for the On-Site Waste Disposal Ordinance. The public meeting for the On-Site Waste Disposal Ordinance, or, and I'll sorry. I will ask at this time if anyone would like to come up and provide oral testimony please so do, that's not on the list. Seeing none, I will close this public meeting for the On-Site Waste Disposal Ordinance at 12:19 p.m.

I will now open up the public meeting for the Public Use of Tribal Land at 12:19 p.m. I will open up the floor for oral testimony for those who have not signed in and would like to provide oral testimony. Seeing none, I will close this public meeting for the Public Use of Tribal Land at 12:19 p.m.

I will now open up the public meeting for the Tribal Environmental Response at 12:20 p.m. Open up the floor for any of those who want to provide oral testimony that are not signed in. Seeing none, I will close this public meeting for the Tribal Environmental Response at 12:20 p.m.

I will now open up the public meeting for the Water Resource Ordinance at 12:20 p.m. I'll open up the floor for any of those who would like to provide oral testimony that are not on the list. Seeing none, I will close the public meeting for the Water Resource Ordinance at 12:20 p.m.

I will now open up the public meeting for the Well Abandonment at 12:21 p.m. I'll open up the floor for any oral testimony for those who are not on the list. Seeing none, I will close the public meeting for the Well Abandonment at 12:21 p.m.

I will now open up the public meeting for the Hunting, Fishing, and Trapping . Please note that in addition to revision that transfers ERB's hearing authority to the Judiciary, an additional revision was made to provide clarity that non-member Indians and non-Indians that hunt, fish, and trap on the Reservation may be subject to State requirements as well as the requirements set forth in the Hunting, Fishing, and Trapping law. Opening up the floor for those who would like to provide oral testimony that are not signed in. Seeing none, I will close the public meeting for the Hunting, Fishing, and Trapping law at 12:22 p.m.

With no more individuals wanting to provide oral comment, I am closing the public meeting at 12:22 p.m. As a reminder the public comment period will remain open until Thursday, June 29, 2017 by close of business. Thank you.

-End of Meeting-



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson *BS*
DATE: July 26, 2017
RE: Well Abandonment Law Amendments

Please find the following attached backup documentation for your consideration of the Well Abandonment Law Amendments:

1. Resolution: Well Abandonment Law Amendments
2. Statement of Effect: Well Abandonment Law Amendments
3. Well Abandonment Law Amendments: Legislative Analysis
4. Well Abandonment Law Amendments: Clean Draft
5. Well Abandonment Law Amendments: Redline to Current Draft
6. Well Abandonment Law Amendments: Fiscal Impact Statement

Overview

This resolution adopts amendments to the Well Abandonment Law to transfer the Environmental Resource Board's hearing authority to the Judiciary.

In accordance with the Legislative Procedures Act, a public meeting was held regarding this law on June 15, 2017 with a comment period closing on June 29, 2017. There were no comments provided. These amendments will become effective beginning in the new fiscal year on October 1, 2017.

Requested Action

Approve the Resolution: Well Abandonment Law Amendments

BC Resolution _____*Well Abandonment Law Amendments*

WHEREAS, the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and

WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

WHEREAS, the Oneida Business Committee originally adopted the Well Abandonment Law through resolution BC-09-12-12-B and thereafter amended it through resolution BC-08-31-94-A; and

WHEREAS, the Amendments to the Law transfer the Environment Resource Board's original hearing body authority and responsibilities to the Oneida Judiciary as part of an effort to standardize and streamline all of the Nation's hearing responsibilities; and

WHEREAS, a public meeting on the proposed Amendments was held on June 15, 2017 in accordance with the Legislative Procedures Act; and

NOW THEREFORE BE IT RESOLVED, that the Well Abandonment Law Amendments are hereby adopted and shall become effective on October 1, 2017.



Statement of Effect

Well Abandonment Law Amendments

Summary

This Resolution adopts Amendments to the Well Abandonment Law Amendments (the “Law”) which transfer the Environmental Resource Board’s original hearing body authority to the Oneida Judiciary.

Submitted by: Krystal L. John, Staff Attorney, Oneida Law Office

Analysis by the Legislative Reference Office

As stated above, these amendments will transfer the delegation of original hearing body authority from the Environmental Resource Board to the Oneida Judiciary. Such a transfer would implicate the Judiciary law and the Environmental Resource Board’s by-laws.

The transfer of hearing body authority would fit into the Oneida Judiciary’s subject matter jurisdiction according to the Judiciary law based on section 801.5-2, which provides that, “The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following... (a) Tribal laws which specifically authorize the Trial Court to exercise jurisdiction...” *Judiciary*, 8 O.C. 801 § 801.5-2. These amendments to the Law specifically authorize the Trial Court to exercise jurisdiction based on section 406.7-4. *Contested Action Hearings*, which reads as follows:

All citations, penalties, forfeitures, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved. ...

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure. ...

The Environmental Resource Board’s by-laws provide the Board’s duties and responsibilities, among other things. Adoption of this law conflicts with the Board’s by-laws and the by-laws recognize the Environmental Resource Board’s original hearing body authority in section 1-4.b., which reads as follows: “The ERB shall serve as the original hearing body in matters concerning environmental and conservation laws and ordinances promulgated by the Oneida Tribe.” Accordingly, if this resolution is adopted, the Environmental Resource Board’s by-laws would need

to be amended to remove the original hearing body authority from the Board's duties and responsibilities.

A public meeting was held for these Amendments on June 15, 2017 for which the public comment period expired on June 22, 2017 in accordance with the Legislative Procedures Act. There were not any oral or written comments submitted.

Conclusion

Adoption of this Resolution would require the Environmental Resource Board's by-laws to be amended to remove the original hearing body authority from the Board's duties and responsibilities.



Hearing Authority Transfer Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: LOC	SPONSOR: Tehassi Hill	DRAFTER: Krystal L. John	ANALYST: Candice E. Skenandore
Intent of the Amendments	To further utilize the Judiciary.		
Purpose	To transfer the Environmental Resource Board (ERB) hearing authority to the Judiciary.		
Affected Entities	Trial Court, ERB		
Affected Legislation	Hunting, Fishing and Trapping law, Public Use of Tribal Land, Tribal Environmental Response, Well Abandonment Law, All-Terrain Vehicle Law, Water Resources Ordinance		
Enforcement/Due Process	ERB will no longer hold hearings; hearing will now be conducted by the Trial Court in accordance with the Rules of Civil Procedure.		
Public Meeting	A public meeting was held on June 15, 2017.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. Since 1985, ERB served as the hearing body authority over the Nation's environmental regulations. On May 2, 1990, the Oneida Business Committee established the Oneida Tribal Judicial System (aka Oneida Appeals Commission) and General Tribal Council reauthorized the Oneida Tribal Judicial System on August 19, 1991 [*See BC Resolution 05-02-90 and GTC Resolution 8-19-91-A*]. The purpose of the Oneida Appeals Commission was to enhance and protect self-governance and sovereignty as well as enhance the separation of powers between the legislative, executive and juridical responsibilities of the Nation. The Oneida Appeals Commission removed the Oneida Business Committee from initial judicial decisions [*See GTC Resolution 8-19-91-A*].
- B. In 2013, the General Tribal Council changed the structure of the Oneida Tribal Judicial System by creating an Oneida Judiciary comprised of the Tribal Court and a Court of Appeals through the adoption of the Judiciary law. The purpose of the Judiciary is to grant the Trial Court and Court of Appeals expanded subject matter jurisdiction and create a greater role for the use of mediation and/or peacemaking [*See GTC Resolution 01-07-13-B*].
- C. These proposed amendments will transfer hearing authority from ERB to the Trial Court. The following laws are amended to reflect the transfer of hearing authority:
- Hunting, Fishing and Trapping law (HTF)
 - Public Use of Tribal Land (Public Use)
 - Tribal Environmental Response (TERP)
 - Well Abandonment Law (Well Abandonment)
 - All-Terrain Vehicle Law (ATV)
 - Water Resources Ordinance (Water Resources)
 - On-Site Waste Disposal Ordinance (Waste Disposal)

SECTION 3. CONSULTATION

A. ERB and the Trial Court have been consulted in the development of this legislative analysis.

SECTION 4. PROCESS

A. These Laws have followed the process set forth in the Legislative Procedures Act (LPA) except that the public meeting was not properly noticed to all managers or directors. The LPA requires the public meeting notice, legislation, legislative analysis and fiscal impact statement, if fiscal impact statement is available, to be electronically provided to all managers or directors a minimum of ten business days before a public meeting is held [See *Legislative Procedures Act, 1 O.C. 109.8-2 (b)*]. The notice and backup documents were provided electronically to all managers or directors on Tuesday, June 13, 2017; the public meeting was held Thursday, June 15, 2017. The public meeting was properly noticed in the Kalihwisaks and was made public on the Oneida Register at least ten business days prior to the public meeting as required by the LPA [See *Legislative Procedures Act, 1 O.C. 8-2 (a & b)*]. The LOC extended the public comment period for these laws for an additional five business days, ending on Thursday, June 29, 2017.

B. A work meeting with ERB was held on Wednesday, May 17, 2017 and a work meeting with ERB and the Judiciary was held on Monday, June 12, 2017.

SECTION 5. CONTENTS OF THE LEGISLATION

A. The identified laws in Section 2.C of this analysis have been amended to state that the Trial Court is the entity authorized to conduct hearings.

SECTION 6. INTENT

A. The intent of these amendments is to further utilize the Oneida Judiciary. The LOC has already decided to transfer hearing authority from identified entities to the Judiciary. The majority of the Oneida Land Commission's and some of the Trust Enrollments Committee's hearing authority has already transferred to the Judiciary. Because the LOC is currently working on amendments the Domestic Animals law in which ERB has hearing authority, it was decided to amend all laws which grant ERB hearing authority and transfer that authority to the Judiciary.

SECTION 7. EFFECT ON EXISTING LEGISLATION

A. These amendments do not conflict with other laws or policies of the Nation.

SECTION 8. OTHER CONSIDERATIONS

A. The following table shows the type and approximate number of hearings ERB has held since 2012. Included are hearings that pertain to Domestic Animals violations; however, the Domestic Animal amendments are being processed separately in order to make further revisions. In total, ERB has held approximately 69 hearings since 2012.

64

	ATV	HFT	Waste Disposal	Public Use	TERP	Water Resources	Well Abandonment	Domestic Animal	TOTAL
2012	0	1	0	0	0	0	0	1	2
2013	0	5	0	0	0	0	0	0	5
2014	0	14	0	0	0	0	0	3	17
2015	0	0	0	1	0	0	0	6	7
2016	0	11	0	2	0	0	0	19	32
2017	0	2	0	0	0	0	0	4	6
TOTAL	0	33	0	3	0	0	0	33	69

65 **B.** Minor changes, including formatting, have been made to these laws to comply with drafting style.

66 These changes do not affect the content of these laws.

67 **C.** Please refer to the fiscal impact statement for any financial impacts.

68

69 SECTION 9. ADDITIONAL AMENDMENTS

70 **A. *Hunting, Fishing, and Trapping law (Law)*.** In additions to the amendments which transfer ERB's
 71 hearing authority to the Judiciary, additional amendments were made to the Hunting, Fishing, and
 72 Trapping law. These amendments include revising section 406.4-3 which states that this Law does
 73 not negate the jurisdiction of the State of Wisconsin in instances that involve non-member Indians
 74 and non-Indians. This means that non-member Indians and non-Indians hunting, fishing and trapping
 75 on land owned by the Nation must adhere to the Nation's license, permit and tag requirements but
 76 may also be subject to State requirements. In addition, license and permit holders cannot utilize
 77 hunting, fishing, or trapping privileges within the Reservation using a State license that would
 78 provide greater privileges than those afforded in this Law and any applicable rules [*See Hunting,*
 79 *Fishing and Trapping, 4 O.C. 406.4-3*].

80

For OBC Consideration (Draft 1)

2017 07 26 – Clean

Title 4. Environment and Natural Resources—Chapter 404**WELL ABANDONMENT****Tsi' Kahne·kóte Kayanl'hsila***our laws of the wells*

404.1. Purpose and Policy

404.2. Adoption, Amendment, Repeal

404.3. Definitions

404.4. Abandonment Required

404.5. Well Operation Permit

404.6. Abandonment Procedures

404.7. Penalties

404.8. Conflict with Federal

404.1. Purpose and Policy

404.1-1. The purpose of this law is to require the abandonment or upgrading of all unused, unsafe or noncomplying wells located within the exterior Reservation boundaries of the Oneida Nation to prevent contamination of groundwater.

404.1-2. The proper abandonment of wells protects public health, safety and welfare by assuring that unused, unsafe or noncomplying wells, or wells which may serve as conduits for contamination, or wells which may be illegally cross-connected to the municipal water system, are properly abandoned.

404.2. Adoption, Amendment, Repeal

404.2-1. This law was adopted by the [Oneida Business Committee or Oneida General Tribal Council] by resolution BC-8-31-94-A and amended by resolution _____.

404.2-2. This law may be amended or repealed by the [Oneida Business Committee and/or Oneida General Tribal Council] pursuant to the procedures set out in the Legislative Procedures Act.

404.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

404.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

404.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

404.3. Definitions

404.3-1. All words used herein shall have their ordinary meaning unless specifically defined within this section.

404.3-2. Unless otherwise stated within this law, the following specific definitions shall apply:

(a) "Municipal water system" means a system for the provision to the public of piped water for human consumption when such system has at least 15 service connections or regularly serves at least 25 year-round residents owned or operated by a city, village, county, town, town sanitary district or public institution, or a privately owned water utility serving any of the above.

(b) "Noncomplying" means a well or a pump installation which does not meet the provisions of NR 112, Wis. Admin. Code.

(c) "Pump installation" means the pump and related equipment used for withdrawing

For OBC Consideration (Draft 1)

2017 07 26 – Clean

water from a well including the discharge piping, the underground connections, pitless adapters, pressure tanks, pits, sampling faucets and well seals or caps.

(d) “Unsafe” means a well or pump installation which produces water which is bacteriologically contaminated or contaminated with substances exceeding the standards of chs. NR 809 or 140, Wis. Admin. Code, or for which a Health Advisory has been issued.

(e) “Unused” means a well or pump installation which has not been in use for three (3) months prior to the date of the adoption of this Law or has not had a functional pumping system for three consecutive months.

(f) “Well” means an excavation or opening into the ground made by digging, boring, drilling, driving, or other methods for the purpose of obtaining groundwater for consumption or other use.

(g) “Well Abandonment” means the filling and sealing of a well according to the provisions set out herein or by adoption within this code of §NR 112.26, Wis. Admin. Code.

404.4. Abandonment Required

404.4-1. All wells located on premises served by a municipal water system or, regardless of location, are unused or of noncomplying construction, shall be abandoned in accordance with the terms of this law and §NR 112.26, Wis. Admin. Code, unless a well operation permit has been obtained from the Oneida Environmental Health and Safety Division within three (3) months of adoption of this law, prior to opening a well after adoption of this law, or a renewal permit was granted within three months of expiration of prior permits.

404.5. Well Operation Permit

404.5-1. The Oneida Environmental Health and Safety Division may grant a yearly well operation permit to a private well owner to operate a well for a period not to exceed five (5) years, providing the conditions of this section are met. An owner may request renewal of a well operation permit by submitting information verifying that the conditions of this section are met.

404.5-2. The following requirements must be met prior to granting a permit

(a) A yearly water quality test is performed at the owner’s expense.

(b) The Oneida Environmental Health and Safety Division or its agent, may conduct inspections or have water quality tests conducted to obtain or verify information necessary for consideration of a permit application, on an annual basis for reverification, or upon request for permit renewal.

(c) Permit applications and renewals shall be made on forms provided by the Oneida Environmental Health and Safety Division.

404.5-3. The following conditions must be met for issuance or renewal of a well operation permit.

(a) The well and pump installation meet or are upgraded to meet the requirements of ch. NR 112, Wis. Admin. Code; and

(b) The well construction and pump installation have a history of producing bacteriologically safe water as verified by sampling histories. No exception to this

For OBC Consideration (Draft 1)
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condition may be made for unsafe well, unless the Oneida Environmental Health and Safety Division provides the appropriate form for the continued use of the well; and

(c) There are no cross-connections between the well and pump installation and the municipal water system; and

(d) The proposed use of the well and pump installation will be reviewed on a case by case basis.

404.6. Abandonment Procedures

404.6-1. All wells abandoned under the jurisdiction of the Oneida Nation shall be abandoned according the procedures and methods set out herein and supplemented in §NR 112.26, Wis. Admin. Code. Provided that, any notification within the state regulation shall be superseded and integrated as reasonable with the notification procedures herein.

404.6-2. The owner of the well, or the owner's agent, shall notify the Oneida Environmental Health and Safety Division at least 48 hours prior to the commencement of any well abandonment activities. The abandonment of the well may be observed by the Oneida Environmental Health and Safety Division, or its designated agent.

404.6-3. A well abandonment report will be completed and submitted by the owner's agent, to the Oneida Environmental Health and Safety Division within 10 days of the completion of the well abandonment. The well abandonment report form is available from the Oneida Environmental Health and Safety Division.

404.6-4. All debris, pump, piping, unsealed liners and any other obstructions which may interfere with sealing operations shall be removed prior to abandonment.

404.7. Penalties

404.7-1. Any well owner or agent violating any provision of this law shall be subject to forfeiture of not less than \$100 nor more than \$1,000. Each day of violation is a separate forfeiture. Provided that each forfeiture be proven individually.

404.7-2. Failure to comply with this law within ten (10) working days after receiving written notice of this violation, the Oneida Nation may impose a penalty and cause the well abandonment to be performed at the expense of the well owner.

404.7-3. It shall be a valid defense to any continuing forfeiture that the well owner has begun procedures to abandon the well and shall be by sworn affidavit that notice has been presented to the Oneida Environmental Health Program of approved well abandonment procedure.

406.7-4. Contested Action Hearings. All citations, penalties, forfeitures, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the

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matter is resolved.

(a) Community Service. Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) Allocation of Citation Revenue. All fines and penalties issued by citations are payable to the Environmental Resource Board or its designee, the proceeds of which the Environmental Resource Board shall contribute to the Nation's general fund.

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) Pursuing Payment of a Citation. The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

404.8. Conflict with Federal.

404.8-1. Should any part of this law be found to be in conflict with federal requirements which are required in order that the Oneida Nation receive federal funds, the conflicting section of this law is to be considered inoperative only for the purpose of the particular funding and that particular conflict. Provided that any consideration in regards to federal funding does not undermine the purposes and policies of this law. Such conflict shall not affect the operation of the remainder of this law in its application to those agencies or department directly affected.

Adopted - BC-8-31-94-A

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Title 4. Environment and Natural Resources—Chapter 404

WELL ABANDONMENT ~~LAW~~

Tsi? Kahne·kóte Kayanl̥hs̥la

our laws of the wells

404.1. Purpose and Policy
404.2. Adoption, Amendment, Repeal
404.3. Definitions
404.4. Abandonment Required

404.5. Well Operation Permit
404.6. Abandonment Procedures
404.7. Penalties
404.8. Conflict with Federal

404.1. Purpose and Policy

404.1-1. The purpose of this law is to require the abandonment or upgrading of all unused, unsafe or noncomplying wells located within the exterior Reservation boundaries of the Oneida Tribe of Indians Nation to prevent contamination of groundwater.

404.1-2. The proper abandonment of wells protects public health, safety and welfare by assuring that unused, unsafe or noncomplying wells, or wells which may serve as conduits for contamination, or wells which may be illegally cross-connected to the municipal water system, are properly abandoned.

404.2. Adoption, Amendment, Repeal

404.2-1. This law ~~may be~~was adopted by the [Oneida Business Committee or ~~the~~Oneida General Tribal Council] by resolution BC-8-31-94-A and ~~effective ten (10) working days after date of adoption~~amended by resolution _____.

404.2-2. This law may be amended ~~or repealed by the~~ [Oneida Business Committee and/or Oneida General Tribal Council] pursuant to the procedures set out in the ~~Oneida Administrative~~Legislative Procedures Act ~~by the Oneida Business Committee or the Oneida General Tribal Council, regardless of where the original adoption took place.~~

404.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

~~404.2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this policy are hereby repealed unless specifically re-enacted after adoption of this policy.~~

~~404.2-5. This law shall apply to all Oneida Tribal entities, the Oneida Tribe, members of the Oneida Tribe of Indians of Wisconsin who own land within the exterior boundaries of the Reservation of the Oneida Tribe of Indians, residents and all entities within the Oneida Utility District and is adopted and implemented by authority of the Oneida Tribe of Indians of Wisconsin Constitution.~~

404.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

404.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

404.3. Definitions

404.3-1. All words used herein shall have their ordinary meaning unless specifically defined

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within this section.

404.3-2. Unless otherwise stated within this law, the following specific definitions shall apply:

(a) “Municipal water system” means a system for the provision to the public of piped water for human consumption when such system has at least 15 service connections or regularly serves at least 25 year-round residents owned or operated by a city, village, county, town, town sanitary district or public institution, or a privately owned water utility serving any of the above.

(b) “Noncomplying” means a well or a pump installation which does not meet the provisions of NR 112, Wis. Admin. Code.

(c) “Pump installation” means the pump and related equipment used for withdrawing water from a well including the discharge piping, the underground connections, pitless adapters, pressure tanks, pits, sampling faucets and well seals or caps.

(d) “Unsafe” means a well or pump installation which produces water which is bacteriologically contaminated or contaminated with substances exceeding the standards of chs. NR 809 or 140, Wis. Admin. Code, or for which a Health Advisory has been issued.

(e) “Unused” means a well or pump installation which has not been in use for three (3) months prior to the date of the adoption of this Law or has not had a functional pumping system for three consecutive months.

(f) “Well” means an excavation or opening into the ground made by digging, boring, drilling, driving, or other methods for the purpose of obtaining groundwater for consumption or other use.

(g) “Well Abandonment” means the filling and sealing of a well according to the provisions set out herein or by adoption within this code of §NR 112.26, Wis. Admin. Code.

404.4. Abandonment Required

404.4-1. All wells located on premises served by a municipal water system or, regardless of location, are unused or of noncomplying construction, shall be abandoned in accordance with the terms of this law and §NR 112.26, Wis. Admin. Code, unless a well operation permit has been obtained from the Oneida Environmental Health ~~Program~~and Safety Division within three (3) months of adoption of this law, prior to opening a well after adoption of this law, or a renewal permit was granted within three months of expiration of prior permits.

404.5. Well Operation Permit

404.5-1. The Oneida Environmental Health ~~Program~~and Safety Division may grant a yearly well operation permit to a private well owner to operate a well for a period not to exceed five (5) years, providing the conditions of this section are met. An owner may request renewal of a well operation permit by submitting information verifying that the conditions of this section are met.

404.5-2. The following requirements must be met prior to granting a permit

(a) A yearly water quality test is performed at the owner’s expense.

(b) The Oneida Environmental Health ~~Program~~and Safety Division or its agent, may conduct inspections or have water quality tests conducted to obtain or verify information

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necessary for consideration of a permit application, on an annual basis for reverification, or upon request for permit renewal.

(c) Permit applications and renewals shall be made on forms provided by the Oneida Environmental Health ~~Program~~ and Safety Division.

404.5-3.— The following conditions must be met for issuance or renewal of a well operation permit.

(a) The well and pump installation meet or are upgraded to meet the requirements of ch. NR 112, Wis. Admin. Code; and

(b) The well construction and pump installation have a history of producing bacteriologically safe water as verified by sampling histories. No exception to this condition may be made for unsafe well, unless the Oneida Environmental Health ~~Program~~ and Safety Division provides the appropriate form for the continued use of the well; and

(c) There are no cross-connections between the well and pump installation and the municipal water system; and

(d) The proposed use of the well and pump installation will be reviewed on a case by case basis.

404.6. Abandonment Procedures

404.6-1. ~~All wells abandoned under the jurisdiction of the Oneida Tribe of Indians of Wisconsin Nation~~ shall be abandoned according the procedures and methods set out herein and supplemented in §NR 112.26, Wis. Admin. Code. Provided that, any notification within the state regulation shall be superseded and integrated as reasonable with the notification procedures herein.

404.6-2.— The owner of the well, or the owner's agent, shall notify the Oneida Environmental Health ~~Program~~ and Safety Division at least 48 hours prior to the commencement of any well abandonment activities. The abandonment of the well may be observed by the Oneida Environmental Health ~~Program~~ and Safety Division, or its designated agent.

404.6-3.— A well abandonment report will be completed and submitted by the owner's agent, to the Oneida Environmental Health ~~Program~~ and Safety Division within 10 days of the completion of the well abandonment. The well abandonment report form is available from the Oneida Environmental Health ~~Program~~ and Safety Division.

404.6-4.— All debris, pump, piping, unsealed liners and any other obstructions which may interfere with sealing operations shall be removed prior to abandonment.

404.7. Penalties

404.7-1. ~~Any well owner or agent violating any provision of this law shall be subject to forfeiture of not less than \$100 nor more than \$1,000. Each day of violation is a separate forfeiture. Provided that each forfeiture be proven individually.~~

404.7-2.— Failure to comply with this law within ten (10) working days after receiving written notice of this violation, the Oneida ~~Tribe~~ Nation may impose a penalty and cause the well abandonment to be performed at the expense of the well owner.

404.7-3. ~~The Oneida Environmental Health Program is authorized to bring all civil forfeiture~~

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~~hearings before the Oneida Environmental resource Board as the Original Hearing Body. Provided that notice and hearing procedures are conducted as directed by the Oneida Administrative Procedures Act.~~

~~404.7-4. It shall be a valid defense to any continuing forfeiture that the well owner has begun procedures to abandon the well and shall be by sworn affidavit that notice has been presented to the Oneida Environmental Health Program of approved well abandonment procedure.~~

~~404.7-5. Appeal from any final, written, judgment shall be made within five (5) working days of notice and may be made by either party.~~

~~404.7-6. No forfeitures accumulate after a civil hearing is begun by filing a request for forfeiture with the Environmental Resource Board.~~

~~404.7-7. Forfeiture collected under this law are to forwarded to the Accounts Receivable Office for placement in the General Tribal Funds.~~

406.7-4. Contested Action Hearings. All citations, penalties, forfeitures, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) Community Service. Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) Allocation of Citation Revenue. All fines and penalties issued by citations are payable to the Environmental Resource Board or its designee, the proceeds of which the Environmental Resource Board shall contribute to the Nation's general fund.

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) Pursuing Payment of a Citation. The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

404.8. Conflict with Federal.

404.8-1. Should any part of this law be found to be in conflict with federal requirements which are required in order that the Oneida ~~Tribe of Indians~~Nation receive federal funds, the conflicting section of this law is to be considered inoperative only for the purpose of the particular funding and that particular conflict. Provided that any consideration in regards to federal funding does not undermine the purposes and policies of this law. Such conflict shall not affect the operation

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164 of the remainder of this law in its application to those agencies or department directly affected.

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168 Adopted - BC-8-31-94-A

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

DATE: June 7, 2017

FROM: Rae Skenandore, Project Manager

TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

RE: **Fiscal Impact of the transfer of the Environmental Resource Board's Hearing Authority to the Oneida Judiciary**

I. Estimated Fiscal Impact Summary

Law: Domestic Animal		Draft 19
Hunting, Fishing and Trapping law (HTF)		Draft 2
Public Use of Tribal Land (Public Use)		Draft 1
Tribal Environmental Response (TERP)		Draft 1
Well Abandonment Law (Well Abandonment)		Draft 1
All-Terrain Vehicle Law (ATV)		Draft 1
Water Resources Ordinance (Water Resources)		Draft 1
On-Site Waste Disposal Ordinance (Waste Disposal)		Draft 1
Implementing Agency		Oneida Police Department (OPD) Conservation Environmental Resource Board (ERB) Emergency Management Environmental Health and Safety Division Comprehensive Health Division Oneida Judiciary
Estimated time to comply		January 1, 2018
Estimated Impact	Current Fiscal Year	10 Year Estimate
ERB stipend savings	\$830	\$8,300
Total Estimated Savings	\$830	\$8,300
Revenue and cost considerations	Fee Schedules should be removed from the various Laws	
Uncertainties and Unknowns	None	

II. Background

A. Legislative History

The Oneida Business Committee created the Environmental Resource Board through Resolution BC-02-22-85-B. GTC Resolution 01-07-13-B established the Oneida Judiciary.

B. Summary of Content

1. The Domestic Animal amendments are being processed separately in order to make further revisions. However, it is included here because there are no additional fiscal impacts due to the amendments.
2. All Laws are being amended to state that the Trial Court is the entity authorized to conduct hearings.
3. Other minor changes, including formatting, have been made to these Laws to comply with drafting style. These changes do not affect the content of these Laws.

C. Methodology and Assumptions

1. A “Fiscal Impact Statement” means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.
2. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.
3. The analysis was completed based on the information provided as of the date of this memo.

III. Agency

The hearing authority will simply be transferred from ERB to the Judiciary. Historical hearing stipends paid to the Board were \$750 in 2017, \$1,200 in 2016, and \$700 in 2015. Transferring the hearing authority to the Judiciary would result in an average savings of approximately \$830 annually. The Judiciary does not anticipate any additional costs as this will simply be absorbed into their existing duties. ERB has stated that they expect the transition of the hearing authority to be complete by January 1, 2018

IV. Financial Impact

Approximately \$830 savings annually.

V. Recommendation

Finance does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.



Legislative Operating Committee
July 19, 2017

Water Resources Ordinance Amendments

Submission Date: 5/17/17	Public Meeting: 6/15/17
LOC Sponsor: Tehassi Hill	Emergency Enacted: n/a Expires: n/a

Summary: *This is a request to amend the law to remove the Environmental Resource Board's Hearing Body Authority and transfer it to the Judiciary.*

5/17/17 LOC: Motion by David P. Jordan to add each of these to the Active Files List as a high priority, assign Tehassi Hill as the sponsor, approve the public meeting packet, in addition to the Tribal Environmental Response law for June 15, 2017; seconded by Fawn Billie. Motion carried unanimously.

6/15/17: Public meeting held.

Next Steps:

- Accept the public meeting comments.
- Approve the Water Resources Ordinance Amendments adoption packet and forward to the OBC for consideration.



TO: Legislative Operating Committee (LOC)
FROM: Krystal John, Staff Attorney, Oneida Law Office
DATE: July 19, 2017
RE: Water Resources Ordinance Amendments: Public Meeting Comment Review

On June 15, 2017 a public meeting was held regarding the Water Resources Ordinance Amendments. There were no oral or written comments received during the public meeting on June 15, 2017, or during the public meeting comment period ending on June 29, 2017; therefore no additional revisions were made to the draft.



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING
Environmental Resource Board's Authority Transfer**
Business Committee Conference Room-2nd Floor Norbert Hill Center
June 15, 2017 12:15 p.m.

Present: Brandon Stevens, Candice Skenandore, Clorissa Santiago, Leyne Orosco, Cathy Bachhuber, Chad Wilson, Laura Manthe, Eugene Schubert.

Brandon Stevens: Greetings. The time is 12:25 p.m. and today's date is Thursday June 15, 2017. I will now call the public meeting to order for the following laws:

- All-Terrain Vehicle
- On-Site Waste Disposal Ordinance
- Public Use of Tribal Land
- Tribal Environmental Response
- Water Resource Ordinance
- Well Abandonment
- Hunting, Fishing, and Trapping

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding these legislative proposals. The public meeting is not a question and answer period. All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Thursday June 29, 2017.

In attendance for today is just myself, Brandon Stevens. And I will impose a time limit for all speakers pursuant to section 16.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons.

Revisions were made to the identified laws which transfer the Environmental Resource Board's hearing authority to the Judiciary. In addition, the Hunting, Fishing, and Trapping law has an additional amendment which clarifies that non-member Indians and non-Indians that hunt, fish, and trap on the Reservation may be subject to State requirements as well as the requirements set forth in the Hunting, Fishing, and Trapping law.

Although the amendments are the same for all laws, except for the additional change to Hunting, Fishing, and Trapping law; we will process these laws individually for the sake of this public meeting. We will begin today's public meeting for All-Terrain Vehicle law.

Okay, we have people checked in and no oral testimony is requested from anyone in attendance. Anyone want to come up that is not on the list, please do so at this time.

Okay, seeing no oral testimony for the All-Terrain Vehicle law, I will close this public meeting at 12:18 p.m.

I will now open up the public meeting for the On-Site Waste Disposal Ordinance. The public meeting for the On-Site Waste Disposal Ordinance, or, and I'll sorry. I will ask at this time if anyone would like to come up and provide oral testimony please so do, that's not on the list. Seeing none, I will close this public meeting for the On-Site Waste Disposal Ordinance at 12:19 p.m.

I will now open up the public meeting for the Public Use of Tribal Land at 12:19 p.m. I will open up the floor for oral testimony for those who have not signed in and would like to provide oral testimony. Seeing none, I will close this public meeting for the Public Use of Tribal Land at 12:19 p.m.

I will now open up the public meeting for the Tribal Environmental Response at 12:20 p.m. Open up the floor for any of those who want to provide oral testimony that are not signed in. Seeing none, I will close this public meeting for the Tribal Environmental Response at 12:20 p.m.

I will now open up the public meeting for the Water Resource Ordinance at 12:20 p.m. I'll open up the floor for any of those who would like to provide oral testimony that are not on the list. Seeing none, I will close the public meeting for the Water Resource Ordinance at 12:20 p.m.

I will now open up the public meeting for the Well Abandonment at 12:21 p.m. I'll open up the floor for any oral testimony for those who are not on the list. Seeing none, I will close the public meeting for the Well Abandonment at 12:21 p.m.

I will now open up the public meeting for the Hunting, Fishing, and Trapping . Please note that in addition to revision that transfers ERB's hearing authority to the Judiciary, an additional revision was made to provide clarity that non-member Indians and non-Indians that hunt, fish, and trap on the Reservation may be subject to State requirements as well as the requirements set forth in the Hunting, Fishing, and Trapping law. Opening up the floor for those who would like to provide oral testimony that are not signed in. Seeing none, I will close the public meeting for the Hunting, Fishing, and Trapping law at 12:22 p.m.


With no more individuals wanting to provide oral comment, I am closing the public meeting at 12:22 p.m. As a reminder the public comment period will remain open until Thursday, June 29, 2017 by close of business. Thank you.

-End of Meeting-



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson 
DATE: July 26, 2017
RE: Water Resources Ordinance Amendments

Please find the following attached backup documentation for your consideration of the Water Resources Ordinance Amendments:

1. Resolution: Water Resources Ordinance Amendments
2. Statement of Effect: Water Resources Ordinance Amendments
3. Water Resources Ordinance Amendments: Legislative Analysis
4. Water Resources Ordinance Amendments: Clean Draft
5. Water Resources Ordinance Amendments: Redline to Current Draft
6. Water Resources Ordinance Amendments: Fiscal Impact Statement

Overview

This resolution adopts amendments to the Water Resources Ordinance to transfer the Environmental Resource Board's hearing authority to the Judiciary.

In accordance with the Legislative Procedures Act, a public meeting was held regarding this law on June 15, 2017 with a comment period closing on June 29, 2017. There were no comments provided. These amendments will become effective beginning in the new fiscal year on October 1, 2017.

Requested Action

Approve the Resolution: Water Resources Ordinance Amendments

BC Resolution _____*Water Resources Ordinance Amendments*

WHEREAS, the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and

WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

WHEREAS, the Oneida Business Committee originally adopted the Water Resources Ordinance through resolution BC-05-08-96-B; and

WHEREAS, the Amendments to the Ordinance transfer the Environment Resource Board's original hearing body authority and responsibilities to the Oneida Judiciary as part of an effort to standardize and streamline all of the Nation's hearing responsibilities; and

WHEREAS, a public meeting on the proposed Amendments was held on June 15, 2017 in accordance with the Legislative Procedures Act; and

NOW THEREFORE BE IT RESOLVED, that the Water Resources Ordinance Amendments are hereby adopted and shall become effective on October 1, 2017.



Statement of Effect

Water Resource Ordinance Amendments

Summary

This Resolution adopts Amendments to the Water Resource Ordinance Amendments (the “Law”) which transfer the Environmental Resource Board’s original hearing body authority to the Oneida Judiciary.

Submitted by: Krystal L. John, Staff Attorney, Oneida Law Office

Analysis by the Legislative Reference Office

As stated above, these amendments will transfer the delegation of original hearing body authority from the Environmental Resource Board to the Oneida Judiciary. Such a transfer would implicate the Judiciary law and the Environmental Resource Board’s by-laws.

The transfer of hearing body authority would fit into the Oneida Judiciary’s subject matter jurisdiction according to the Judiciary law based on section 801.5-2, which provides that, “The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following... (a) Tribal laws which specifically authorize the Trial Court to exercise jurisdiction...” *Judiciary*, 8 O.C. 801 § 801.5-2. These amendments to the Law specifically authorize the Trial Court to exercise jurisdiction based on section 409.6-5. *Contested Action Hearings*, which reads as follows:

All citations, penalties, orders and declarations issued pursuant to this law shall include a prehearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved. ...

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal to the Judiciary Court of Appeals in accordance with the Rules of Appellate Procedure. ...

The Environmental Resource Board’s by-laws provide the Board’s duties and responsibilities, among other things. Adoption of this law conflicts with the Board’s by-laws and the by-laws recognize the Environmental Resource Board’s original hearing body authority in section 1-4.b., which reads as follows: “The ERB shall serve as the original hearing body in matters concerning environmental and conservation laws and ordinances promulgated by the Oneida Tribe.” Accordingly, if this resolution is adopted, the Environmental Resource Board’s by-laws would need

to be amended to remove the original hearing body authority from the Board's duties and responsibilities.

A public meeting was held for these Amendments on June 15, 2017 for which the public comment period expired on June 22, 2017 in accordance with the Legislative Procedures Act. There were not any oral or written comments submitted.

Conclusion

Adoption of this Resolution would require the Environmental Resource Board's by-laws to be amended to remove the original hearing body authority from the Board's duties and responsibilities.



Hearing Authority Transfer Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: LOC	SPONSOR: Tehassi Hill	DRAFTER: Krystal L. John	ANALYST: Candice E. Skenandore
Intent of the Amendments	To further utilize the Judiciary.		
Purpose	To transfer the Environmental Resource Board (ERB) hearing authority to the Judiciary.		
Affected Entities	Trial Court, ERB		
Affected Legislation	Hunting, Fishing and Trapping law, Public Use of Tribal Land, Tribal Environmental Response, Well Abandonment Law, All-Terrain Vehicle Law, Water Resources Ordinance		
Enforcement/Due Process	ERB will no longer hold hearings; hearing will now be conducted by the Trial Court in accordance with the Rules of Civil Procedure.		
Public Meeting	A public meeting was held on June 15, 2017.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. Since 1985, ERB served as the hearing body authority over the Nation's environmental regulations. On May 2, 1990, the Oneida Business Committee established the Oneida Tribal Judicial System (aka Oneida Appeals Commission) and General Tribal Council reauthorized the Oneida Tribal Judicial System on August 19, 1991 [*See BC Resolution 05-02-90 and GTC Resolution 8-19-91-A*]. The purpose of the Oneida Appeals Commission was to enhance and protect self-governance and sovereignty as well as enhance the separation of powers between the legislative, executive and juridical responsibilities of the Nation. The Oneida Appeals Commission removed the Oneida Business Committee from initial judicial decisions [*See GTC Resolution 8-19-91-A*].
- B. In 2013, the General Tribal Council changed the structure of the Oneida Tribal Judicial System by creating an Oneida Judiciary comprised of the Tribal Court and a Court of Appeals through the adoption of the Judiciary law. The purpose of the Judiciary is to grant the Trial Court and Court of Appeals expanded subject matter jurisdiction and create a greater role for the use of mediation and/or peacemaking [*See GTC Resolution 01-07-13-B*].
- C. These proposed amendments will transfer hearing authority from ERB to the Trial Court. The following laws are amended to reflect the transfer of hearing authority:
- Hunting, Fishing and Trapping law (HTF)
 - Public Use of Tribal Land (Public Use)
 - Tribal Environmental Response (TERP)
 - Well Abandonment Law (Well Abandonment)
 - All-Terrain Vehicle Law (ATV)
 - Water Resources Ordinance (Water Resources)
 - On-Site Waste Disposal Ordinance (Waste Disposal)

SECTION 3. CONSULTATION

A. ERB and the Trial Court have been consulted in the development of this legislative analysis.

SECTION 4. PROCESS

A. These Laws have followed the process set forth in the Legislative Procedures Act (LPA) except that the public meeting was not properly noticed to all managers or directors. The LPA requires the public meeting notice, legislation, legislative analysis and fiscal impact statement, if fiscal impact statement is available, to be electronically provided to all managers or directors a minimum of ten business days before a public meeting is held [See *Legislative Procedures Act, 1 O.C. 109.8-2 (b)*]. The notice and backup documents were provided electronically to all managers or directors on Tuesday, June 13, 2017; the public meeting was held Thursday, June 15, 2017. The public meeting was properly noticed in the Kalihwisaks and was made public on the Oneida Register at least ten business days prior to the public meeting as required by the LPA [See *Legislative Procedures Act, 1 O.C. 8-2 (a & b)*]. The LOC extended the public comment period for these laws for an additional five business days, ending on Thursday, June 29, 2017.

B. A work meeting with ERB was held on Wednesday, May 17, 2017 and a work meeting with ERB and the Judiciary was held on Monday, June 12, 2017.

SECTION 5. CONTENTS OF THE LEGISLATION

A. The identified laws in Section 2.C of this analysis have been amended to state that the Trial Court is the entity authorized to conduct hearings.

SECTION 6. INTENT

A. The intent of these amendments is to further utilize the Oneida Judiciary. The LOC has already decided to transfer hearing authority from identified entities to the Judiciary. The majority of the Oneida Land Commission's and some of the Trust Enrollments Committee's hearing authority has already transferred to the Judiciary. Because the LOC is currently working on amendments the Domestic Animals law in which ERB has hearing authority, it was decided to amend all laws which grant ERB hearing authority and transfer that authority to the Judiciary.

SECTION 7. EFFECT ON EXISTING LEGISLATION

A. These amendments do not conflict with other laws or policies of the Nation.

SECTION 8. OTHER CONSIDERATIONS

A. The following table shows the type and approximate number of hearings ERB has held since 2012. Included are hearings that pertain to Domestic Animals violations; however, the Domestic Animal amendments are being processed separately in order to make further revisions. In total, ERB has held approximately 69 hearings since 2012.

64

	ATV	HFT	Waste Disposal	Public Use	TERP	Water Resources	Well Abandonment	Domestic Animal	TOTAL
2012	0	1	0	0	0	0	0	1	2
2013	0	5	0	0	0	0	0	0	5
2014	0	14	0	0	0	0	0	3	17
2015	0	0	0	1	0	0	0	6	7
2016	0	11	0	2	0	0	0	19	32
2017	0	2	0	0	0	0	0	4	6
TOTAL	0	33	0	3	0	0	0	33	69

65 **B.** Minor changes, including formatting, have been made to these laws to comply with drafting style.

66 These changes do not affect the content of these laws.

67 **C.** Please refer to the fiscal impact statement for any financial impacts.

68

69 SECTION 9. ADDITIONAL AMENDMENTS

70 **A. *Hunting, Fishing, and Trapping law (Law)*.** In additions to the amendments which transfer ERB's
71 hearing authority to the Judiciary, additional amendments were made to the Hunting, Fishing, and
72 Trapping law. These amendments include revising section 406.4-3 which states that this Law does
73 not negate the jurisdiction of the State of Wisconsin in instances that involve non-member Indians
74 and non-Indians. This means that non-member Indians and non-Indians hunting, fishing and trapping
75 on land owned by the Nation must adhere to the Nation's license, permit and tag requirements but
76 may also be subject to State requirements. In addition, license and permit holders cannot utilize
77 hunting, fishing, or trapping privileges within the Reservation using a State license that would
78 provide greater privileges than those afforded in this Law and any applicable rules [*See Hunting,*
79 *Fishing and Trapping, 4 O.C. 406.4-3*].

80

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Title 4. Environment and Natural Resources – Chapter 409**WATER RESOURCES****Ka'nekalunyuhsé Olihwa'ke***the matters of the different kinds of waters*

409.1. Policy and Purpose

409.2. Authority

409.3. Definitions

409.4. Powers and Duties

409.5. Review

409.6. Enforcement; Reporting

409.1. Policy and Purpose

409.1-1. Pollution of the waters of the Oneida Reservation has aroused widespread public concern. It endangers the health and general welfare of both members and residents of the Oneida Nation. A comprehensive program directed at all present and potential sources of water pollution whether residential, farm, recreational, municipal, industrial or commercial is needed to protect human life and health, fish and aquatic life, scenic, and ecological values and domestic, municipal, recreational, industrial, agricultural, cultural, religious, and other uses of Reservation water resources.

409.1-2. The Oneida Environmental Department ("Department") shall serve as the central unit of tribal government to protect, maintain and improve the quality and management of the waters of the Oneida Reservation, ground and surface, public and private. The purpose of this law is to grant necessary powers and to organize a comprehensive program under a single tribal department for the enhancement of the quality management and protection of all waters of the Reservation, ground and surface, public and private. To the end that these vital purposes may be accomplished, this law and all rules and orders promulgated under this law shall be liberally construed in favor of the policy objectives set forth in this law.

409.1-3. The Oneida Environmental Resource Board ("Board") shall serve in an advisory capacity to the Department in the development and administration of the programs contemplated by this law.

409.2. Adoption, Amendment and Repeal

409.2-1. This law was adopted by the [Oneida Business Committee or Oneida General Tribal Council] by resolution BC-5-08-96-B.

409.2-2. This law may be amended or repealed by the [Oneida Business Committee and/or Oneida General Tribal Council] pursuant to the procedures set out in the Legislative Procedures Act.

409.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

409.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

409.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

409.3. Definitions

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409.3-1.

- (a) “Board” shall mean the Oneida Environmental Resource Board.
- (b) “Department” shall mean the Oneida Environmental Department.
- (c) “Environmental Pollution” shall mean the contaminating or rendering unclean or impure the air, land or waters of the Reservation, or making the same injurious to public health, harmful for commercial, recreational, cultural or religious use, or deleterious to fish, bird, animal or plant life.
- (d) “Garbage” means discarded materials resulting from the handling, processing, storage and consumption of food.
- (e) “Hazardous Substance” shall mean any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration, or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives, as determined by the Department.
- (f) “Industrial Waste” shall mean liquid or other wastes resulting from any process of industry, manufacture, trade or business or the development of any natural resource.
- (g) “Nonpoint Source” means a land management activity which contributes to runoff, seepage or percolation which adversely affects or threatens the quality of waters of the Reservation and which is not a point source as defined in Section 409.3-10.
- (h) “Other Waste” shall include all other substances, except industrial wastes, which pollute any of the waters of the Reservation. The term also includes siltation resulting from operations such as stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion.
- (i) “Person” means an individual, owner, operator, corporation chartered under federal, state or tribal law, limited liability company, partnership, association, municipality, township, interstate agency, tribal agency, county agency, state agency, or federal agency.
- (j) “Point Source” means a discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants may be discharged into waters of the Reservation. “Point Source” specifically includes any discernible, confined and discrete conveyance of storm water.
- (k) “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewerage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954 as amended (42 U.S.C 2011 et. seq.)) heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into the waters of the Reservation, including discharges of storm water that result in deleterious alterations of the hydrology and morphology of waters of the Reservation.
- (l) “Pollution” means contaminating or rendering unclean or impure the waters of the Reservation by the introduction to those waters of one or more pollutants as defined in

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Section 409.3-11, or otherwise making the waters of the Reservation injurious to public health, harmful for any of the uses described in Section 409.1-1, or deleterious to fish, bird, animal or plant life. The term “Pollution” shall include deleterious alterations to the hydrologic or morphologic characteristics of the waters of the Reservation.

(m) “Refuse” means all matters produced from industrial or community life, subject to decomposition, not defined as sewage.

(n) “Reservation” shall mean the Oneida Indian Reservation as established by the Treaty of 1838, 7 Stat. 566.

(o) “Solid Waste” shall mean any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under the Federal Water Pollution Control Act, 33 U.S.C. 1251 et. seq.

(p) “State” shall mean the State of Wisconsin.

(q) “Storm Water” means any discharge, whether discreet or from sheet flow resulting from the movement of water across the surface of land including storm water runoff, snow melt runoff, surface runoff, and drainage.

(r) “Nation” shall mean the Oneida Nation.

(s) “Water Supply” means the sources and their surroundings from which water is supplied for drinking and domestic purposes.

(t) “Waters of the Reservation” means any accumulation of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, flow through, or border upon the Oneida Reservation. “Waters of the Reservation” includes wetlands, as that term is defined in Section 409.3-21, below.

(u) “Wetlands” means land that has a predominance of hydric soils, is inundated or saturated by surface or ground water at a frequency and duration to support, and under normal circumstances does support, a prevalence or hydrophytic vegetation typically adapted for life in saturated soil conditions. “Normal circumstances” refers to the soil and hydrologic conditions that are normally present, without regard to whether the vegetation has been removed.

409.4. Powers and Duties

409.4-1. The Department shall have general supervisory authority over the waters of the Reservation. It shall carry out and coordinate the planning, management and regulatory programs necessary for implementing the policy and purpose of this chapter. The Department also shall formulate plans and programs for the prevention and abatement of water pollution and for the maintenance and improvement of water quality.

409.4-2. Water Quality Standards

(a) The Department shall set standards of water quality to be applicable to the waters of the Reservation, recognizing that different standards may be required for different waters

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or portions thereof. Water quality standards shall consist of the designated uses of the waters or portions thereof, antidegradation standards, and the water quality criteria for those waters based upon their designated uses. Water quality standards shall protect the public interest, which includes the protection of:

- (1) the public health and welfare;
- (2) the present and prospective future use of such waters for public and private water supplies;
- (3) the propagation of fish, aquatic life and wildlife;
- (4) domestic and recreational purposes; and
- (5) agricultural, cultural, religious, commercial, industrial and other legitimate uses.

(b) In adopting or revising any water quality criteria for the waters of the Reservation or any designated portion thereof, the Department shall do all the following:

- (1) From time to time, but at least once every three (3) years, review water quality standards, and publish and provide public notice of water quality criteria to be adopted, revised or reviewed in the following three year(s).
- (2) Establish criteria sufficient to protect any and all applicable designated uses. Such criteria must contain sufficient parameters or constituents to protect each designated use. For waters with multiple designations, the criteria shall support the most sensitive use.
- (3) Employ reasonable statistical techniques, where appropriate, in interpreting the relevant water quality data.

(c) Form of Criteria: In establishing criteria, the Department shall

- (1) Establish numeric values based on:
 - (A) 40 C.F.R. 132, Water Quality Guidance for the Great Lakes System; and
 - (B) Other scientifically defensible methods.
- (2) Establish narrative criteria or criteria based upon biomonitoring methods and/or hydrologic or morphologic assessments where numerical criteria cannot be established, or to supplement numerical criteria.

409.4-3. The Department shall be responsible for the application, processing, and review of tribal water quality certifications required by Section 401 of the Federal Water Pollution Control Act, 33 USC § 1341.

409.4-4. The Department may issue general orders applicable throughout the Reservation for the construction, installation, use and operation of practicable and available systems, methods and means for preventing and abating pollution of the waters of the Oneida Reservation. Such general orders and rules shall be issued only after an opportunity to be heard thereon has been afforded to interested parties by means of a public hearing. The Department shall, when appropriate, consult with other tribal departments and entities having particular expertise in the subject matter of the order.

409.4-5. Special/Emergency Orders

- (a) The Department may issue special orders directing particular persons to secure such operating results toward the control of pollution of the waters of the Reservation as the

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Department prescribes, within a specified time. Pending efforts to comply with any order, the Department may permit continuance of operations on such conditions as it prescribes. If any person cannot comply with an order within the time specified, the person may, before the date set in the order, petition the Department to modify the order. The Department may modify the order, specifying in writing the reasons therefor. If any order is not complied with within the time period specified, the Department shall forthwith commence an action to enforce compliance with said order.

(b) The Department may issue temporary emergency orders without prior public hearing when the Department determines that the protection of the waters of the Reservation necessitates such immediate action. Such emergency orders shall take effect at such time as the Department determines. As soon as is practicable, the Department shall schedule a public hearing after which it may modify or rescind the temporary emergency order or issue a special order under Section 409.4-5(a).

409.4-6. The Department shall make investigations and inspections to insure compliance with any general or special order or rule which it issues.

409.4-7. The Department may enter into agreements with the responsible authorities of the state or any of its political subdivisions, subject to approval by the Board and the Oneida Business Committee, relative to methods, means and measures to be employed to control pollution of any inter-jurisdiction streams and other waters and to carry out such agreement by appropriate general and special orders. This power shall not be deemed to extend to the modification of any agreement with the state or any political subdivision thereof concluded by direct legislative act of the Oneida Business Committee or the Oneida General Tribal Council.

409.4-8. The Department may order or cause the abatement of any nuisance affecting the waters of the Oneida Reservation.

409.4-9. In cases of noncompliance with any order issued by the Department, the Department may take the action directed by the order, and collect the costs thereof from the person to whom the order was directed by seeking a judgment for money from the Oneida Judiciary. The Department shall have all the necessary powers needed to carry out this paragraph including powers granted by the Constitution of the Oneida Nation, and any and all delegations of authority under federal environmental laws.

409.4-10. The Department may, upon receipt of the appropriate delegation of federal authority, establish, administer and maintain a safe drinking water program no less stringent than the requirements of the Safe Drinking Water Act of 1974, P.L. 93-523, 88 Stat. 1660. (42 USC 300f et. seq).

409.4-11. The Department, subject to the approval of the Oneida Business Committee, may designate priority watersheds and priority lakes where the need for non-point source water pollution abatement and/or hydrologic or morphologic restoration is the most critical. The Duck-Apple-Ashwaubenon Creeks watershed is hereby designated by the Nation as a priority watershed.

409.4-12. The Department may order or cause the abatement of pollution of waters of the Reservation which the Department has determined to be significant and caused by a nonpoint source, as defined in Section 409.3-7, including pollution which causes the violation of a water quality standard, pollution which generally impairs the aquatic habitat or organisms, pollution

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which restricts navigation due to sedimentation, pollution which is deleterious to human health, pollution which interferes with cultural or religious uses of waters of the Reservation, or pollution which otherwise significantly impairs water quality. Any and all orders of the Department issued under this Section shall be consistent with the goals and objectives of the Duck-Apple-Ashwaubenon Creeks Priority Watershed Project or such other priority watershed projects as may be designated under Section 409.4-11. Participation by a person in a designated priority watershed project and the compliance by that person with any and all criteria established by said priority watershed project shall entitle the person to a rebuttable presumption of compliance with the requirements of this Section.

409.5. Review

409.5-1. Any person in interest may secure a review of the necessity for and reasonableness of any order of the Department under this law in the following manner:

(a) They shall first file with the Department a verified petition setting forth specifically the modification or change desired in such order. Such petition must be filed within 60 days of the issuance of the orders sought to be reviewed. Upon receipt of such a petition the Department shall schedule a public hearing before the Board thereon and make such further investigations as it shall deem advisable. Pending such review and hearing, the Board may suspend such orders under terms and conditions to be fixed by the Department on application of any such petitioner. The Board shall affirm, repeal or change the order in question within 60 days after the close of the hearing on the petition.

(b) The determination of the Board shall be subject to review as provided in the Oneida Administrative Procedure Act.

409.6. Enforcement; Reporting; Penalties

409.6-1.

(a) The Department shall require that all persons discharging any substance to waters of the Reservation requiring a permit under the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., report the manner used, amount used and amount discharged to the waters of the Reservation for each substance. The Department may verify reports received by field monitoring of any discharge.

(b) The Department may establish minimum effluent volumes for which reports are required under this Section.

(c) Wastewater Discharge Environmental Fee: Beginning in 1997, there is established a Wastewater Discharge Environmental Fee. This fee shall be paid by each person required by Section 409.6-1 to report a discharge. In 1997, the fee under this Section shall be based on an administrative fee of \$ _____ plus an additional fee, to be set by the Department by rule and to be based on the concentration or quantity or both of pollutants discharged.

(d) Violators of the reporting requirement established under Section 409.6-1 shall forfeit not less than \$100 nor more than \$5,000 for each offense. Each day of continued violation is a separate offense.

409.6-2. Environmental Pollution: Hearings; Procedure; Review. The Board shall hold a public hearing relating to alleged or potential environmental pollution upon the filing of a

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complaint by the Department. The Department shall serve a copy of the complaint and notice of the hearing upon the alleged or potential polluter either personally or by registered mail directed to the last-known post office address at least twenty (20) days prior to the time set for the hearing. The hearing shall be held not later than ninety (90) days after the filing of the complaint. The respondent shall file a verified answer to the complaint with the Department not later than five (5) days prior to the date set for the hearing, unless the time for answering is extended by the Board for cause shown. For purposes of any hearing under this Section, the Board may issue subpoenas and administer oaths. Within ninety (90) days after the closing of the hearing, the Board shall make and file its findings of fact and conclusions of law and order, which shall be subject to review under the Oneida Administrative Procedures Act. If the Board determines that any complaint was filed maliciously or in bad faith it shall issue a finding to that effect and the person complained against shall be entitled to recover from the Department the reasonable expenses of the hearing, including attorney's fees. Any situation, project or activity which upon continuance or implementation would cause, by a preponderance of the evidence, a degree of pollution that normally would require clean-up action if it already existed, shall be considered potential environmental pollution.

409.6-3. Enforcement. The Oneida Conservation Department shall enforce this law, and all rules and orders issued by the Department.

409.6-4. Penalties. Any person who violates this law, or any rule promulgated or any regular, special or emergency order issued under this law, shall forfeit not less than one hundred dollars (\$100) or more than five thousand dollars (\$5,000) for each violation. Each day of continued violation is a separate offense.

409.6-5. Contested Action Hearings. All citations, penalties, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) Community Service. Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) Allocation of Citation Revenue. All fines and penalties issued by citations are payable to ERB or its designee, the proceeds of which ERB shall contribute to the Nation's general fund.

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) Pursuing Payment of a Citation. The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the

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296 garnishment process contained in the Garnishment law and/or by attaching a Tribal
297 member's per capita payment pursuant to the Per Capita law.

~~298~~

300

301 Adopted - BC-5-08-96-B

302 Corrected-2012-10-03

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Title 4. Environment and Natural Resources – Chapter 409

WATER RESOURCES ~~ORDINANCE~~

Ka'nekalunyuhsé Olihwa'ke

the matters of the different kinds of waters

409.1. Policy and Purpose

409.2. Authority

409.3. Definitions

409.4. Powers and Duties

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409.1. Policy and Purpose

409.1-1. Pollution of the waters of the Oneida Reservation has aroused widespread public concern. It endangers the health and general welfare of both members and residents of the Oneida Nation. A comprehensive program directed at all present and potential sources of water pollution whether residential, farm, recreational, municipal, industrial or commercial is needed to protect human life and health, fish and aquatic life, scenic, and ecological values and domestic, municipal, recreational, industrial, agricultural, cultural, religious, and other uses of Reservation water resources.

409.1-2. The Oneida Environmental Department ("Department") shall serve as the central unit of tribal government to protect, maintain and improve the quality and management of the waters of the Oneida Reservation, ground and surface, public and private. The purpose of this Ordinance~~law~~ is to grant necessary powers and to organize a comprehensive program under a single tribal department for the enhancement of the quality management and protection of all waters of the Reservation, ground and surface, public and private. To the end that these vital purposes may be accomplished, this Ordinance~~law~~ and all rules and orders promulgated under this Ordinance~~law~~ shall be liberally construed in favor of the policy objectives set forth in this Ordinance~~law~~.

409.1-3. The Oneida Environmental Resource Board ("Board") shall serve in an advisory capacity to the Department in the development and administration of the programs contemplated by this Ordinance. ~~The Board shall serve as the initial hearing body in all matters arising under the terms of this Ordinance or any regulations adopted pursuant to its delegations of authority.~~law~~.~~

409.2. ~~Authority~~

409.2-1. ~~This Ordinance is adopted pursuant to Article IV, Section 1 (f), and Article IV, Section 2 of the Constitution of the Oneida Tribe of Indians of Wisconsin, the Federal Water Pollution Control Act, 33 USC 1251 et. seq., and the inherent authority of the Oneida Nation to regulate matters affecting the political integrity, economic security, or the health and welfare of the Oneida Nation.~~

~~409.2-2. Adoption, Amendment, and Repeal.~~

~~(a) 409.2-1.~~ This ~~Ordinance may be~~law was adopted by the [Oneida Business Committee or

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~~the~~ Oneida General Tribal Council] by resolution BC-5-08-96-B.

409.2-2. (b) This Ordinance law may be amended pursuant to the procedures set forth in the Oneida Administrative Procedures Act by the or repealed by the [Oneida Business Committee and/or the Oneida General Tribal Council] pursuant to the procedures set out in the Legislative Procedures Act.

(e) 409.2-3. Should a provision of this Ordinance law or the application thereof to any person or circumstance circumstances be held to be as invalid, such invalidity shall not affect any other provisions of this law which are considered to have legal force without the invalid portions.

409.2-4. In the event of a conflict between a provision of this Ordinance law and a provision of another law, the remainder provisions of which this law shall continue in full force and effect. control.

(d) All other Oneida laws, policies, regulations, resolutions, ordinances, and other similar actions which are inconsistent with the Ordinance are hereby repealed unless specifically reenacted after the passage of this Ordinance. Where related laws purport to regulate the same activity, the more stringent shall control.

409.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

409.3. Definitions

409.3-1.

(a) "Board" shall mean the Oneida Environmental Resource Board.

(b) "Department" shall mean the Oneida Environmental Department.

(c) "Environmental Pollution" shall mean the contaminating or rendering unclean or impure the air, land or waters of the Reservation, or making the same injurious to public health, harmful for commercial, recreational, cultural or religious use, or deleterious to fish, bird, animal or plant life.

(d) "Garbage" means discarded materials resulting from the handling, processing, storage and consumption of food.

(e) "Hazardous Substance" shall mean any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration, or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives, as determined by the Department.

(f) "Industrial Waste" shall mean liquid or other wastes resulting from any process of industry, manufacture, trade or business or the development of any natural resource.

(g) "Nonpoint Source" means a land management activity which contributes to runoff, seepage or percolation which adversely affects or threatens the quality of waters of the Reservation and which is not a point source as defined in Section 409.3-10.

(h) "Other Waste" shall include all other substances, except industrial wastes, which pollute any of the waters of the Reservation. The term also includes siltation resulting from operations such as stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of

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land erosion.

(i) "Person" means an individual, owner, operator, corporation chartered under federal, state or tribal law, limited liability company, partnership, association, municipality, township, interstate agency, tribal agency, county agency, state agency, or federal agency.

(j) "Point Source" means a discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants may be discharged into waters of the Reservation. "Point Source" specifically includes any discernible, confined and discrete conveyance of storm water.

(k) "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewerage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954 as amended (42 U.S.C 2011 et. seq.)) heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into the waters of the Reservation, including discharges of storm water that result in deleterious alterations of the hydrology and morphology of waters of the Reservation.

(l) "Pollution" means contaminating or rendering unclean or impure the waters of the Reservation by the introduction to those waters of one or more pollutants as defined in Section 409.3-11, or otherwise making the waters of the Reservation injurious to public health, harmful for any of the uses described in Section 409.1-1, or deleterious to fish, bird, animal or plant life. The term "Pollution" shall include deleterious alterations to the hydrologic or morphologic characteristics of the waters of the Reservation.

(m) "Refuse" means all matters produced from industrial or community life, subject to decomposition, not defined as sewage.

(n) "Reservation" shall mean the Oneida Indian Reservation as established by the Treaty of 1838, 7 Stat. 566.

(o) "Solid Waste" shall mean any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under the Federal Water Pollution Control Act, 33 U.S.C. 1251 et. seq.

(p) "State" shall mean the State of Wisconsin.

(q) "Storm Water" means any discharge, whether discreet or from sheet flow resulting from the movement of water across the surface of land including storm water runoff, snow melt runoff, surface runoff, and drainage.

(r) "~~Trib~~e" or "~~N~~ation" shall mean the Oneida ~~Trib~~e of ~~I~~ndians of ~~W~~isconsin~~N~~ation.

(s) "Water Supply" means the sources and their surroundings from which water is supplied for drinking and domestic purposes.

(t) "Waters of the Reservation" means any accumulation of water, surface and

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underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, flow through, or border upon the Oneida Reservation. "Waters of the Reservation" includes wetlands, as that term is defined in Section 409.3-21, below.

(u) "Wetlands" means land that has a predominance of hydric soils, is inundated or saturated by surface or ground water at a frequency and duration to support, and under normal circumstances does support, a prevalence or hydrophytic vegetation typically adapted for life in saturated soil conditions. "Normal circumstances" refers to the soil and hydrologic conditions that are normally present, without regard to whether the vegetation has been removed.

409.4. Powers and Duties

409.4-1. The Department shall have general supervisory authority over the waters of the Reservation. It shall carry out and coordinate the planning, management and regulatory programs necessary for implementing the policy and purpose of this chapter. The Department also shall formulate plans and programs for the prevention and abatement of water pollution and for the maintenance and improvement of water quality.

409.4-2. Water Quality Standards

(a) The Department shall set standards of water quality to be applicable to the waters of the Reservation, recognizing that different standards may be required for different waters or portions thereof. Water quality standards shall consist of the designated uses of the waters or portions thereof, antidegradation standards, and the water quality criteria for those waters based upon their designated uses. Water quality standards shall protect the public interest, which includes the protection of:

- (1) the public health and welfare;₂
- (2) the present and prospective future use of such waters for public and private water supplies;₂
- (3) the propagation of fish, aquatic life and wildlife;₂
- (4) domestic and recreational purposes;₂ and
- (5) agricultural, cultural, religious, commercial, industrial and other legitimate uses.

(b) In adopting or revising any water quality criteria for the waters of the Reservation or any designated portion thereof, the Department shall do all the following:

- (1) From time to time, but at least once every three (3) years, review water quality standards, and publish and provide public notice of water quality criteria to be adopted, revised or reviewed in the following three year(s).
- (2) Establish criteria sufficient to protect any and all applicable designated uses. Such criteria must contain sufficient parameters or constituents to protect each designated use. For waters with multiple designations, the criteria shall support the most sensitive use.
- (3) Employ reasonable statistical techniques, where appropriate, in interpreting the relevant water quality data.

(c) Form of Criteria: In establishing criteria, the Department shall

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- 167 (1) Establish numeric values based on:
- 168 | (A) 40 C.F.R. 132, Water Quality Guidance for the Great Lakes System;
- 169 | and
- 170 | (B) Other scientifically defensible methods.
- 171 (2) Establish narrative criteria or criteria based upon biomonitoring methods
- 172 and/or hydrologic or morphologic assessments where numerical criteria cannot be
- 173 established, or to supplement numerical criteria.
- 174 | 409.4-3. __ The Department shall be responsible for the application, processing, and review of
- 175 tribal water quality certifications required by Section 401 of the Federal Water Pollution Control
- 176 Act, 33 USC § 1341.
- 177 | 409.4-4. __ The Department may issue general orders applicable throughout the Reservation for
- 178 the construction, installation, use and operation of practicable and available systems, methods
- 179 and means for preventing and abating pollution of the waters of the Oneida Reservation. Such
- 180 general orders and rules shall be issued only after an opportunity to be heard thereon has been
- 181 | afforded to interested parties: by means of a public hearing. The Department shall, when
- 182 appropriate, consult with other tribal departments and entities having particular expertise in the
- 183 subject matter of the order.
- 184 | 409.4-5. __ Special/Emergency Orders
- 185 (a) The Department may issue special orders directing particular persons to secure such
- 186 operating results toward the control of pollution of the waters of the Reservation as the
- 187 Department prescribes, within a specified time. Pending efforts to comply with any order,
- 188 the Department may permit continuance of operations on such conditions as it prescribes.
- 189 If any person cannot comply with an order within the time specified, the person may,
- 190 before the date set in the order, petition the Department to modify the order. The
- 191 Department may modify the order, specifying in writing the reasons therefor. If any order
- 192 is not complied with within the time period specified, the Department shall forthwith
- 193 commence an action to enforce compliance with said order.
- 194 | (b) The Department may issue temporary emergency orders without prior public hearing
- 195 when the Department determines that the protection of the waters of the Reservation
- 196 necessitates such immediate action. Such emergency orders shall take effect at such time
- 197 as the Department determines. As soon as is practicable, the Department shall schedule a
- 198 public hearing after which it may modify or rescind the temporary emergency order or
- 199 issue a special order under Section 409.4-5(a).
- 200 | 409.4-6. __ The Department shall make investigations and inspections to insure compliance with
- 201 any general or special order or rule which it issues.
- 202 | 409.4-7. __ The Department may enter into agreements with the responsible authorities of the
- 203 state or any of its political subdivisions, subject to approval by the Board and the Oneida
- 204 Business Committee, relative to methods, means and measures to be employed to control
- 205 pollution of any inter-jurisdiction streams and other waters and to carry out such agreement by
- 206 appropriate general and special orders. This power shall not be deemed to extend to the
- 207 modification of any agreement with the state or any political subdivision thereof concluded by
- 208 direct legislative act of the Oneida Business Committee or the Oneida General Tribal Council.
- 209 | 409.4-8. __ The Department may order or cause the abatement of any nuisance affecting the

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waters of the Oneida Reservation.

409.4-9. In cases of noncompliance with any order issued by the Department, the Department may take the action directed by the order, and collect the costs thereof from the person to whom the order was directed- ~~by seeking a judgment for money from the Oneida Judiciary.~~ The Department shall have all the necessary powers needed to carry out this paragraph including powers granted by the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~Nation, and any and all delegations of authority under federal environmental laws.

409.4-10. The Department may, upon receipt of the appropriate delegation of federal authority, establish, administer and maintain a safe drinking water program no less stringent than the requirements of the Safe Drinking Water Act of 1974, P.L. 93-523, 88 Stat. 1660. (42 USC 300f et. seq).

409.4-11. The Department, subject to the approval of the Oneida Business Committee, may designate priority watersheds and priority lakes where the need for non-point source water pollution abatement and/or hydrologic or morphologic restoration is the most critical. The Duck-Apple-Ashwaubenon Creeks watershed is hereby designated by the Nation as a priority watershed.

409.4-12. The Department may order or cause the abatement of pollution of waters of the Reservation which the Department has determined to be significant and caused by a nonpoint source, as defined in Section 409.3-7, including pollution which causes the violation of a water quality standard, pollution which generally impairs the aquatic habitat or organisms, pollution which restricts navigation due to sedimentation, pollution which is deleterious to human health, pollution which interferes with cultural or religious uses of waters of the Reservation, or pollution which otherwise significantly impairs water quality. Any and all orders of the Department issued under this Section shall be consistent with the goals and objectives of the Duck-Apple-Ashwaubenon Creeks Priority Watershed Project or such other priority watershed projects as may be designated under Section 409.4-11. Participation by a person in a designated priority watershed project and the compliance by that person with any and all criteria established by said priority watershed project shall entitle the person to a rebuttable presumption of compliance with the requirements of this Section.

409.5. Review

409.5-1. Any person in interest may secure a review of the necessity for and reasonableness of any order of the Department under this ~~Ordinance~~law in the following manner:

(a) They shall first file with the Department a verified petition setting forth specifically the modification or change desired in such order. Such petition must be filled within 60 days of the issuance of the orders sought to be reviewed. Upon receipt of such a petition the Department shall schedule a public hearing before the Board thereon and make such further investigations as it shall deem advisable. Pending such review and hearing, the Board may suspend such orders under terms and conditions to be fixed by the Department on application of any such petitioner. The Board shall affirm, repeal or change the order in question within 60 days after the close of the hearing on the petition.

(b) The determination of the Board shall be subject to review as provided in the Oneida Administrative Procedure Act.

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409.6. Enforcement; Reporting; Penalties

409.6-1.

(a) The Department shall require that all persons discharging any substance to waters of the Reservation requiring a permit under the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., report the manner used, amount used and amount discharged to the waters of the Reservation for each substance. The Department may verify reports received by field monitoring of any discharge.

(b) The Department may establish minimum effluent volumes for which reports are required under this Section.

(c) Wastewater Discharge Environmental Fee: Beginning in 1997, there is established a Wastewater Discharge Environmental Fee. This fee shall be paid by each person required by Section 409.6-1 to report a discharge. In 1997, the fee under this Section shall be based on an administrative fee of \$_____ plus an additional fee, to be set by the Department by rule and to be based on the concentration or quantity or both of pollutants discharged.

(d) Violators of the reporting requirement established under Section 409.6-1 shall forfeit not less than \$100 nor more than \$5,000 for each offense. Each day of continued violation is a separate offense.

~~(e) The Department is authorized to request hearings before the Board relating to any aspect of the administration of the system established under Section 409.6-1, and, in connection therewith, may compel the attendance of witnesses and the production of evidence.~~

409.6-2. Environmental Pollution: Hearings; Procedure; Review. The Board shall hold a public hearing relating to alleged or potential environmental pollution upon the filing of a complaint by the Department. The Department shall serve a copy of the complaint and notice of the hearing upon the alleged or potential polluter either personally or by registered mail directed to the last-known post office address at least twenty (20) days prior to the time set for the hearing. The hearing shall be held not later than ninety (90) days after the filing of the complaint. The respondent shall file a verified answer to the complaint with the Department not later than five (5) days prior to the date set for the hearing, unless the time for answering is extended by the Board for cause shown. For purposes of any hearing under this Section, the Board may issue subpoenas and administer oaths. Within ninety (90) days after the closing of the hearing, the Board shall make and file its findings of fact and conclusions of law and order, which shall be subject to review under the Oneida Administrative Procedures Act. If the Board determines that any complaint was filed maliciously or in bad faith it shall issue a finding to that effect and the person complained against shall be entitled to recover from the Department the reasonable expenses of the hearing, including attorney's fees. Any situation, project or activity which upon continuance or implementation would cause, by a preponderance of the evidence, a degree of pollution that normally would require clean-up action if it already existed, shall be considered potential environmental pollution.

409.6-3. Enforcement. The Oneida Conservation Department shall enforce this Ordinance~~law~~, and all rules and orders issued by the Department.

409.6-4. Penalties. Any person who violates this Ordinance~~law~~, or any rule promulgated or

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any regular, special or emergency order issued under this ~~Ordinance~~law, shall forfeit not less than one hundred dollars (\$100) or more than five thousand dollars (\$5,000) for each violation. Each day of continued violation is a separate offense. ~~While the order is suspended, stayed or enjoined, this penalty will not accrue.~~

~~4094069.6-5. Oneida Environmental Fund established.~~ Contested Action Hearings. All citations, penalties, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Oneida Environmental Fund is hereby established. Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) Community Service. Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) Allocation of Citation Revenue. All fines and penalties issued by citations are payable to ERB or its designee, the proceeds of which ERB shall contribute to the Nation's general fund. Any and all monies collected pursuant to this Ordinance shall be deposited in the Oneida Environmental Fund. This fund shall be used by the Tribe to defray the expense of administering this Ordinance, and to fund pilot projects and provide pollution control and prevention grants to persons at the discretion of the Department, and subject to the availability of funds.

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) Pursuing Payment of a Citation. The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

Adopted - BC-5-08-96-B
Corrected-2012-10-03

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

DATE: June 7, 2017

FROM: Rae Skenandore, Project Manager

TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

RE: **Fiscal Impact of the transfer of the Environmental Resource Board's Hearing Authority to the Oneida Judiciary**

I. Estimated Fiscal Impact Summary

Law: Domestic Animal		Draft 19
Hunting, Fishing and Trapping law (HTF)		Draft 2
Public Use of Tribal Land (Public Use)		Draft 1
Tribal Environmental Response (TERP)		Draft 1
Well Abandonment Law (Well Abandonment)		Draft 1
All-Terrain Vehicle Law (ATV)		Draft 1
Water Resources Ordinance (Water Resources)		Draft 1
On-Site Waste Disposal Ordinance (Waste Disposal)		Draft 1
Implementing Agency		Oneida Police Department (OPD) Conservation Environmental Resource Board (ERB) Emergency Management Environmental Health and Safety Division Comprehensive Health Division Oneida Judiciary
Estimated time to comply		January 1, 2018
Estimated Impact	Current Fiscal Year	10 Year Estimate
ERB stipend savings	\$830	\$8,300
Total Estimated Savings	\$830	\$8,300
Revenue and cost considerations	Fee Schedules should be removed from the various Laws	
Uncertainties and Unknowns	None	

II. Background

A. Legislative History

The Oneida Business Committee created the Environmental Resource Board through Resolution BC-02-22-85-B. GTC Resolution 01-07-13-B established the Oneida Judiciary.

B. Summary of Content

1. The Domestic Animal amendments are being processed separately in order to make further revisions. However, it is included here because there are no additional fiscal impacts due to the amendments.
2. All Laws are being amended to state that the Trial Court is the entity authorized to conduct hearings.
3. Other minor changes, including formatting, have been made to these Laws to comply with drafting style. These changes do not affect the content of these Laws.

C. Methodology and Assumptions

1. A “Fiscal Impact Statement” means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.
2. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.
3. The analysis was completed based on the information provided as of the date of this memo.

III. Agency

The hearing authority will simply be transferred from ERB to the Judiciary. Historical hearing stipends paid to the Board were \$750 in 2017, \$1,200 in 2016, and \$700 in 2015. Transferring the hearing authority to the Judiciary would result in an average savings of approximately \$830 annually. The Judiciary does not anticipate any additional costs as this will simply be absorbed into their existing duties. ERB has stated that they expect the transition of the hearing authority to be complete by January 1, 2018

IV. Financial Impact

Approximately \$830 savings annually.

V. Recommendation

Finance does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.



Legislative Operating Committee
July 19, 2017

Business Committee Meetings Law

Submission Date: 8/27/15	Public Meeting: 12/29/16, 5/18/17
LOC Sponsor: Brandon Stevens	Emergency Enacted: n/a Expires: n/a

Summary: *This is a proposal for a new law to govern the structure of the Oneida Business Committee Meetings, creating a more efficient process for conducting Tribal business.*

9/2/15 LOC: Motion by Jennifer Webster to add the Business Committee Meetings Law to the Active Files List; seconded by Tehassi Hill. Motion carried unanimously. *Note: Brandon Stevens will be the sponsor for this item.*

11/4/15 LOC: Motion by Fawn Billie to accept the memorandum for the Business Committee Meetings Law as FYI and defer to the sponsor to bring back when ready; seconded by Tehassi Hill. Motion carried unanimously.

5/4/16 LOC: Motion by Fawn Billie to make the Business Committee Meeting law a priority item on the Active Files List and to direct the sponsor to schedule a strategy meeting to discuss possible solutions to mitigate tension and improve the communication process at Business Committee meetings; seconded by Jennifer Webster. Motion carried unanimously.

9/21/16 LOC: Motion by Jennifer Webster to accept the Oneida Business Committee Meetings law and send to the Legislative Reference Office for legislative and fiscal analysis; seconded by Tehassi Hill, seconded by Fawn Billie. Motion carried unanimously.

10/19/16: *Quarterly Sponsor Update Meeting.* Present: Brandon Stevens, Jennifer Falck, Clorissa Santiago, Maureen Perkins, and Tani Thurner. LRO Director will schedule a work meeting to decide on some policy issues.

11/7/16: *Work meeting held.* Present: Clorissa Santiago, Maureen Perkins, Tehassi Hill, Cathy Bachhuber, Fawn Billie, Brandon Stevens, Jo Anne House. In addition to working out draft details, the group decided to request that the Secretary change the Regular BC Meeting agenda, to improve efficiency.

11/16/16 LOC: Motion by Fawn Billie to approve the Oneida Business Committee Meetings Law public meeting packet with the noted change and direct the LRO to hold a public meeting on December 29, 2016; seconded by Tehassi Hill. Motion carried unanimously.

12/29/16: Public meeting held.

3/1/17 LOC: Motion by Tehassi Hill to accept the public meeting comments and defer this item to a work

meeting; seconded by Fawn Billie. Motion carried unanimously.

3/15/17: *Work meeting held.* Present: Brandon Stevens, Tehassi Hill, Jenny Webster, David Jordan, Fawn Billie, Clorissa Santiago, Maureen Perkins, Jen Falck, Danelle Wilson, Mike Debraska. Public meeting comments were reviewed and considered. Drafter will update draft to reflect revisions discussed.

4/5/17 LOC: *Item deleted at adoption of the agenda and deferred to a work meeting.*

4/17/17: *Work meeting held.* Present: Brandon Stevens, Tehassi Hill, Jenny Webster, David P. Jordan, Fawn Billie, Clorissa Santiago, Maureen Perkins, Jen Falck. Updated revisions to draft were discussed. Drafter will update draft and prepare a public meeting packet.

4/19/17 LOC: Motion by David P. Jordan to approve the public meeting packet and forward the Oneida Business Committee Meetings law to a public meeting to be held on May 18, 2017; seconded by Fawn Billie. Motion carried unanimously.

Motion by Jennifer Webster to request the Finance Department to prepare a fiscal analysis due to the Legislative Reference Office on May 17, 2017; seconded by Fawn Billie. Motion carried unanimously.

5/18/17: Public Meeting Held.

6/7/17 LOC: Motion by Fawn Billie to accept the Business Committee Meetings Law public comments and to defer to a work meeting; seconded by Tehassi Hill. Motion carried unanimously.


6/7/17: *Work Meeting Held.* Present: Brandon Stevens, Tehassi Hill, Jenny Webster, David P. Jordan, Fawn Billie, Clorissa Santiago, Candice Skenandore, Jen Falck. LOC reviewed and considered all public comments.

6/21/17 LOC: Motion by Fawn Billie to accept the public meeting comment response memorandum and updated draft and direct the Legislative Reference Office to update the legislative analysis and prepare an adoption packet; seconded by David P. Jordan. Motion carried unanimously.

Next Steps:

- Approve the adoption packet and forward the Oneida Business Committee Meetings law to the Oneida Business Committee for consideration.



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson 
DATE: July 26, 2017
RE: Oneida Business Committee Meetings Law

Please find the following attached backup documentation for your consideration of the proposed Oneida Business Committee Meetings law:

1. Resolution: Oneida Business Committee Meetings Law
2. Statement of Effect: Oneida Business Committee Meetings Law
3. Oneida Business Committee Meetings Law Legislative Analysis
4. Oneida Business Committee Meetings Law Draft
5. Oneida Business Committee Meetings Law Fiscal Impact Statement

Overview

This resolution adopts the proposed Oneida Business Committee Meetings law. The proposed Oneida Business Committee Meetings law will identify how the Oneida Business Committee will carry out its responsibilities to conduct the business of the Oneida Nation in a clear and consistent manner while guided by Oneida culture and tradition as delegated to the Oneida Business Committee under the Constitution of the Oneida Nation and by the General Tribal Council.

The proposed Oneida Business Committee Meetings law will:

- Recognize the need for frank and honest discussions in all Oneida Business Committee meetings but sets forth requirements and guidelines for providing public comment and discussing individuals in a respectful and productive manner *[see section 117.5]*;
- Provide that an annual schedule and reporting schedule for Oneida Business Committee meetings be presented each year by the Oneida Nation Secretary *[see section 117.6]*;
- Describe the general characteristics of each section that may be contained in the agenda and discusses which individuals are authorized to present items on the agenda *[see section 117.7]*;
- Describe the responsibilities of Oneida Business Committee meeting attendees in regard to their behavior during meetings, and while recording and photographing the meeting; *[see section 117.8]*;
- Set forth guidelines for the removal of a disorderly or disruptive person from an Oneida Business Committee meeting *[see section 117.9]*; and

- Establish standards for enforcement of the provisions of this Law, and require all members of the Oneida Business Committee to request a point of order to direct compliance with Robert's Rules of Order, requirements set forth in this law or requirements set forth in resolutions or standard operating procedures adopted by the Oneida Business Committee when necessary[see section 117.10].

In accordance with the Legislative Procedures Act, a public meeting on the proposed law was held on December 29, 2016, with a comment period closing on January 6, 2017. All comments received during the public comment period were accepted and reviewed by the Legislative Operating Committee on March 1, 2017. A second public meeting on the proposed Law was held on May 18, 2017, with a comment period closing on May 25, 2017. All comments received during the second public comment period were reviewed and accepted by the Legislative Operating Committee on June 7, 2017. Any changes made based on those comments have been incorporated into this draft.

Requested Action

Approve the Resolution: Oneida Business Committee Meetings Law

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____ Oneida Business Committee Meetings Law

- WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Oneida Business Committee Meetings law ("the Law) identifies how the Oneida Business Committee will carry out its responsibilities to conduct the business of the Oneida Nation as delegated to the Oneida Business Committee under the Constitution of the Oneida Nation and by the General Tribal Council; and
- WHEREAS,** the Law intends for the Oneida Business Committee to be clear and consistent in its actions and be guided by the responsibilities grounded in the Oneida culture and the Oneida Nation Constitution; and
- WHEREAS,** the Law recognizes the need for frank and honest discussions in all Oneida Business Committee meetings but sets forth requirements and guidelines for providing a public comment and the discussion of individuals; and
- WHEREAS,** the Law provides that an annual schedule and reporting schedule for Oneida Business Committee meetings shall be presented around October of each year by the Oneida Nation Secretary; and
- WHEREAS,** the Law sets forth the general characteristics of each section that may be contained in the agenda and discusses which individuals are authorized to present items on the agenda; and
- WHEREAS,** the Law describes the responsibilities of Oneida Business Committee meeting attendees in regard to their behavior during meetings and while recording and photographing the meeting; and
- WHEREAS,** the Law sets forth guidelines for the removal of a disorderly or disruptive person from an Oneida Business Committee meeting; and
- WHEREAS,** the Law establishes enforcement, and requires all members of the Oneida Business Committee to request a point of order to direct compliance with Robert's Rules of Order, requirements set forth in this law or requirements set forth in resolutions or standard operating procedures adopted by the Oneida Business Committee when necessary; and
- WHEREAS,** a first public meeting on the proposed law was held on December 29, 2016, in accordance with the Legislative Procedures Act, and comments received were reviewed and accepted by the Legislative Operating Committee on March 1, 2017.

53
54 **WHEREAS,** a second public meeting on the proposed law was held on May 18, 2017, in accordance
55 with the Legislative Procedures Act, and comments received were reviewed and
56 accepted by the Legislative Operating Committee on June 7, 2017.
57

58 **NOW THEREFORE BE IT RESOLVED,** that the Oneida Business Committee Meetings law is hereby
59 adopted and shall become effective September 13, 2017.
60
61
62



Statement of Effect
Oneida Business Committee Meetings Law

Summary

This resolution adopts the Oneida Business Committee Meetings law.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

This resolution adopts the Oneida Business Committee Meetings law which is a new law that identifies how the Oneida Business Committee will carry out its responsibilities to conduct the business of the Oneida Nation in a clear and consistent manner while guided by Oneida culture and tradition as delegated to the Oneida Business Committee under the Constitution of the Oneida Nation and by the General Tribal Council.

The Oneida Business Committee Meetings law:

- Recognizes the need for frank and honest discussions in all Oneida Business Committee meetings but sets forth requirements and guidelines for providing public comment and discussing individuals in a respectful and productive manner;
- Provides that an annual schedule and reporting schedule for Oneida Business Committee meeting be presented each year by the Oneida Nation Secretary;
- Describes the responsibilities of Oneida Business Committee meeting attendees in regard to their behavior during meetings and while recording and photographing the meeting;
- Sets forth guidelines for the removal of a disorderly or disruptive person from an Oneida Business Committee meeting; and
- Establishes standards for enforcement of the provisions of this Law, and requires all members of the Oneida Business Committee to request a point of order to direct compliance with Robert's Rules of Order, requirements set forth in this law or requirements set forth in resolutions or standard operating procedures adopted by the Oneida Business Committee when necessary.

The first public meeting on the proposed Law was held on December 29, 2016, in accordance with the Legislative Procedures Act, and comments received were reviewed and accepted by the Legislative Operating Committee on March 1, 2017. A second public meeting on the proposed Law was held on May 18, 2017, and comments received were reviewed and accepted by the Legislative Operating Committee on June 7, 2017.

Conclusion

Adoption of this resolution would not conflict with any of the Nation's laws.



Oneida Business Committee Meetings law

5

<i>Analysis by the Legislative Reference Office</i>					
Title	Oneida Business Committee Meetings (law)				
Sponsor	Brandon Stevens	Drafter	Clorissa N. Santiago	Analyst	Maureen Perkins
Requester & Reason for Request	Brandon Stevens This is a proposal for a new law to govern the structure of the Oneida Business Committee (OBC) Meetings, creating a more efficient process for conducting the Nation's business.				
Purpose	The purpose of this law is to identify how the OBC will carry out its responsibilities. Meetings of the OBC are for the purpose of conducting the business of the Oneida Nation as delegated to the OBC under the Constitution of the Nation.				
Authorized/ Affected Entities	Oneida Business Committee, entities, Oneida Nation membership, Oneida Nation employees				
Related Legislation	BC resolution # 08-14-91-A (BC Meeting – Executive Session for Employee Complaints), Open Records and Open Meetings law				
Enforcement & Due Process	This law is enforced by the OBC Chairperson, an OBC Officer or an OBC Member according to Robert's Rules of Order as amended by the Constitution or the OBC [see 117.10].				
Public Meeting Status	A public meeting was held December 29, 2016. A second public meeting was held May 18, 2017 and all comments were considered; the final draft includes changes made by the Legislative Operating Committee based on public comments received.				

6

7

Overview

8 This is a new law that will govern Oneida Business Committee (OBC) meetings and
 9 provides a new format to facilitate more effective meetings. The law sets parameters for OBC
 10 meetings regarding:

- 11 ■ the discussion of individuals,
- 12 ■ public comments,
- 13 ■ annual OBC scheduling and reporting schedule,
- 14 ■ the OBC agenda,
- 15 ■ requests to present agenda items,
- 16 ■ appointment of a sergeant-at-arms,
- 17 ■ conduct of OBC meeting attendees,
- 18 ■ removal of disorderly or disruptive persons, and
- 19 ■ enforcement of this law.

20

21

Body of the Analysis

22 Rules of Order

23 This section details the rules that govern OBC meetings. Major aspects include:

- 24 ■ Roberts Rules of Order

- OBC meetings are guided by Robert's Rules of Order; except as modified by the Oneida Constitution *[see 117.4-1]* or the OBC *[see 117.4-2]*.
- Discussion of Individuals
 - Negative or disrespectful discussion of individual members of the Nation or employees that implicates their integrity, honesty, or morality is prohibited during any OBC meeting and shall be immediately stopped. The presiding Chairperson shall regulate the discussion to ensure the integrity, honesty and morality of individuals is not implicated during any discussions *[see 117.5-1(c)]*. The OBC shall have the authority to redact any statements made during open session regarding improper discussion of an individual from all video and audio recordings of the OBC meetings *[see 117.5-1(d)]*.
- Public Comment
 - A public comment period has been included at the beginning of each agenda item of the OBC meeting in order to provide the public with an opportunity for meaningful community input. Each individual is limited to speak once per agenda item for a maximum of three minutes. This time limitation may be extended by the OBC *[see 117.5-2(b)]*. The public comment period provides an opportunity for the community to request OBC review of an issue or action, comment on an item on the agenda, provide praise, provide public notice about an activity or fundraising event, or other comments deemed pertinent by the presiding Chairperson *[see 117.5-2(e)]*. There are no requirements to accept or take action on public comments. OBC meeting attendees may ask questions while providing public comment and OBC meeting attendees may answer questions posed during this time *[see 117.5-2(d)]*. The OBC shall proceed with official business related to the agenda item once all public comments have been received *[see 117.5-2(f)]*.

OBC Meeting Schedule

Detail regarding a meeting schedule and a reporting schedule are included in this law.

- proposed yearly schedule of OBC meetings around October of each year adopted by OBC resolution *[see 117.6-1]*.
- proposed reporting schedule for Tribal entities around October of each year adopted by OBC resolution *[see 117.6-2]*.

Agenda

- The required sections of the OBC agenda and general characteristics of each section are detailed *[see 117.7-1]*.
- Detail regarding individuals and entities authorized to submit requests to present agenda *[see 117.7-2]*.

Responsibilities of OBC meeting attendees

- OBC meeting attendees are expected to treat each other with respect and kindness. A list of prohibited behaviors is detailed *[see 117.8-1]*.
- This law compliments the Open Records and Open Meetings law with the provision regarding video and audio recording *[see 117.8-2]*.

- The law states that attendees who wish to video and audio record an OBC meeting are required to operate the recording device openly so that the recording obvious to those in attendance *[see 117.8-2(a)]*.
- Additionally, the recording device cannot create excessive noise or light that disturbs meeting attendees *[see 117.8-2(b)]*. And the recording does not interfere with an individual's observation or participation in the meeting *[see 117.8-2(c)]*.

Removal of a Disorderly or Disruptive Person

- The presiding Chairperson may designate a sergeant-at-arms to oversee the security of OBC meetings *[see 117.9-1]*.
- The OBC has the authority to direct the removal of OBC meeting attendees who violate this law and this decision is not appealable *[see 117.9-2]*.
- Meeting attendees that interrupt a meeting or violate section 117.5-1 by discussing individuals or commit a prohibited behavior *[see 117.8-1]* may, at the decision of the OBC, be removed from the meeting. The presiding Chairperson shall order the sergeant-at-arms to remove the individual from the meeting. Removal is an option provided only in the case that a person causes a breach of peace committed at a meeting. An individual removed from a meeting shall not be allowed to return for the duration of the meeting *[see 117.9-2]*.
- The presiding OBC Chairperson may take immediate action to remove an OBC meeting attendee if their behavior results in an immediate danger to the health and safety of any OBC meeting attendee *[see 117.9-3]*.
- The OBC may permanently ban a person from attending an OBC meeting for any of the following *[see 117.9-4]*:
 - A person is repeatedly removed from an OBC meeting for disorderly or disruptive behavior *[see 117.9-4(a)]*, or
 - The behavior of a person reaches such a severe level that an automatic ban is necessary to protect the health and safety of all OBC attendees *[see 117.9-4(b)]*.

Enforcement

- This law shall be enforced according to Robert's Rules of Order *[see 117.10-1]*.
- The OBC Chairperson, at the decision of the OBC, has the authority to remove members of the public who violate this law and this decision is not appealable *[see 117.10-2]* and *[see 117.9-2]*.
- An OBC Officer or OBC Member may request a point of order to direct compliance with requirements in this law, Robert's Rules of Order, or requirements established by resolutions or SOPs adopted by the OBC *[see 117.10-3]*.

Other

- Please refer to the fiscal impact statement for any financial impacts.

Title 1. Government and Finances – Chapter 117
ONEIDA BUSINESS COMMITTEE MEETINGS
latityohkwak@nyehse> lutkanisa>@tha> laotiyanasla>sh&ha
the people are contesting – their meeting place - their laws

117.1. Purpose and Policy
117.2. Adoption, Amendment, Repeal
117.3. Definitions
117.4. Rules of Order
117.5. Public Comment and Discussion of Individuals
117.6. Oneida Business Committee Meetings Schedule

117.7. Agenda
117.8. Responsibilities of Oneida Business Committee Meeting Attendees
117.9. Removal of a Disorderly or Disruptive Person
117.10. Enforcement

117.1. Purpose and Policy

117.1-1. *Purpose.* The purpose of this law is to identify how the Oneida Business Committee will carry out its responsibilities. Meetings of the Oneida Business Committee are for the purpose of conducting the business of the Oneida Nation as delegated to the Oneida Business Committee under the Constitution of the Oneida Nation.

117.1-2. *Policy.* It is the policy of the Nation that the Oneida Business Committee be clear and consistent in its actions and be guided by the responsibilities grounded in the Oneida culture and the Oneida Nation Constitution. It is further the policy that Oneida Business Committee meetings to be open to the public and to have discussions related to the items on the agenda in order to have the widest possible viewpoint, to request and receive technical advice and respect conflicting views.

117.1-3. *Roles and Responsibilities.* The Oneida Business Committee is elected by the membership of the Nation and is delegated legislative responsibility under Article IV of the Constitution of the Oneida Nation, General Tribal Council resolution # GTC-2-15-82, adoption of job descriptions in July of 1990, and a motion at the October 1998 General Tribal Council meeting. The work associated with this legislative responsibility is carried out through various subcommittees including, but not limited to, the Legislative Operating Committee, Community Development and Planning Committee, and the Quality of Life Committee, in order to obtain the broadest and most informed discussion. The action regarding this legislative responsibility is taken at a regular, special, or emergency Oneida Business Committee meeting, or when necessary, by e-poll in accordance with approved processes. The goal of this law is to formalize the action of legislative responsibility taking place at Oneida Business Committee meetings and the work of legislative responsibility within subcommittees.

117.2. Adoption, Amendment, Repeal

117.2-1. This law was adopted by the Oneida Business Committee by resolution BC -_____.

117.2-2. This law may be amended or repealed by the Oneida Business Committee or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

117.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

117.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, this law repeals the following:

- (a) Resolution # BC-08-14-91-A *BC Meeting – Executive Session for Employee Complaints.*

117.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

117.3. Definitions

117.3-1. This section shall govern the definitions of words or phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Board, Committee or Commission” means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee with members appointed by the Oneida Business Committee or elected by the Nation’s membership.

(b) “Constitution” means the Constitution and By-laws of the Oneida Nation, as amended.

(c) “Corporation” means a business that is chartered by the Nation.

(d) “Employee” means anyone employed by the Nation in one of the following employed capacities: full-time, part-time, emergency temporary, limited term or on a contractual basis. For purposes of this law the term employee also includes political appointees.

(e) “Entities” means all boards, committees, commissions, departments, and programs of the Nation.

(f) “Executive session” means a meeting which is held to discuss matters that require confidentiality and are not open to the public.

(g) “Kalihwi=y%” means the good mind principle which represents “the use of the good words about ourselves, our Nation, and our future.”

(h) “Member of the Nation” means an individual enrolled in the Oneida Nation.

(i) “Nation” means the Oneida Nation.

(j) “Officer” means an individual holding the position of chairperson, vice-chairperson, secretary or treasurer on a board, committee or commission.

(k) “Open session” means a meeting which is held in a place reasonably accessible to the public at all times.

(l) “Roberts Rules of Order” means a handbook for running meetings effectively and efficiently that sets the guidelines for such issues as leading debates; recognizing speakers; defining the role of the chair and other officers; proposing, seconding, and voting on motions; and writing and amending constitutions and bylaws.

117.4. Rules of Order

117.4-1. The Oneida Business Committee shall use Robert’s Rules of Order, current edition, for the procedural rules of its meetings except as specifically modified by the Constitution.

117.4-2. The Oneida Business Committee may:

(a) amend, modify, or direct that a rule shall not apply; and

(b) adopt Standard Operating Procedures that provide administrative guidance in the application of rules.

117.5. Public Comment and Discussion of Individuals

117.5-1. *Discussion of Individuals.* There is a need for frank and honest discussions in all meetings of the Oneida Business Committee. Such discussions often include personal observations, evaluations, and judgments of other employees and members of the Nation. The negative or disrespectful discussion of individuals in open session undermines the morale and trust of employees and members of the Nation.

(a) It is the policy of the Nation that discussion in open and public meetings of the Oneida Business Committee be strictly conducted in an orderly, civil manner avoiding acrimony and ad hoc remarks.

(b) All discussion relevant to an agenda item regarding a member of the Nation or an employee and the actions, activities, and/or performance responsibilities of that individual may be respectfully discussed during the open session of the Oneida Business Committee meeting.

(c) Should any information be received at any meeting of the Oneida Business Committee that implicates the integrity, honesty, or morality of a member of the Nation or an employee, such discussion shall be immediately stopped. The presiding Chairperson shall regulate the discussion to ensure the integrity, honesty or morality of an individual is not implicated during any discussions.

(d) The Oneida Business Committee shall have the authority to redact any statements made during open session regarding improper discussion of an individual from all video and audio recordings of the Oneida Business Committee meetings.

117.5-2. *Public Comment.*

(a) The Oneida Business Committee meetings are conducted to make decisions regarding the business of the Nation as delegated by the General Tribal Council and the Oneida Nation Constitution. However, public comment is a resource for ideas and concerns to be raised and addressed by the Oneida Business Committee.

(b) Individuals shall be allowed to make public comments at the beginning of each agenda item only. All public comments made shall be relevant to the current agenda item. Each individual shall be allowed to give public comment one time per agenda item. Each individual shall be limited to speaking for a maximum of three (3) minutes each per agenda item. The time limitation may be extended by request of the individual with approval of the Oneida Business Committee.

(c) All comments are subject to the limitations of section 117.5-1 when discussing individuals or groups of individuals.

(d) No action is required to accept or otherwise take action regarding a comment being made. Oneida Business Committee meeting attendees may ask questions while providing public comment. If an Oneida Business Committee meeting attendee can provide a proper response to a posed question then that individual may answer the question.

(e) Public comments shall be relevant to the current agenda item and may be any of the following:

- (1) A request to have the Oneida Business Committee review an issue or action;
- (2) A comment on an item on the agenda;
- (3) Praise regarding an entity, an individual or an employee;
- (4) A public notice about an activity or fundraising event; and/or
- (5) Other comments deemed pertinent by the presiding Chairperson.

(f) The Oneida Business Committee shall proceed with conducting official business related to the agenda item once all public comments are received.

117.6. Oneida Business Committee Meetings Schedule

117.6-1. *Annual Schedule.* The Oneida Nation Secretary shall present, on or around October of each year, a proposed schedule for regular meetings of the Oneida Business Committee for approval by the Oneida Business Committee.

117.6-2. *Reporting Schedule.* The Oneida Nation Secretary shall present, on or around October of each year, a proposed schedule for presentation of reports by entities at regular meetings of the Oneida Business Committee for approval by the Oneida Business Committee.

117.7. Agenda

117.7-1. *Agenda.* The agenda for Oneida Business Committee meetings shall contain the following sections. The general characteristics of each section are defined below. The Oneida Business Committee agenda shall only contain sections that contain business that must be addressed during that meeting. Not all sections of the agenda will be addressed at every meeting of the Oneida Business Committee.

(a) *Call to Order.* The presiding Chairperson shall call the meeting to order, shall establish the existence of a quorum, and identify reasons why members of the Oneida Business Committee are not present.

(b) *Opening.* This section of the agenda shall be used to present any opening statements.

(c) *Adopt the Agenda.* The agenda for the meeting shall contain necessary subsections so as to identify each section of the agenda that will be used during that meeting. If there are amendments to the agenda, they should be made during this section, but are not required to be done under this section of the agenda.

(d) *Oath of Office.* Individuals who have been elected or appointed to an office on a board, committee, commission, as a police officer or other employee requiring an oath to be taken shall be given the oath of office,

(e) *Minutes.* The minutes of each regular, special and emergency meeting of the Oneida Business Committee presented for approval shall be listed in this section of the agenda.

(f) *Resolutions.* This section shall be used to present all resolutions to the Oneida Business Committee for adoption.

(g) *Appointments.* Actions regarding appointments to boards, committees, commissions, corporations, and other memberships of the Nation shall be taken in this section of the agenda in accordance with the Nation's laws, policies and rules, specifically those governing boards, committees and commissions of the Nation.

(h) *Standing Committees.* Standing committees are entities of the Oneida Business Committee delegated certain responsibilities to act, and whose actions are reported to, the Oneida Business Committee. Such actions may require further approval by the Oneida Business Committee to carry out, such as the Finance Committee meeting minutes, or adoption of laws and rules presented by the Legislative Operating Committee. Items presented in this section of the agenda shall include minutes, quarterly reports, and other actions presented by the Standing Committee.

(i) *General Tribal Council.* This section of the agenda shall only be open to members of the Nation and shall address issues related to General Tribal Council meetings including, but not limited to, scheduling General Tribal Council meetings, accepting and directing action regarding petitions, and approving materials for presentation at General Tribal Council meetings. The Oneida Business Committee may allow individuals who are not members of the Nation to attend this section of the agenda if the attendance of the individual is required for official purposes.

(j) *Standing Items.* This section of the agenda shall be used to present items which the Oneida Business Committee has determined require a constant, short term, presence on the agenda because repeat actions and/or follow-up actions may be necessary.

(k) *Unfinished Business*. This section of the agenda shall be used when agenda items from prior meetings were unable to be completed.

(l) *Tabled Business*. This section of the agenda shall be used when an agenda item has been specifically tabled from a prior meeting. The item on the agenda shall be clearly labeled as a tabled action and the date of the meeting at which it was tabled shall be noted.

(m) *New Business*. Any business brought before the Oneida Business Committee that does not otherwise fit in any of the other agenda categories shall be placed in this section of the agenda.

(n) *Travel Reports*. This section of the agenda shall be used to present reports regarding approved travel that is required to be presented to or approved by the Oneida Business Committee.

(o) *Travel Requests*. This section of the agenda shall be used to present requests for travel by an Oneida Business Committee member or where approval by the Oneida Business Committee is required.

(p) *Reports*. This section of the agenda shall be used to present quarterly reports as directed by the Oneida Business Committee.

(q) *Executive Session*. This section of the agenda shall be used to discuss matters that require confidentiality and meet the requirements set forth in the Open Records and Open Meetings Law for limitations upon access and exceptions. This section of the agenda may be organized to meet the needs of the Oneida Business Committee.

117.7-2. *Requests to Present Agenda Items*. In general, the following individuals are authorized to present items on the agenda of the Oneida Business Committee.

(a) *Oneida Business Committee Members*. Each member of the Oneida Business Committee is authorized to present items to be placed on the agenda for discussion and/or action.

(b) *Chairpersons of Boards, Committees or Commissions*. Chairpersons, on behalf of boards, committees or commissions, shall be authorized to submit the following to be placed on the agenda:

(1) quarterly reports;

(2) contracts for the board, committee or commission requiring Oneida Business Committee approval; and

(3) any other item that must be placed on the Oneida Business Committee agenda.

(c) *Direct Reports*. Employees who are identified as direct reports to the Oneida Business Committee shall be authorized to submit the following to be placed on the agenda:

(1) quarterly reports;

(2) contracts of the entity requiring Oneida Business Committee approval; and

(3) requests for actions under the section of the agenda containing new business as described in section 117.7-1(l).

(d) *Corporations*. All chairpersons, presidents, agents or other authorized representatives of a corporation shall be authorized to submit reports of the corporation and other items on the agenda on behalf of the corporation, as directed by the corporate charter, operating agreement or other governing document.

117.8. Responsibilities of Oneida Business Committee Meeting Attendees

117.8-1. *Behavior of Oneida Business Committee Meeting Attendees.* Keeping in line with the Oneida principle of Kalihwi=y%, all attendees including the Oneida Business Committee members are expected to treat each other with respect and kindness. Attendees shall not:

- (a) Use profanity, interrupt others, heckle or threaten people, disrespect property or exhibit behavior that disrupts the meeting or endangers the safety of other attendees;
- (b) Be under the influence of alcohol or illegal drugs;
- (c) Have a weapon on their person while on any public property of the Nation or at any event sponsored by the Nation unless the Oneida Business Committee meeting attendee is required to carry a weapon when acting in the official capacity of his or her employment; and
- (d) Take action that violates any laws, rules or policies of the Nation.

117.8-2. *Recording and Photographing.* Any Oneida Business Committee meeting attendee may photograph, tape-record, or otherwise reproduce any part of a meeting required to be open as long as the device:

- (a) Is operated openly so that it is obvious to those in attendance that the meeting is being recorded;
- (b) Does not create an excessive noise or light that disturbs any individual attending the meeting; and
- (c) Does not otherwise interfere with an individual's observation or participation in the meeting.

117.9. Removal of a Disorderly or Disruptive Person

117.9-1. *Sergeant-at-Arms.* The presiding Chairperson may designate an individual to serve as the sergeant-at-arms for Oneida Business Committee meetings. The sergeant-at-arms shall oversee the security of the meeting and ensure the safety of all present.

117.9-2. *Removal of a Disorderly or Disruptive Person.* If a meeting is willfully interrupted by a person and the meeting cannot proceed forward or the person violates section 117.8-1 regarding behavior of Oneida Business Committee attendees and/or section 117.5-1 regarding the discussion of individuals, the Oneida Business Committee shall decide if the individual shall be removed from the meeting. The Oneida Business Committee's decision to remove a person shall be final and not appealable. At the decision of the Oneida Business Committee the presiding Chairperson shall order the sergeant-at-arms to remove the person from the meeting. No person shall be removed from a meeting except for an actual breach of the peace committed at the meeting. An individual removed from an Oneida Business Committee meeting shall not be allowed to return for the duration of the meeting.

117.9-3. *Emergency Removal of a Disorderly or Disruptive Person.* If the disorderly or disruptive behavior of an individual results in an immediate danger to the health and safety of any Oneida Business Committee meeting attendee the presiding Chairperson may take immediate action to remove the disorderly or disruptive person.

117.9-4. *Banning a Disorderly or Disruptive Person.* The Oneida Business Committee may permanently ban a person from attending Oneida Business Committee meetings for any of the following:

- (a) A person is repeatedly removed from Oneida Business Committee meetings for disorderly or disruptive behavior; or

(b) The behavior of a person reaches such a severe level that an automatic ban from attending Oneida Business Committee meetings is necessary for the protection of the health and safety of all other Oneida Business Committee meeting attendees.

117.10. Enforcement

117.10-1. This law shall be enforced according to Robert's Rules of Order, except as specifically modified by the Constitution of the Oneida Nation and the Oneida Business Committee.

117.10-2. *Enforcement by the Oneida Business Committee Chairperson.* At the decision of the Oneida Business Committee the presiding Chairperson shall order the sergeant-at-arms to remove any disorderly or disruptive person from the meeting.

117.10-3. *Enforcement by an Oneida Business Committee Officer or Member.* Officers and members of the Oneida Business Committee are authorized, under Robert's Rules of Order, to request a point of order to direct compliance with Robert's Rules of Order, requirements set forth in this law or requirements set forth in resolutions or standard operating procedures adopted by the Oneida Business Committee.

End.

Adopted - BC-

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

DATE: May 15, 2017

FROM: Rae Skenandore, Financial Management Analyst

TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

RE: **Fiscal Impact of the Business Committee Meetings Law**

I. Estimated Fiscal Impact Summary

Law: Business Committee Meetings		Draft 6
Implementing Agency	Oneida Business Committee	
Estimated time to comply	Immediately upon approval	
Estimated Impact	Current Fiscal Year	10 Year Estimate
Start up		
Personnel		
Office		
Documentation Costs		
Total Estimated Fiscal Impact	\$0	\$ 0
Revenue and cost considerations	None	
Uncertainties and Unknowns	None	

II. Background

A. Legislative History

This is a new Law. A public meeting was held December 29, 2016.

B. Summary of the Content of the Law

1. Discussion of individuals shall be civil and respectful. Negative and disrespectful comments shall be immediately stopped by the Chair.

2. Public comments are limited to the beginning of the agenda item, must be relevant to the agenda item and shall be limited to three (3) minutes. Comments may be any of the following;

- a) A request to have the Oneida Business Committee review an issue or action;
- b) A comment on an item on the agenda;
- c) Praise regarding an entity, an individual or an employee;
- d) A public notice about an activity or fundraising event; and/or
- e) Other comments deemed pertinent by the presiding Chairperson.

3. Annual OBC meeting schedule and reporting.

4. Format of the OBC agenda and authorized entities to request to present agenda items.

5. Behavioral expectations & recording requirements.

6. The Oneida Business Committee may appoint a sergeant-at-arms to serve as security during a meeting.

7. The Oneida Business Committee shall decide if a disorderly or disruptive person shall be removed from a meeting by the sergeant-at-arms for a breach of the peace.

8. Meeting attendees may be permanently banned from Oneida Business Committee meetings.

C. Methodology and Assumptions

1. A “Fiscal Impact Statement” means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the law after implementation.

2. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

3. The analysis was completed based on the information provided as of the date of this memo.

II. Agency Response

The Oneida Business Committee discussed the Law at a work meeting and reported that the only cost they foresaw with the implementation of the law is the estimated expense for the sergeant-at-arms. However, this is simply reallocating an existing resource and therefore no additional fiscal impact. The Secretary has indicated that the Law can be implemented immediately upon approval.

III. Financial Impact

No impact

IV. Recommendation

Finance does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.



Legislative Operating Committee
July 19, 2017

Petition: Child Care Department Consumer Complaint Policy

Submission Date: 9/17/14	Public Meetings: 10/31/13, 2/27/14, 6/29/17
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a Expires: n/a

Summary: *A petition was submitted to mandate the OBC review, amend and implement a new complaint process for Oneida Child Care. The intent of the petition is to provide the minimum requirements of the new process which include mandatory administrative leave during investigations; investigation timelines, providing explanation of results, and quarterly reporting of all complaints to the Childcare Division Director and OBC.*

This item was added to the active files list on June 6, 2012. A legislative analysis was presented to GTC on November 19, 2012 and GTC approved the petition, directing the OBC to review, amend and implement a new parent communications and grievances process for the Oneida Childcare Department. Since then a draft was developed and an update was given to GTC on July 1, 2013 as directed. Public meetings were held on October 13, 2013 and February 27, 2014. On April 16, 2014 the sponsor began to develop the Policy through a series of work meetings.

9/17/14 LOC: Motion by Jennifer Webster to add the Child Care Department Consumer Complaint Policy to the Active Files List; seconded by Fawn Billie. Motion carried unanimously.

Note: Jennifer Webster will be the sponsor for this item.

11/18/14: Work meeting held. Attendees include: Candice Skenandore, Chenoa Webster, Michelle Mays, Dorothy A. Skenandore, Jenny Webster, Rae Skenandore, Donna Christensen, Jacob Metoxen, Bob Keck and Norbert Hill.

11/24/14: Work meeting held. Attendees include: Candice Skenandore, Michelle Mays and Stephen Webster.

12/5/14: Work meeting held. Attendees include: Candice Skenandore, Michelle Mays, Jennifer Webster, Dorothy Skenandore and Diane Heim-McLester

12/12/14: Work meeting held. Attendees include: Richard Cluckey, Stephen Webster and Candice Skenandore

2/23/15: Work meeting held. Attendees include: Norbert Hill, Dorothy Skenandore, Jennifer Webster, Bob Keck, Donna Christensen, Jessica Wallenfang, Rae Skenandore, Susan House, Chenoa Webster, Jacob Metoxen

- 3/18/15 LOC:** Motion by Fawn Billie to defer the Child Care Department Consumer Complaint Policy for a legislative analysis and fiscal impact statement; seconded by Tehassi Hill. Motion carried unanimously.
- 6/3/15 LOC:** Motion by Tehassi Hill to defer back to the Legislative Reference Office for redrafting; seconded by David P. Jordan. Motion carried unanimously.
- 7/15/15/ LOC:** Motion by Jennifer Webster to defer the Petition: Child Care Department Consumer Complaint Policy back to the Legislative Reference Office to make changes; seconded by David P. Jordan. Motion carried unanimously.
- 2/13/17:** *Work meeting held.* Attendees include: David P. Jordan, Jennifer Webster, Brandon Stevens, Clorissa Santiago, Candice Skenandore, Liz Somers, Tom Wilbur
- 2/15/17 LOC:** Motion by Jennifer Webster to establish a high priority level for the Petition: Child Care Department Consumer Complaint Policy; seconded by Tehassi Hill. Motion carried unanimously.
- 5/1/17:** *Work Meeting Held.* Attendees include: Clorissa Santiago, Candice Skenandore, Jennifer Falck, Tehassi Hill, Cheona Webster, Jessica Wallenfang, Stephen Webster, Dorothy Skenandore, George Skenandore, Cathy Bachhuber, Fawn Billie, Brandon Stevens. Drafter will update the draft with changes discussed during work meeting.
- 5/17/17 LOC:** Motion by Jennifer Webster to review and accept the draft Child Care Department Consumer Complaint law and send for analysis to be completed by June 7, 2017; seconded by David P. Jordan. Motion carried unanimously.
- 6/7/17 LOC:** Motion by Fawn Billie to approve the public meeting packet and forward the Petition: Child Care Department Consumer Complaint law to a public meeting to be held on June 29, 2017; noting that the fiscal impact statement be submitted to the Legislative Reference Office by June 28, 2017; seconded by David P. Jordan. Motion carried unanimously.
- 6/29/17:** Public Meeting Held.

Next Steps:

- Accept the public meeting comments;
- Defer the review and consideration of the public meeting comments to a work meeting.



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney
DATE: July 19, 2017
RE: Child Care Department Consumer Complaint Law: Public Meeting Comment Review

On June 26, 2017, and June 29, 2017, public meetings were held regarding the proposed Child Care Department Consumer Complaint law. This memorandum is submitted as a review of the written comments received within the public meeting and public comment period. The public meeting draft, public meeting transcript, and written comments received are attached to this memorandum for review.

Comment 1 – Comment Regarding Appeals to Nation’s Appellate Court:

902.11. Appeal

902.11-3. If the person filing the appeal is dissatisfied with the Division Director’s decision, he or she may appeal the Division Director’s decision to the Nation’s Judiciary pursuant to the Judiciary’s Rules of Appellate Procedure.

The Honorable Gerald L. Hill and the Honorable Denice E. Beans (written): Re: Proposed Child Care Consumer Complaint Law, Chapter 902, Concerns

Dear Committee,

This is to bring your attention a provision that is problematic as drafted. Specifically, 902.11-3; *"If the person filing the appeal is dissatisfied with the Division Director's decision, he or she may appeal the Division Director's decision to the Nation's Judiciary pursuant to the Judiciary's Rules of Appellate Procedure."*

This is an erroneous statement because it eliminates the requirement of a hearing. The scope of appellate review of this court addresses formal hearing decisions of the Oneida Trial Court, and the Family Law Court.

As presently drafted, 9 O.C. 902- Page 8, Lines 318 to 320, Appeal provision, 902.11-3, quoted above, does not provide a hearing decision that can be appealed here. It is suggested that another provision be added that informs an unsatisfied party to a Division Director's decision may file for a de novo hearing in the Oneida Trial Court prior to the directive of an appeal. Please call or write the Judiciary if you have any questions about this matter, or this letter.

Thank you,
Gerald L. Hill, Chief Appellate Judge and Denice E. Beans, Chief Trial Judge

Response

The commenters express concern that the Law eliminates the Nation's Court of Appeals' requirement of a hearing, and therefore should be rewritten to state that a person wishing to appeal the Division Director's decision may file for a de novo hearing in the Oneida Trial Court prior to the directive of an appeal.

The Nation's Rules of Appellate Procedure state that any party who is aggrieved by a final judgment or order of the Trial Court or *original hearing body* may appeal to the Court of Appeals. [See *Rules of Appellate Procedure* section 805.5-1].

An appeal is defined in the Rules of Appellate Procedure as "a review in the Court of Appeals by appeal or writ of error authorized by law of a judgment or order of the Trial Court or original hearing body." [See *Rules of Appellate Procedure* section 805.3-1(e)].

Original hearing body is then defined by the Rules of Appellate Procedure as "the administrative agency decision-making panel which heard a contested case under the Administrative Procedures Act (or similar law) and from which appeal is permitted by law." [See *Rules of Appellate Procedure* section 805.3-1(s)].

The Law intends for the Governmental Services Division Director to serve as the original hearing body for complaints against the Child Care Department and have hearing authority to determine if the results of the complaint investigation were proper when the results of the investigation are contested. [See *Child Care Department Consumer Complaint law* section 902.11]. When the Governmental Services Division Director receives notice that an individual is dissatisfied with the results of the complaint investigation, the Governmental Services Division Director then completes a review and comes to a determination, or judgment, as to whether the results of the investigation were proper according to the requirements set forth by this Law. It is this judgment, or conclusion by the Governmental Services Division Director that the Law intends for the Nation's Court of Appeals to review, since the Rules of Appellate Procedure allow the Nation's Court of Appeals to review factual findings and conclusions of law of the original hearing body. [See *Rules of Appellate Procedure* section 805.4-3].

The Nation's Community Support Fund law, most recently amended by the Oneida Business Committee by resolution BC-01-11-17-B, follows the same structure for appeals to the Nation's Court of Appeals. In the Community Support Fund law the case manager makes initial decisions following the submission of a complete application. [See *Community Support Fund law* section 125.9-2]. If an individual is dissatisfied with the case manager's decision, the individual may appeal the decision to the Program Director, who will then make a decision on whether the case manager's decision was proper [See *Community Support Fund law* section 125.9-2]. If an individual is still dissatisfied with the conclusion made by the Program Director, the individual may then appeal the decision to the Area Manager, who will then provide a determination on the matter to the individual. [See *Community Support Fund law* section 125.9-3]. If an individual is still dissatisfied with the judgment made by the Area Manager's, then the individual may appeal

the decision of the Area Manager to the Court of Appeals pursuant to the Rules of Appellate Procedure. *[See Community Support Fund law section 125.9-4].*

Since the Governmental Services Division Director is intended to serve as the original hearing body for complaints against the Child Care Department, the Law does not eliminate the requirement of a hearing for the Court of Appeals to review. The LOC may consider whether the Governmental Services Division Director serving as the original hearing body for complaints against the Child Care Department is proper, or if individuals should be instructed to file for a de novo hearing in the Oneida Trial Court prior to the directive of an appeal.

LOC Consideration

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Title 9. Education – Chapter 902

Child Care Department Consumer Complaint

902.1. Purpose and Policy	902.9. Processing Level One through Level Three Complaints
902.2. Adoption, Amendment, Repeal	902.10. Processing Level Four Complaints
902.3. Definitions	902.11. Appeal
902.4. Filing of a Complaint	902.12. Video Surveillance
902.5. Complaint Coordinator	902.13.
902.6. Responsibilities of the Complaint Coordinator Upon Receipt of a Complaint	902.14. Mandatory Reporting to the Oneida Business Committee
902.7. Types of Complaints	902.15. Parent/Teacher Organization
902.8. Determination of the Severity of Complaint and Complaint Investigators	901.16. Enforcement

902.1. Purpose and Policy

902.1-1. *Purpose.* The purpose of this law is to provide a formal process for addressing complaints for anyone who uses the services of the Oneida Child Care Department. The law is not intended to resolve employee complaints or grievances which shall be addressed through the process specified in the Nation's laws, rules and policies governing employment.

902.1-2. *Policy.* It is the policy of the Nation to provide a safe, secure and nurturing environment for all children that are enrolled in the Oneida Child Care Department. It is also the policy of the Nation to allow any person who utilizes the services of the Oneida Child Care Department to have any and all complaints concerning those services addressed in a timely and professional manner.

902.2. Adoption, Amendment, Repeal

902.2-1. This law is adopted by the Oneida Business Committee by resolution _____.

902.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

902.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

902.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provision of this law shall control. Provided that this law repeals the following:

(a) Resolution BC-07-26-95-A *Policy on Internal Investigation of Complaints.*

902.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

902.3. Definitions

902.3-1. This article shall govern the definitions of words and phrases used within the law. All words not herein defined shall be used in their ordinary and everyday sense.

(a) "Abuse" means any of the following:

- (1) Physical injury inflicted on a child by other than accidental means;
- (2) Sexual assault of a child;
- (3) Sexual exploitation of a child;
- (4) Permitting, allowing, or encouraging a child to be involved in prostitution;

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- 32 (5) Causing mental harm to a child; or
33 (6) Causing a child to view or listen to sexual activity or sexually explicit materials.
34 (b) "Area Manager" means the individual employed by the Nation as the Area Manager of
35 Education and Training within the Governmental Services Division.
36 (c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding
37 holidays recognized by the Nation.
38 (d) "Complaint" means an allegation of certain wrongdoing against the Oneida Child Care
39 Department or employee.
40 (e) "Complaint coordinator" means the individual designated to receive and handle all
41 complaints alleged against the Oneida Child Care Department.
42 (f) "Complaint investigator" means any of the following individuals as recommended by the
43 complaint coordinator to investigate alleged complaints against the Oneida Child Care
44 Department:
45 (1) the supervisor of an Oneida Child Care Department employee that has a
46 complaint alleged against him or her;
47 (2) the supervisor's substitute; and/or(3) an outside agency designated to
48 investigate a complaint, including but not limited to, the Wisconsin Department of
49 Children and Families and a law enforcement agency.
50 (g) "Conflict of interest" means any interest, real or apparent, whether it be personal,
51 financial, political, or otherwise, in which a person or their immediate family, friends,
52 associates, or any other person with whom they have contact with, have that conflicts with
53 any right or interest of the Nation. Conflicts of interest include any situation that has the
54 potential to corrupt a person's motivation or decision making, because of an actual or
55 apparent divergence between the person's self-interests, and the best interests of the Nation.
56 (h) "Department" means the Oneida Child Care Department.
57 (i) "Director" means the individual employed by the Nation as the Oneida Child Care
58 Department Director.
59 (j) "Division Director" means the individual employed by the Nation as the Governmental
60 Services Division Director.
61 (k) "Employee" means an individual employed by the Nation in the Oneida Child Care
62 Department.
63 (l) "Nation" means the Oneida Nation.
64 (m) "Neglect" means a failure, refusal or inability of an Oneida Child Care Department
65 employee to provide necessary care, food, clothing, medical care or shelter so as to
66 seriously endanger the physical health of a child, lack of supervision, or total
67 abandonment.
68 (n) "Ombudsperson" means an individual employed by the Nation who functions as a
69 designated confidential, independent, neutral and informal dispute resolution resource that
70 does not represent the Nation or any specific party, but advocates for fairness and the
71 application of a fair and equitable process.
72 (o) "Substantiated" means a finding that the complaint or allegation in the complaint is valid
73 because there is proof by a preponderance of the evidence.

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- (p) “Supervisor” means the individual who directly oversees an Oneida Child Care Department employee, which may include the Oneida Child Care Department Director.
- (q) “Unsubstantiated” means a finding that the complaint or allegation in the complaint is not valid because there is not proof by a preponderance of the evidence.

902.4. Filing of a Complaint

902.4-1. *When to File.* A complaint filed within sixty (60) days of the alleged incident shall guarantee a review of the complaint. Any complaint filed after sixty (60) days from the alleged incident shall not guarantee an investigation.

- (a) Although a complaint can be filed within sixty (60) days of an alleged incident, video surveillance footage is only available from the Department for ten (10) days after an alleged incident occurs.

902.4-2. *Who May File.* The following people may file a complaint:

- (a) Any parent or guardian who is currently utilizing the services of the Department;
- (b) Any person who is on the child’s emergency contact list that has been submitted to the Department; and/or
- (c) Any person who witnesses any action by the Department or an employee that would warrant an investigation.

902.4-3. *Format of Complaint.* A complaint shall be filed in one (1) of the following formats:

- (a) the specific form provided for by the Department, which shall at all times be made available at the facility as well as on the Department’s webpage; or
- (b) in writing as long as it contains the statement of facts required by section 902.4-4.

902.4-4. *Statement of Facts.* The complaint filed shall contain a statement of facts which describes the specific allegations made against the Department and/or an employee. The statement of facts shall include, if known, but is not limited to the following information:

- (a) The name(s) of the child(ren) involved;
- (b) The name(s) of the employee(s) involved;
- (c) The specific date(s) and time(s) of the alleged incident(s);
- (d) The specific details of the alleged incident;
- (e) Name(s) of any witness(es) to the alleged incident;
- (f) Any noted impacts; and
- (g) The contact information for the person filing the complaint, which at minimum shall include the person’s name, address and telephone number.

902.4-5. *Where to File Complaint.* Completed complaints shall be delivered to the complaint coordinator. If the complaint coordinator is unavailable, then a complaint shall be delivered to the Division Director.

902.4-6. *Repeat Complaints.* A complaint that was deemed unsubstantiated or rejected on appeal shall not be re-filed unless new facts or new evidence have been discovered.

902.5. Complaint Coordinator

902.5-1. The complaint coordinator shall receive and handle all complaints alleged against the Department. The complaint coordinator shall be one (1) of the following individuals:

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- (a) The Area Manager;
- (b) The Ombudsperson; or
- (c) A designee assigned by the Area Manager.

902.6. Responsibilities of the Complaint Coordinator Upon Receipt of a Complaint.

902.6-1. *Receipt of an Incomplete Complaint.* The complaint coordinator shall develop standard operating procedures for handling complaints that are missing the information required for the statement of facts.

902.6-2. *Collection of Video Surveillance.* The complaint coordinator shall immediately contact the Department and request that the Department secure an electronic copy of the appropriate video surveillance footage that is relevant to the complaint if the video surveillance footage is still available. The complaint coordinator shall provide the video surveillance footage to the Nation's Records Management Department.

902.6-3. *Notification of Receipt of Complaint.* Upon receipt of the complaint, the complaint coordinator shall immediately forward a copy of the complaint to the Director and Division Director. The complaint coordinator shall also notify the person filing the complaint by mail or e-mail that the complaint was received and what the next steps will be.

902.6-4. *Notification of the Parents of the Child.* If the person who filed the complaint is not the parent of the child at issue, the parent(s) of the child shall be noticed throughout the complaint process whenever the person who filed the complaint is notice. This will include notice of receipt of the complaint, what the next steps will be, mediation, extension of the investigation, and the results of the investigation.

902.6-5. *Determination of Severity of Complaint and the Complaint Investigator.* Upon receipt of the complaint, the complaint coordinator shall make a determination as to the severity of the complaint and recommend to the Department an appropriate complaint investigator. The complaint coordinator shall have five (5) business days to refer the matter to the complaint investigator. However, if the person who filed the complaint agrees to mediate the matter with the complaint coordinator, any time limits under this law may be suspended while the parties are in mediation. The complaint coordinator shall have five (5) business days to recommend a complaint investigator, if needed, after mediation ends.

902.6-6. *Notification of the Risk Management Department.* If the complaint coordinator determines the complaint is a severity level two (2), three (3) or four (4), the complaint coordinator shall forward a redacted copy of the complaint to the Risk Management Department.

902.7. Types of Complaints

902.7-1. Complaints against the Department may include, but are not limited to, violations involving the following:

- (a) licensed capacity;
- (b) reports of incident or accident;
- (c) background checks;
- (d) reporting abuse or neglect of a child;
- (e) qualifications of an employee;

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- (f) employee orientation;
- (g) supervision of children;
- (h) exceeding limit of employee-to-child ratio;
- (i) maintaining accurate attendance records;
- (j) maximum group size;
- (k) potential source of harm on premises (hazards);
- (l) outdoor play space – potential source of harm (hazards);
- (m) access to materials potentially harmful to children;
- (n) flaking or deteriorating paint;
- (o) energy absorbing surfaces on playgrounds;
- (p) medications;
- (q) pets or animals;
- (r) transportation;
- (s) infant sleep position;
- (t) compliance with laws;
- (u) behavior of employees;
- (v) potentially dangerous items on premise/firearms, ammunition on premises;
- (w) alcohol or non-prescribed drug use;
- (x) child management techniques; and/or
- (y) child abuse or neglect.

902.8. Determination of Severity of Complaint and the Complaint Investigator

902.8-1. The complaint coordinator shall determine the severity of the complaint and recommend the appropriate complaint investigator by using the following guidelines:

(a) Level one (1) complaint:

(1) *Severity.* The severity of a level one (1) complaint may be deemed very mild, mild or moderate.

(2) *Description.* A level one (1) complaint includes, but is not limited to, complaints of the following: poor business practices, inadequate equipment and furnishings, inappropriate discipline, parents not notified of injury.

(3) *Complaint Investigator.* A level one (1) complaint shall be investigated by the supervisor.

(b) Level two (2) complaint:

(1) *Severity.* The severity of a level two (2) complaint shall be deemed serious.

(2) *Description.* A level two (2) complaint involves complaints that do not pose a risk of direct harm to children. Level two (2) complaints include, but are not limited to, medication or drugs and alcohol being left within the reach of children, failing to obtain emergency medical care for a child, and minor physical injury to a child.

(3) *Complaint Investigator.* A level two (2) complaint shall be investigated by the supervisor, but the investigation may also include the involvement of the Wisconsin Department of Children and Families if determined necessary by the complaint investigator.

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(c) Level three (3) complaint:

(1) *Severity.* The severity of a level three (3) complaint shall be deemed very serious.

(2) *Description.* A level three (3) complaint involves complaints that pose a risk of direct harm to children. Level three complaints include, but are not limited to, complaints of gross violations of ratio and supervision, abandoned children, severe injury to a child, unlocked weapons accessible to children, provider under the influence of alcohol or drugs.

(3) *Complaint Investigator.* A level three (3) complaint shall be investigated by the supervisor and the Oneida Police Department or other local law enforcement agency. The investigation may also include the involvement of the Wisconsin Department of Children and Families if determined necessary by the complaint investigator.

(4) The Department may place any employee accused of a level three (3) complaint on leave in accordance with the Nation's laws, policies, and rules governing investigative leave, except that he employee may be placed on leave until completion of the investigation. The employee shall not have contact with any child as it relates to their employment during the time the employee is on investigative leave. If placed on investigative leave, the employee shall be allowed to return to work if the complaint allegations are found to be unsubstantiated by all agencies completing an investigation. If the investigation by one (1) agency results in substantiated findings the complaint coordinator shall have the discretion to proceed with reviewing and finalizing the substantiated investigative findings and corrective plan.

(d) Level four (4) complaint:

(1) *Severity.* The severity of a level four (4) complaint shall be deemed child abuse or neglect.

(2) *Description.* A level four (4) complaint includes, but is not limited to, any action that results in the imminent danger to a child, such as child abuse or neglect.

(3) *Complaint Investigator.* A level four (4) complaint shall be investigated by the supervisor, Wisconsin Department of Children and Families and the Oneida Police Department or other local law enforcement agency.

(4) The Department shall automatically place any employee accused of a level four (4) complaint on leave in accordance with the Nation's laws, policies, and rules governing investigative leave, except that the Department does not need prior approval from the Human Resources Department manager or his or her designee and the Division Director prior to placing the employee on leave, and the employee may be placed on leave until the completion of the investigation. The employee shall not have contact with any child as it relates to their employment during the time the employee is on investigative leave. The employee shall be allowed to return to work if the complaint allegations are found to be unsubstantiated by all agencies completing an investigation. A substantiated level four (4) complaint shall result in the automatic termination of the employee. If the investigation by one (1) agency results in substantiated findings the complaint coordinator shall have the discretion to proceed with termination of the employee.

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902.8-2. *Conflict of Interest.* Any potential conflict of interest the complaint investigator may have in conducting the investigation shall be reported to the complaint coordinator. If it is determined that the complaint investigator has a conflict in conducting the investigation, the complaint coordinator shall recommend a new complaint investigator to conduct the investigation.

902.9. Processing Level One through Level Three Complaints

902.9-1. *Mediation.* If the person who filed the complaint agrees, the complaint coordinator shall facilitate a mediation meeting(s) between the person who filed the complaint and the Department. The complaint coordinator may use a trained mediator to facilitate the mediation meetings. The parent(s) of the child shall have a right to attend the mediation meeting(s). This meeting shall take place within five (5) business days of the filing of the complaint. The intent of this meeting(s) is to resolve the complaint prior to commencing a full investigation.

(a) If a resolution is reached during mediation, the complaint coordinator shall inform the Director that a corrective action plan shall be prepared, if necessary, based on the agreement.

(b) If the matter is not resolved through mediation, a full investigation shall be completed and the complaint coordinator shall have five (5) business days to recommend a complaint investigator.

902.9-2. *Investigation.* Once the complaint investigator is assigned, he or she shall have five (5) business days to complete a thorough investigation.

(a) *Thorough Investigation.* A thorough investigation by the complaint investigator may include:

- (1) An interview with the employee(s) involved in the complaint;
- (2) An interview with the individual who made the complaint;
- (3) The collection of statements from any potential witnesses;
- (4) The review of any available video surveillance footage; and
- (5) Any other investigative method the complaint investigator deems appropriate in order to complete a thorough investigation.

(b) *Extension of the Investigation.* The complaint coordinator may grant a five (5) business day extension for extenuating circumstances. If an extension is granted, the complaint coordinator shall send written notice to the person filing the complaint within twenty-four (24) hours of that extension being granted.

902.9-3. *Results of the Investigation.* Upon completion of the investigation, the complaint investigator shall either substantiate or not substantiate the complaint and forward copies of all documents and findings to the complaint coordinator, Director, and Division Director for review. The complaint coordinator, Director, and Division Director shall complete a review within five (5) business days of receiving the investigation findings.

(a) *Unsubstantiated Findings.* The complaint coordinator, Director, and/or Division Director may accept or override the complaint investigator's determination that the complaint is not substantiated.

- (1) If the complaint coordinator, Director, and/or Division Director decide to override the complaint investigator's decision to not substantiate the complaint, the Director shall complete a corrective action plan within five (5) business days of over-

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riding the decision to not substantiate the complaint.

(2) The Director's corrective action plan shall be finalized by the complaint coordinator and Division Director within five (5) business days.

(b) *Substantiated Findings*. The complaint investigator shall create a corrective action plan within five (5) business days of forwarding the investigation findings for a complaint that is substantiated.

(1) The complaint coordinator, Director, and Division Director shall not have the authority to override a decision by the complaint investigator to substantiate the complaint.

(2) The Director and complaint coordinator shall finalize the corrective action plan within five (5) business days.

(c) If investigations from different complaint investigators produce different results, a substantiated complaint shall take precedence over any unsubstantiated complaints.

902.9-4. *Notification of Results of the Investigation*. The complaint coordinator shall notify the person who filed the complaint of the results of the investigation in writing by U.S. or private mail using a delivery tracking feature within five (5) business days of receiving the finalized corrective action plan or findings that the complaint was not substantiated. The information provided to the person filing the complaint and/or the parent(s) of the child shall include, but is not limited to the following:

(a) Details of the investigation which would not compromise the legally-protected confidentiality of any other person;

(b) Whether or not the complaint was substantiated; and

(c) Any corrective action plan prepared to resolve the complaint, redacting specific employee related matters or information; or

(d) An explanation as to why the complaint is unsubstantiated, if necessary.

902.9-5. The complaint coordinator shall provide the corrective action plan to the Director and Division Director. All employees shall comply with any corrective action plan.

902.10. Processing Level Four Complaints

902.10-1. When a complaint involving an allegation under level four (4) is filed against an employee the complaint coordinator or any other person receiving the complaint shall immediately refer the matter to the Wisconsin Department of Children and Families and Oneida Police Department or other local law enforcement agency for investigation and follow through with the investigation results. The complaint coordinator shall also inform the supervisor of the level four (4) complaint. The supervisor shall investigate the level four (4) complaint following the same process as a level one (1) through level three (3) complaint as described in section 902.9.

902.11. Appeal

902.11-1. A person who filed a complaint, or the parent(s) of the child, may appeal the matter to the Division Director if he or she is dissatisfied with the finding that the complaint is unsubstantiated, or is dissatisfied with the corrective action plan. The appeal shall be in writing, and shall be submitted to the Division Director within ten (10) business days of receiving the results of the investigation and/or

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the corrective action plan.

902.11-2. The Division Director shall complete his or her review of the appeal and come to a determination within five (5) business days of receiving the written appeal. The Division Director may suspend the time limits for an appeal decision if the Division Director determines that more investigation on the matter is necessary. The Division Director shall then inform the person filing the appeal in writing of his or her decision.

902.11-3. If the person filing the appeal is dissatisfied with the Division Director's decision, he or she may appeal the Division Director's decision to the Nation's Judiciary pursuant to the Judiciary's Rules of Appellate Procedure.

902.12. Video Surveillance

902.12-1. *Department Video Surveillance.* The Department, for security purposes, shall have daily video surveillance. The video surveillance footage shall not be erased by anyone in the Department. The Department shall retain the video surveillance footage for at least ten (10) days.

902.12-2. *Records Management Department Maintenance of Video Surveillance.* The Records Management Department shall be responsible for the secured maintenance of any video surveillance footage related to a complaint received from the complaint coordinator.

(a) Only the complaint coordinator, complaint investigator, Director, Division Director, police department, Risk Management Department, and/or the Wisconsin Department of Children and Families shall have access to the video surveillance footage.

(b) The video surveillance footage shall be viewed at the Records Department with the complaint coordinator or a Records Management Department personnel present.

(c) The Records Management Department shall maintain the video surveillance footage until the time period for an appeal to the Nation's Judiciary has expired.

(d) The Records Management Department shall follow a standard operating procedure for disposal of video surveillance that complies with the child care industry standard.

902.13. Employee Self-Reporting

902.13-1. If any employee witnesses another employee behaving in an unethical or otherwise inappropriate manner as defined by the State of Wisconsin licensing requirements, that person shall immediately document and report such behavior to the complaint coordinator. An investigation shall be conducted as if a complaint was filed.

902.13-2. If any employee witnesses another employee engaging in behavior that constitutes child abuse or neglect, the employee shall immediately report the child abuse or neglect pursuant to laws governing reporting child abuse and neglect. The employee shall also report the witnessed abuse or neglect to the complaint coordinator. An investigation shall be conducted as if a complaint was filed.

902.14. Mandatory Reporting to the Oneida Business Committee

902.14-1. The Governmental Services Division shall include in their quarterly report to the Oneida Business Committee complaint information for the Department. Complaint information regarding the Department shall include, but it not limited to, the following:

(a) the number of complaints filed against the Department and its employees;

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(b) number of substantiated complaints; and

(c) the number of investigation conducted.

902.14 -2. The Division Director shall address and report to the Oneida Business Committee any continuous patterns of failure by the Department to follow the corrective action plan.

902.15. Parent-Teacher Organization

902.15-1. The Department shall form a parent-teacher organization for the purpose of providing an opportunity for parents and the Department to come together in order to gather and share information, ideas, and concerns, plan activities to enhance or improve the Department and lives of children, and to foster community amongst all those involved.

902.16. Enforcement

902.16-1. A violation of this law or retaliation against the children or family involved in a complaint may result in discipline in accordance with the Nations laws, rules and policies governing employment.

End.

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Title 9. Education – Chapter 902
Child Care Department Consumer Complaint
Addendum

This chart may be used as a guide by the complaint coordinator to determine the severity of the Oneida Child Care Department complaint and recommend the appropriate complaint investigator as required by section 902.8-1 of the Child Care Department Consumer Complaint law.

LEVEL	CATEGORY	DESCRIPTION	WHO INVESTIGATES
1	Very Mild, Mild and Moderate	Complaints such as poor business practices, inadequate equipment or furnishings, inappropriate discipline, parents not notified of injury to child.	Supervisor, if not resolved through mediation with the complaint coordinator.
2	Serious	Complaints that do not pose a risk of direct harm to children, such as medication or drugs and alcohol being left within the reach of children, failing to obtain emergency medical care to a child, and minor physical injury to a child.	Supervisor; may also include the Wisconsin Department of Children and Families as determined by the complaint investigator.
3	Very Serious	Complaints that pose a risk of harm to children, such as gross violations of ratio and supervision, abandoned children, severe injury to a child, unlocked weapons accessible to children, provider under the influence of drugs or alcohol.	Supervisor and the Oneida Police Department or other local law enforcement agency. The investigation may also include the Wisconsin Department of Children and Families as determined by the complaint investigator.
4	Child Abuse or Neglect	Complaints regarding any action that results in the imminent danger to children, such as child abuse or neglect.	Supervisor, the Wisconsin Department of Children and Families, and the Oneida Police Department or other local law enforcement agency.



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING**

Child Care Department Consumer Complaint Law

Business Committee Conference Room-2nd Floor Norbert Hill Center
June 26, 2017 12:15 p.m.

Present: Brandon Stevens, Tehassi Hill, David P. Jordan, Fawn Billie, Candice Skenandore, Clorissa Santiago, Danelle Wilson, Tani Thurner, Maureen Perkins, Leyne Orosco, Ed Delgado.

Brandon Stevens: Okay, I'll call this public meeting to order. Today's date is June 26, 2017. And it is 12:25 p.m. and today's date is Thursday May 18, 2017. The public meeting here is for the following laws:

- Administrative Rulemaking law amendments
- Child Care Department Consumer Complaint law
- General Tribal Council Meetings law
- Comprehensive Policy Governing Boards, Committees, and Commissions amendments

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding these legislative proposals. The public meeting is not a question and answer period. All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Friday June, July 17, the 7th. July 7, 2017. Friday.

In attendance today we have councilman David Jordan, council woman Fawn Billie, and Tehassi Hill, councilman Tehassi Hill, sorry.

The LOC may impose a time limit for all speakers pursuant to section 16.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons, for all public meetings today.

Alright, Ed, did you want to sign in or provide any comment on any of these?

Ed Delgado: Yes

[Note: A public meeting for the Administrative Rulemaking law amendments was held open at 12:15 p.m. and closed at 12:26 p.m. before the public meeting on the Child Care Department Consumer Complaint law was specifically opened.]

Brandon Stevens: Alright. I'll call the public meeting to order for the Child Care Department Consumer Complaint law at 12:26 p.m. Let's see, and I'll enforce the same five minutes time

limit for this one. This is a proposal to create a new Child Care Department Consumer Complaint law which would:

- Describe the process for filing a complaint against the Oneida Child Care Department.
- Provide for a complaint coordinator to receive and handle all complaints alleged against the Oneida Child Care Department, and describe the complaint coordinator's responsibilities.
- Provide guidelines for how the severity of a complaint and who will investigate the complaint will be determined.
- Provide a process by which complaints will be investigated [see 902.9 and 902.10].
- Allow for investigation results to be appealed.
- Describes how video surveillance footage will be maintained.
- Provide requirements for employee reporting, reporting to the Oneida Business Committee, enforcement, and the development of a Parent-Teacher Organization.

Umm let's see. I'll open it up for, nobody has signed in to speak on this, so I'll open it up from the floor if anyone would like to speak on behalf of this law. Seeing no one, I will close this public meeting at 12:28 p.m. for the Child Care Department Consumer Complaint law.

[Note: A public meeting for the General Tribal Council Meetings law as opened at 12:28 p.m. and closed at 12:36 p.m. and a public meeting for the Comprehensive Policy Governing Boards, Committees, and Commissions amendments was held open at 12:36 p.m. and closed at 12:44 p.m. after the public meeting on the Child Care Department Consumer Complaint law was specifically closed. The general opening and closing statements apply to all public meetings held June 26, 2017.]

Brandon Stevens: Written comments may be submitted until close of business on Friday, July 7, 2017. Just for those in attendance, I just want to make sure, there was confusion on the public notice it said, "Monday, June 29" and so today is the 26th. So since there was a miscommunication in the notice we are providing two public meetings for the same items. Today Monday, I guess today "Monday the 29th" and Thursday, the 29th. So we are providing the two days just so the confusion is met, so if you would like another shot at you know kicking the can on Thursday you are very welcome to come and provide.

Ed Delgado: When you're retired you don't even notice those details.

Brandon Stevens: Yeah, so just for the confusion we made sure we said both on a Monday and then Thursday, the 29th. And so I just wanted to make that clear for the record as well. So thank you for your attendance and your testimony today Ed. So we will close today, and thank you everyone.

-End of Meeting-



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING**

Child Care Department Consumer Complaint Law

Business Committee Conference Room-2nd Floor Norbert Hill Center
June 29, 2017 12:15 p.m.

Present: Brandon Stevens, Tehassi Hill, Jennifer Webster, Candice Skenandore, Clorissa Santiago, Tani Thurner, Maureen Perkins, Ed Delgado, Bonnie Pigman, Lisa Liggins, Lisa Summers, Steve Webster, Mike Denny, Daniel Guzman.

Brandon Stevens: Greetings. The time is 12:15 p.m. Today's date is June 29, 2017. I will now call this public meeting to order for the following laws:

- Administrative Rulemaking law amendments
- Child Care Department Consumer Complaint law
- General Tribal Council Meetings law
- Comprehensive Policy Governing Boards, Committees, and Commissions amendments

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding these legislative proposals. The public meeting is not a question and answer period. All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Friday July 7, 2017.

In attendance today we have council woman Jennifer Webster, and Tehassi Hill, councilman Tehassi Hill.

The LOC may impose a time limit for all speakers pursuant to section 16.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons, for all four public meetings.

[Note: A public meeting for the Administrative Rulemaking law amendments was held open at 12:15 p.m. and closed at 12:22p.m. before the public meeting on the Child Care Department Consumer Complaint law was specifically opened.]

Brandon Stevens: I will now call to order the Child Care Department Consumer Complaint law public meeting to order. This is a proposal to create a new Child Care Department Consumer Complaint law which would:

- Describe the process for filing a complaint against the Oneida Child Care Department.

- Provide for a complaint coordinator to receive and handle all complaints alleged against the Oneida Child Care Department, and describe the complaint coordinator's responsibilities.
- Provide guidelines for how the severity of a complaint and who will investigate the complaint will be determined.
- Provide a process by which complaints will be investigated.
- Allow for investigation results to be appealed.
- Describes how video surveillance footage will be maintained.
- Provide requirements for employee reporting, reporting to the Oneida Business Committee, enforcement, and the development of a Parent-Teacher Organization.

Okay, looking on the list, the x's mean what? That you're here for it? The x's mean what on here, they're just checked off? Okay, is anyone signed in to speak on behalf of the Child Care Department Consumer Complaint Law? Seeing none, I will call, I will close this Child Care Department Consumer Complaint law, closed at 12:23 p.m.

[Note: A public meeting for the General Tribal Council Meetings law as opened at 12:23 p.m. and closed at 12:51 p.m. and a public meeting for the Comprehensive Policy Governing Boards, Committees, and Commissions amendments was held open at 12:51 p.m. and closed at 1:04 p.m. after the public meeting on the Child Care Department Consumer Complaint law was specifically closed. The general opening and closing statements apply to all public meetings held June 29, 2017.]

Brandon Stevens: I will close this meeting at 1:04 p.m. Just a reminder that written comments may be submitted until close of business on Friday, July 7, 2017. Thank you for attending the meetings today, and have a good day.

-End of Meeting-

ONEIDA JUDICIARY

Tsi nu téshakotiya?tolétha?

July 7, 2017

Legislation Operating Committee
Norbert Hill Center
Oneida, WI 54155

Re: Proposed Child Care Consumer Complaint Law, Chapter 902, Concerns

Dear Committee,

This is to bring your attention a provision that is problematic as drafted. Specifically, 902.11-3; *"If the person filing the appeal is dissatisfied with the Division Director's decision, he or she may appeal the Division Director's decision to the Nation's Judiciary pursuant to the Judiciary's Rules of Appellate Procedure."*

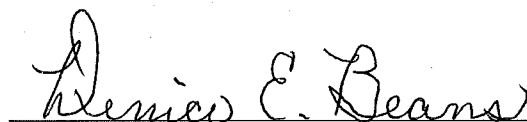
This is an erroneous statement because it eliminates the requirement of a hearing. The scope of appellate review of this court addresses formal hearing decisions of the Oneida Trial Court, and the Family Law Court.

As presently drafted, 9 O.C. 902 – Page 8, Lines 318 to 320, Appeal provision, 902.11-3, quoted above, does not provide a hearing decision that can be appealed here. It is suggested that another provision be added that informs an unsatisfied party to a Division Director's decision may file for a de novo hearing in the Oneida Trial Court prior to the directive of an appeal.

Please call or write the Judiciary if you have any questions about this matter, or this letter.

Thank you,


Gerald L. Hill, Chief Appellate Judge


Denice E. Beans, Chief Trial Judge



Legislative Operating Committee
July 19, 2017

Administrative Rulemaking Law Amendments

Submission Date: 03/15/17	Public Meeting: 6/29/17
LOC Sponsor: Brandon Stevens	Emergency Enacted: n/a Expires: n/a

Summary: *This is a request to revise the law to clarify timelines and to make additional revisions to update the law.*

3/15/17 LOC: Motion by Jennifer Webster to place the Administrative Rulemaking Amendments on the Active Files List as a high priority and assign Brandon Stevens as the sponsor; seconded by Tehassi Hill. Motion carried unanimously.

4/24/17: *Work Meeting Held.* Present: Clorissa Santiago, Maureen Perkins, Jennifer Falck, Jennifer Webster, David P. Jordan, Tehassi Hill, Fawn Billie, Danelle Wilson, Rhiannon Metoxen, Rae Skenandore. Reviewed two versions of potential revisions. Drafter will make changes to draft.

5/3/17 LOC: Motion by Tehassi Hill to approve the draft Administrative Rulemaking law amendments and send for legislative analysis due back to the Legislative Operating Committee by May 17, 2017; seconded by Fawn Billie. Motion carried unanimously.

5/17/17 LOC: Motion by Fawn Billie to approve an extension to June 7, 2017 for the legislative analysis to be completed; seconded by David P. Jordan. Motion carried unanimously.

6/7/17 LOC: Motion by Tehassi Hill to approve the public meeting packet and forward the Administrative Rulemaking Amendments to a public meeting to be held on June 29, 2017; nothing that the fiscal impact statement be submitted to the Legislative Reference Office by June 28, 2017; seconded by David P. Jordan. Motion carried unanimously.

6/29/17: Public Meeting Held.

Next Steps:

- Accept the public meeting comments;
- Defer the review and consideration of the public meeting comments to a work meeting.



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney
DATE: July 19, 2017
RE: Administrative Rulemaking Law Amendments: Public Meeting Comment Review

On June 26, 2017, and June 29, 2017, public meetings were held regarding amendments to the Administrative Rulemaking law. This memorandum is submitted as a review of the oral comments received within the public meeting. No written comments were received during the public comment period ending on July 7, 2017. The public meeting draft and the public meeting transcript are attached to this memorandum for review.

Comment 1 – General Comment Regarding the Comprehensive Policy:

Ed Delgado (oral): I will be submitting some written. Unfortunately this is the first one, and I would rather start out on a happy note. On the front of this I have written obstinate. The reason for that is I find this almost shocking. I mean, the most shocking part would be that the Business Committee appears and this uhh, I read this three times. And it still, I am a slow reader but I am a good reader. And this idea about exclusion, excluding or a similar word. That's scary. That the Business Committee could remove elected people. That's the way I read it towards the end. Exclusion. That's what it seems like it's all about, exclusion.

Brandon Stevens (oral): This one is the Administrative Rulemaking law. This is the law that grants authority to the agencies.

Ed Delgado (oral): Ohh okay.

Response

Due to the fact that that public meeting addressed four separate laws, the commenter mistakenly referenced amendments to the Comprehensive Policy Governing Boards, Committees, and Commissions.

There is no recommended revision based on this comment.

LOC Consideration

Comment 2 through 3 – Participation of Individuals in Public Meetings:

Ed Delgado (oral): First page, it says, where it says, on the front page, review. What's your, this is all about. Provides that if the authorized agency provides a service to a defined base of customers or individuals the authorized agency may make reasonable efforts to provide additional notice of the public meeting to the base of customers or individuals. This is good, but add that number, the number of non-department employees be added in the report. Rulemaking, you know, the agency is making the rules, you know, supposed public hearing. But you don't know the number of people from the public who are providing testimony there. I mean this is big time here for the Business Committee and you have limited participation. You don't know how many people responding for some of these rulemaking actions by the departments. And you should. Maybe there is absolutely no participation. I fear that a lot of the times we are making rulemaking and policy based on the whiter outside world that has populations of millions, and when you get a very very small percentage of your people participating it's still in the hundreds maybe. Here we have nobody maybe. When you're adopting these rules maybe you should consider how many people participated. I won't mention which one, but I think that's, the report should include the number of people participating.

Brandon Stevens (oral): Okay, time. The question that you had was whether the list of people testifying in a public meeting, that is provided in the public notice, the packet that is sent to the LOC. We review that and the list, and the sign in sheet is actually in the packet. So that's one of the answers.

Response

The first commenter requested that information be provided on the number of individuals that participate in public meetings for proposed rules when the proposed rules are considered for adoption. Councilman Brandon Stevens responded to the commenter by stating that the list of people testifying in a public meeting is provided to the LOC in the administrative record that is submitted for certification.

The Law states, "After the public comment period has expired and the authorized agency has considered all public comments received, the authorized agency shall submit the proposed rule and all items contained in the administrative record described in section 106.11 to the Legislative Operating Committee." [see *Administrative Rulemaking law section 106.7-1*].

The Law then states that included in the administrative record is a memorandum provided by the authorized agency containing the public comments that were received, both orally and written, and the authorized agency's response to each comment. [see *Administrative Rulemaking law section 106.11-1(g)*]. The memorandum will contain the names of all the individuals that provided oral and written comments, along with the comment they provided and the authorized agency's response to the comment. This document will illustrate how many individuals participated in the public meeting.

Thus far, many authorized agencies have also provided the registration sign-in sheet that is required by the Law in the administrative record they provide to the LOC. [see *Administrative Rulemaking law section 106.6-2(f)*]. The inclusion of the registration sign-in sheet in the administrative record is not required by the Law.

There is no recommended revision based on this comment. The LOC may determine if the memorandum responding to all oral and written comments received during the public comment period is an adequate representation of the amount of individuals that participated in the public meeting, or if the public meeting registration sign-in sheet should be included in the administrative record.

LOC Consideration

Comments 4 through 6 – Conflict Between a Proposed Rule and a Current Law of the Nation:

106.2. Adoption, Amendment, Repeal

106.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

Ed Delgado (oral): Okay it says in line 17 of the red draft, I forget what you call them, this one with all the colors in it. The old, the new and the proposed. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect the provisions of this law which are considered to have legal force. I don't know, some of these are, may need to go to General Tribal Council. Those laws that may affect the General Tribal Council past law, they need to go to General Tribal Council to be considered law, they need to go back to General Tribal Council.

Ed Delgado (oral): Okay. Again, I've got under line 470, it should be included, if the rule is contrary to Oneida Nation law adopted by GTC, that GTC input needs to be, it needs to go to GTC if it violates or is contrary to a rule or an amendment type thing to a rule established by GTC.

Brandon Stevens (oral): And then one of the amendments we did make in here was that if it is in contrary or in direct violation of an existing law or directive that the rule cannot move forward. And that's one of the checklist that we so as LOC specifically. So yeah, thank you for comments and we'll, it's a definitely new change having rulemaking authority within the Tribe.

Response

The first commenter expressed concern that a proposed rule that potentially conflicts with a law established by the General Tribal Council should go back to the General Tribal Council for input before it is adopted. Councilman Brandon Stevens is correct in stating that one purpose of the amendments to the Law was to ensure that all proposed rules do not conflict with a law, rule, or policy of the Nation, whether it was originally established by the General Tribal Council or the Oneida Business Committee.

The Law states, “A rule developed pursuant to this law shall not conflict or supersede a law, policy or rule of the Nation or a resolution passed by the Oneida Business Committee or the Oneida General Tribal Council.” *[see Administrative Rulemaking law section 106.4-1(b)]*. Furthermore, the Legislative Operating Committee is tasked with the responsibility of certifying that the proposed rule does not exceed its rulemaking authority or conflict with any other law, policy, rule or resolution of the Nation before the Legislative Operating Committee may certify the rule and forward it to the Oneida Business Committee for adoption. *[see Administrative Rulemaking law section 106.7-2(c)]*.

The first commenter also mentioned the language contained in line 17 of the Law, contained in section 106.2-3, which is stated as follows, “Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.” It appears the commenter believed this section of the Law was related to his comment regarding his belief that any rule that might conflict with a law established by the General Tribal Council should be brought back to the General Tribal Council for review. The Legislative Procedures Act, adopted by the General Tribal Council through resolution GTC-01-07-13-A, states that all laws of the Nation may have the appropriate portions severed and allow the remainder of the law to continue in effect. *[see Legislative Procedures Act section 109.11-1(b)]*. The Law then goes on to state language that must be contained in Section 2 of every law, unless other sections are necessary to convey needed information on the law. *[see Legislative Procedures Act section 109.11-1(b)]*. The language contained in section 106.2-3 of the Law starting on line 17 is comprised of the mandatory language provided by the Legislative Procedures Act to address the severability of invalid portions of the Law.

Additionally, it may be interpreted that the commenter meant that if the General Tribal Council adopts a law that grants rulemaking authority to an authorized agency, the proposed rule the authorized agency promulgates should then be adopted by the General Tribal Council and not the Oneida Business Committee. The LOC has previously discussed this matter and came to the determination that if the General Tribal Council adopts a law that grants rulemaking authority to an authorized agency, the General Tribal Council is adopting that law with the understanding that the potential rules will be promulgated in accordance with this Law, and therefore that the Oneida Business Committee will be adopting all rules.

There is no recommended revision based on this comment. The LOC may determine if more consideration is needed for this comment.

*LOC Consideration***Comment 7 – Notice:**

Ed Delgado (oral): Notice. It appears that we've diminished the requirement of notice. It used to be that General Tribal Council would be noticed of a change, or when there is going to be a meeting, or just, never mind, I forgot. Exclude that. That's why I need to do this.

Response

The commenter did not finish stating this comment and asked that this comment be excluded and disregarded.

There is no recommended revision based on this comment.

*LOC Consideration***Comment 8 – Adoption of the Rules by the Oneida Business Committee:**

Bonnie Pigman (oral): Umm as a General Tribal Council member I want to identify that I do not feel that the Oneida Business Committee should need to adopt rules since they adopt the laws. And the documents, the rules, as far as the rules go, um should only require certification from the LOC. I think that is too heavy of a level of going through things to get things approved. So I think if the Business Committee is not aware of the laws that they are adopting, I think people on the, the five members on the LOC should be working in coordination with the Business Committee in order to make sure they are aware that these rules exist. It shouldn't have to be coming before the LOC to get them certified and then to get them formally adopted by the Business Committee. So that is my opinion.

Response

The commenter expresses concern that the Oneida Business Committee should not be allowed to adopt rules because that is too high of a level of approval, and certification from the Legislative Operating Committee should be the only level of review before a rule is adopted. Although in the version of the Law that is currently effective the Oneida Business Committee does not officially adopt the rules, review of the proposed rule by the Oneida Business Committee beyond LOC certification is still occurring. The current law states the following:

“106.7-3. The Oneida Business Committee shall review the proposed Rule, the summary report, the memorandum containing the public comments that were received, both orally and written, and the Authorized Agency’s response to each comment, and the Legislative Operating Committee’s certification of compliance. If upon review the Oneida Business Committee has any concerns and/or requested revisions to the Rule, the Authorized Agency shall work with the

Oneida Business Committee to address any concerns.

(a) Unless the Oneida Business Committee repeals the Rule, the Rule will remain in effect while the Authorized Agency and the Oneida Business Committee jointly work to amend the existing Rule.

(1) Should the Oneida Business Committee repeal the Rule adopted by the Authorized Agency, the Rule that was in effect immediately previous to those repealed, if any, will be automatically reinstated and effective immediately upon the repeal of the Rule adopted by the Authorized Agency.

(b) If the Authorized Agency does not receive written notice from the Oneida Business Committee of intent to repeal or amend the Rule within thirty (30) days of the date the Oneida Business Committee is provided notice of the Rule, the Rule will remain in effect as submitted and certified by the Legislative Operating Committee.

(c) Should the Oneida Business Committee pursue amendments to the Rule, the amendments must be completed through one (1) of the following actions within six (6) months from the date the amendments are initiated by the Oneida Business Committee:

(1) if the Authorized Agency and the Oneida Business Committee reach an agreement as to the content of the amendments, the Authorized Agency shall adopt the revised Rule that has been discussed with and agreed upon by the Oneida Business Committee. Provided that, if substantial revisions are requested by the Oneida Business Committee, where the consideration of a substantial revision is in the Authorized Agency’s best informed discretion, the Authorized Agency shall hold an additional public comment period, which would restart the process beginning in Section 106.6 hereof ; or

(2) if the Authorized Agency and the Oneida Business Committee do not reach an agreement as to the content of the amendments, the Oneida Business Committee may defer the Rule to the Legislative Operating Committee for revisions as directed by the Oneida Business Committee. If substantial revisions are requested by the Oneida Business Committee, where the consideration of a substantial revision is in the Legislative Operating Committee’s best informed discretion, the Legislative Operating Committee shall hold an additional public comment period according to the requirements contained in Section 106.6 with the Legislative Operating Committee taking the place of the Authorized Agency. When the Rule is ready for adoption, the Legislative Operating Committee shall forward it to the Oneida Business Committee for consideration.

(d) If a revised Rule is not adopted by either the Authorized Agency or the Oneida Business Committee within six (6) months from the date the amendments are initiated by the Oneida Business Committee, the Rule originally adopted by the Authorized Agency will remain in effect.

(e) If revisions are made to the Rule by either the Authorized Agency or the Oneida Business Committee, such party making the revisions shall provide a final version of the Rule to the Legislative Operating Committee. Upon receipt, the Legislative Operating Committee shall update the Oneida Register with the final version of the Rule.”

Although the current law does not have the Oneida Business Committee formally adopting the proposed rules, the Oneida Business Committee can repeal the rule, revise and amend the rule. The purpose of the proposed amendments to the Law is to simplify the process, and have the rulemaking process mirror the law making process outlined in the Legislative Procedures Act since a rule has the same force and effect as the law which delegated the authorized agency rulemaking authority [see *Administrative Rulemaking law section 106.4-1(a)*]. If a rule and a law have the same effect on members of the community, then both rules and laws should go through the same stringent approval process.

Additionally, requiring the Oneida Business Committee to formally adopt the rules allows the Oneida Business Committee to ensure that the values and policies of the Nation as a whole are maintained, while still allowing the authorized agencies who can be considered subject matter experts the ability to actually write the proposed rule. The intent of the Administrative Rulemaking law was to allow those entities that have specific knowledge and experience over a matter to draft rules regarding that matter, while also ensuring that there was a process in place to allow for public input and review. The Administrative Rulemaking law was adopted to move away from past practices where agencies were able to draft and revise standard operating procedures, which directly affected members of the community, without any public input or review.

There is no recommended revision based on this comment. The LOC may consider whether the Oneida Business should be allowed to adopt rules.

LOC Consideration

Comment 9 – Review By the Authorized Agency:

106.12. Review by the Authorized Agency

106.12-1. Biennial Review. The authorized agency shall conduct a review of each adopted rule promulgated by the authorized agency at least once every two years after the rule is adopted by the Oneida Business Committee.

106.12-2. Consideration during Review. During the review the authorized agency may consider, but is not limited to the consideration of, whether the rule continues to serve its intended purpose and if any amendments to the rule are necessary.

106.12-3. The authorized agency shall have the authority to decide if amendments to a rule are necessary to pursue. The Oneida Business Committee shall not compel an authorized agency to amend a rule.

Bonnie Pigman (oral): And then, on the review of the authorized agency underneath section 106.12, a biennial review. It doesn't go into detail, unless you're creating some kind of rules, but it doesn't say you're creating, after the rule is adopted. It doesn't say you're creating rules on who is going to be doing those reviews. Who is going to have responsibility to enforce that those reviews go on. There is nothing in the document that identifies that process. That's it. Thank you.

Response

The Law states that once an authorized agency promulgates and makes effective a rule, the authorized agency is required to conduct a review of each adopted rule at least one every two years after the rule is adopted by the Oneida Business Committee. *[see Administrative Rulemaking law section 106.12-1]*. The Law then goes on to state that during the review, the authorized agency may consider whether the rule continues to serve its intended purpose or if any amendments are necessary. *[see Administrative Rulemaking law section 106.12-2]*. The commenter expresses concern that there is not a detailed process for how the reviews are to be conducted, or who shall enforce the reviews to ensure that they are occurring. This details surrounding the review process was not included in the Law because it will be up to the authorized agency to determine how reviews will be processed and enforced.

There is no recommended revision based on this comment, but the LOC may consider whether more detail should be included for the process of the biennial review by the authorized agency.

LOC Consideration

Comment 10 – Notice Requirements for Public Meetings:

106.6-2. Public Meetings. A public meeting on a proposed rule shall be held in accordance with the following requirements.

(a) **Notice.** The authorized agency shall set a date for the public meeting and have a public meeting notice published in the Kalihwisaks and on the Oneida Register not less than ten (10) business days prior to the meeting. If the authorized agency provides a service to a defined base of customers or individuals the authorized agency may make reasonable efforts to provide additional notice of the public meeting to that base of customers or individuals that may be substantially affected by the proposed rule.

Lisa Liggins (oral): So this is a comment as Lisa Liggins, a comment as a tribal member. On line 61 of draft two I am seeing that the authorized agency provides a service to a defined base of customers or individuals of the authorized agency may make reasonable efforts to provide additional notice. I just think that “may” should be “shall”. Umm I think that if there is a rule that affects people who rent or people who own homes, that they should be noticed. That there has to be that effort, not they could do the effort. So I think the word should be shall. Thank you.

Response

The Law states that an authorized agency promulgating rules must hold a public meeting and have a public meeting notice published in the Kalihwisaks and on the Oneida Register for the proposed rule not less than ten (10) business days prior to the public meeting. [see *Administrative Rulemaking law section 106.6-2(a)*]. The Law further states that if the authorized agency provides a service to a defined base of customers or individuals the authorized agency may make reasonable efforts to provide additional notice of the public meeting to that base of customers or individuals that may be substantially affected by the proposed rule. [see *Administrative Rulemaking law section 106.6-2(a)*]. The purpose of this section was to draw attention to the fact that extra efforts could be made to provide notice to those individuals that may be affected by the proposed rule. The LOC had in depth discussions on whether the requirement to reach out to individuals that may be substantially affected by the proposed rule should be a suggestion for best practice in promulgating rules, or a requirement. Ultimately, since a rule has the same force and effect as the law which delegated the authorized agency rulemaking authority the LOC determined that the rulemaking process should mirror the law making process. [see *Administrative Rulemaking law section 106.4-1(a)*]. The Legislative Procedures Act requires that all proposed laws be noticed a minimum of ten (10) business days before a public meeting is held, and be made publically available on the Oneida Register, electronically provided to all managers or directors, and published in the Kalihwisaks. [see *Legislative Procedures Act section 109.8-2*]. The Legislative Procedures Act does not require the Legislative Operating Committee to provide additional notice of a public meeting for a proposed law to those that might be substantially affected by the Law. For those reasons, the LOC determined that “may” should be utilized instead of “shall” because then it provides a suggestion for best practices in promulgating rules, but is not a requirement.

There is no recommended revision based on this comment. The LOC may consider whether the term “may” or “shall” should be used in regards to the statement that if an authorized agency provides a service to a defined base of customers or individuals the authorized agency may make reasonable efforts to provide additional notice of the public meeting to that base of customers or individuals that may be substantially affected by the proposed rule.

LOC Consideration

Title 1. Government and Finances – Chapter 106
ADMINISTRATIVE RULEMAKING
Thotihá·tú lutyánłashu·níhe?
they are the leaders, they are making the laws, policies and rules

106.1.	Purpose and Policy	106.9.	Effective Date of Rules
106.2.	Adoption, Amendment, Repeal	106.10.	Emergency Rules
106.3.	Definitions	106.11.	Creating and Maintaining an Administrative Record
106.4.	General	106.12.	Review by the Authorized Agency
106.5.	Preparation of Proposed Rules	106.13.	Judicial Review of a Rule
106.6.	Public Comment Period on Proposed Rules	106.14.	Standard of Review for Actions Taken by Authorized Agency
106.7.	Legislative Operating Committee Certification		
106.8.	Oneida Business Committee Adoption		

106.1. Purpose and Policy

106.1-1. *Purpose.* The purpose of this law is to provide a process for the adoption and amendment of administrative rules.

106.1-2. *Policy.* It is the policy of the Nation to ensure there is an efficient, effective and democratic process for enacting and revising administrative rules, and that authorized agencies act in a responsible and consistent manner when enacting and revising administrative rules.

106.2. Adoption, Amendment, Repeal

106.2-1. This law was adopted by the Oneida Business Committee by resolution BC-02-24-16-C and amended by BC_____.

106.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

106.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

106.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

106.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

106.3. Definitions

106.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Authorized agency” means any board, committee, commission, department, program or officer of the Nation that has been granted rulemaking authority.

(b) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

(c) “Financial analysis” means an estimate of the total fiscal year financial effects associated with a proposed rule prepared by the authorized agency proposing the rule. It includes startup costs, personnel, office, documentation costs, and an estimate of the amount of time necessary for an individual or agency to comply with the rule after implementation.

(d) “Entity” means a board, committee or commission created by the Oneida General Tribal Council or the Oneida Business Committee whose members are appointed by the

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Oneida Business Committee or elected by the majority of the Nation's eligible voters, and also any department or program of the Nation.

(e) "Nation" means the Oneida Nation.

(f) "Officer" means an individual holding the position of chairperson, vice chairperson, secretary or treasurer on a board, committee or commission of the Nation, including the Oneida Business Committee.

(g) "Oneida Register" means the Legislative Operating Committee's publication on the Nation's website containing, at a minimum, agency rules, proposed legislation and notices, and the Oneida Code of Laws.

(h) "Rule" means a set of requirements enacted by an authorized agency in order to implement, interpret and/or enforce a law of the Nation, which may include citation fee and penalty schedules.

(i) "Rulemaking authority" means the delegation of authority to authorized agencies found in the Nation's laws, other than this law, which allows authorized agencies to implement, interpret and/or enforce a law of the Nation.

(j) "Standard operating procedures" means statements, interpretations, decisions, internal rules, regulations, internal 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.

(k) "Statement of effect" means an analysis of the proposed rule which explains potential conflicts and effects that adopting a rule would have on the Nation's current legislation.

106.4. General

106.4-1. *Administrative Rulemaking.* Only authorized agencies may promulgate rules. Authorized agencies shall be granted rulemaking authority by a law of the Nation, provided that, this law does not confer rulemaking authority. 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. Authorized agencies shall adhere to the rulemaking procedures as provided in this law.

(a) Rules developed pursuant to this law have the same force and effect as the law which delegated the authorized agency rulemaking authority and shall be followed by both the general public and the authorized agency promulgating the rule.

(b) A rule developed pursuant to this law shall not conflict or supersede a law, policy or rule of the Nation or a resolution passed by the Oneida Business Committee or the Oneida General Tribal Council.

(c) This law does not apply to the Nation's standard operating procedures.

106.4-2. *Solicitation of Comment on General Subject Matter.* For the purpose of soliciting public comments, ideas and opinions, an authorized agency may hold a public meeting on the general subject matter of a possible or anticipated rule before preparing a proposed rule. A public meeting under this subsection does not satisfy the public comment period requirements of section 106.6 with respect to promulgation of a specific proposed rule.

106.4-3. *Substantial Compliance.* Any rule hereafter adopted is valid only if adopted in substantial compliance with this law. Rules already in effect at the time of this law's adoption

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remain in effect unless directed to be updated based on this law's requirements by the Oneida Business Committee. Any amendments made to rules already in effect shall follow the requirements of this law.

106.5. Preparation of Proposed Rules

106.5-1. *Form and Style.* The Legislative Operating Committee shall create a template for rules with which authorized agencies shall comply; the template is not subject to the procedural requirements of this law.

(a) At a minimum, all rules shall be numbered in the following consistent manner "1-1(a)(1)(A)(i)" where:

(1) "1-1" means the first section.

(2) "(a)" means the first subsection.

(3) "(1)" means the second subsection.

(4) "(A)" means the third subsection.

(5) "(i)" means the fourth subsection.

(6) All other numbering after the fourth subsection shall be in a logical manner.

106.5-2. *Summary Report.* The authorized agency shall prepare a summary report regarding each proposed rule. The summary report shall be attached to the proposed rule when presented for public comment, and included in the administrative record for certification by the Legislative Operating Committee and ultimately for adoption by the Oneida Business Committee. The summary report shall include the following:

(a) the name of the proposed rule;

(b) a reference to the law that the proposed rule interprets, along with a list of any other related laws, rules, or resolutions that may be affected by the proposed rule;

(c) a brief summary of the proposed rule;

(d) any changes made to the proposed rule based on the public comment period required by section 106.6, if applicable;

(e) a statement of effect for the rule prepared by the Legislative Reference Office upon request by the authorized agency; and

(f) the financial analysis.

(1) The authorized agency shall prepare the financial analysis. The authorized agency shall send a written request to each entity that may be affected by the proposed rule soliciting information on how the proposed rule would financially affect the entity. Each entity's response indicating its financial affects shall be included in the financial analysis.

(2) If an authorized agency does not receive a response from one (1) or more entities regarding its request for the financial effects of the rule on the entity within ten (10) business days of the date of the request, the authorized agency may submit a financial analysis noting which entities were non-responsive to its request.

106.6. Public Comment Period on Proposed Rules

106.6-1. *Required Public Comment Period.* A proposed rule shall be preceded by a public comment period, which shall include a public meeting.

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(1) A rule promulgated under the emergency rules exemptions described in section 106.10 shall not be required to have a public comment period or public meeting.

(2) Nothing in this section prohibits or restricts the holding of any other type of community meeting which may be used to gather input on rules.

106.6-2. *Public Meetings.* A public meeting on a proposed rule shall be held in accordance with the following requirements.

(a) *Notice.* The authorized agency shall set a date for the public meeting and have a public meeting notice published in the Kalihwisaks and on the Oneida Register not less than ten (10) business days prior to the meeting. If the authorized agency provides a service to a defined base of customers or individuals the authorized agency may make reasonable efforts to provide additional notice of the public meeting to that base of customers or individuals that may be substantially affected by the proposed rule.

(b) *Requirements for Public Meeting Notice.* The public meeting notice shall include:

(1) the date, time, and location of the scheduled public meeting;

(2) information for electronically accessing the proposed rule and summary report and a statement that hard copies of the materials will be available with the authorized agency; and

(3) the name, address, phone number, and other appropriate information to submit written comments on the rule and the time period during which the authorized agency shall accept written comments.

(c) The authorized agency shall hold a public meeting at the date, time and place designated in the meeting notice.

(d) *Presiding Representative.* The authorized agency holding the public meeting shall have a representative to preside at the meeting who shall briefly describe the rule which is the subject of the public meeting and the nature of the rule's requirements, and then open the meeting for comments.

(1) The authorized agency's presiding representative is not required to comment or respond to comments at the meeting, but may at his or her discretion. (e) *Time Limitation.* The authorized agency's presiding representative may impose a time limit for all oral testimony. Any time limit imposed shall not be less than five (5) minutes and shall be applied to all persons equally.

(f) *Registration.* The authorized agency shall create and bring to the public meeting a sign-in sheet. Persons attending the public meeting shall register at the meeting by signing the sign-in sheet.

(g) The authorized agency shall audio record the public meeting and persons who provide oral comments shall state their name for the record.

(h) The authorized agency shall hold the record open for the submission of written comments for a minimum of five (5) business days following the public meeting.

106.6-3. *Extension of Public Comment Period.* The authorized agency may extend the public comment period as it deems appropriate by posting an amended public meeting notice. The amended public meeting notice shall follow the posting requirements found in section 106.6-2(b). The amended public meeting notice shall identify the extended public comment period ending date and may be posted at any time prior to the close of the original public comment period.

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106.6-4. *Consideration of Public Comments.* The authorized agency shall fully consider all comments received during the public comment period and during any public meeting held regarding a proposed rule.

106.6-5. *Public Comment Memorandum.* Once all public comments are received and the public comment period closes, the authorized agency shall draft a memorandum containing all public comments received and the authorized agency's response to each comment.

106.6-6. *Substantial Changes to Proposed Rule.* The authorized agency shall hold an additional public meeting for the proposed rule if substantial changes are made to the proposed rule after the public comment period ends and all public comments are considered.

106.7. Legislative Operating Committee Certification

106.7-1. *Submission of Rule Certification Materials.* After the public comment period has expired and the authorized agency has considered all public comments received, the authorized agency shall submit the proposed rule and all items contained in the administrative record described in section 106.11 to the Legislative Operating Committee.

106.7-2. *Requirements for Certification.* The Legislative Operating Committee is responsible for certifying the proposed rule meets the following requirements:

(a) that promulgation of the rule complies with the procedural requirements contained in this law;

(b) that the administrative record is complete; and

(c) that the rule does not exceed its rulemaking authority or conflict with any other law, policy, rule or resolution of the Nation.

106.7-3. *Rule Certification.* Upon receipt of a complete rule certification submission the Legislative Operating Committee shall take one (1) of the following actions:

(a) *Certify the Rule.* If the Legislative Operating Committee determines the authorized agency has complied with the requirements for certification stated in section 106.7-2, the Legislative Operating Committee shall certify the proposed rule.

(1) Upon certification of the rule the Legislative Operating Committee shall forward the administrative record to the Oneida Business Committee with a written certification that the requirements of this law have been fulfilled.

(b) *Deny Certification of the Rule.* If the Legislative Operating Committee determines that the authorized agency has not complied with the certification requirements stated in section 106.7-2 the Legislative Operating Committee shall not certify the proposed rule.

(1) Upon the denial of certification of the rule the Legislative Operating Committee shall return the proposed rule to the authorized agency with specific feedback as to which requirements were not fulfilled.

(2) The authorized agency may resubmit the proposed rule for certification by the Legislative Operating Committee once all requirements for certification have been met.

106.8. Oneida Business Committee Adoption

106.8-1. *Oneida Business Committee Consideration.* The Oneida Business Committee shall review and consider the proposed rule, the administrative record, and the Legislative Operating Committee's certification of compliance.

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106.8-2. *Oneida Business Committee Adoption.* After review of all materials submitted and consideration of the proposed rule, the Oneida Business Committee may take one of the following actions:

(a) *Adopt the Proposed Rule.* The Oneida Business Committee may adopt, by motion, the proposed rule. A majority vote is required for the adoption of a rule by the Oneida Business Committee.

(1) The Legislative Operating Committee shall be responsible for publishing the rule on the Oneida Register upon adoption by the Oneida Business Committee.

(b) *Deny Adoption of the Proposed Rule.* The Oneida Business Committee may deny adoption of the proposed rule if the Oneida Business Committee has any concerns and/or requested revisions to the rule. The Oneida Business Committee may request that the authorized agency work with the Oneida Business Committee to address any concerns.

106.9. Effective Date of Rules

106.9-1. The authorized agency shall determine a rule's effective date, provided that a rule may not become effective until the Oneida Business Committee adopts the proposed rule.

106.9-2. A failure to publish an approved rule on the Oneida Register by its effective date does not change the effective date of the rule.

106.10. Emergency Rules

106.10-1. *Emergency Promulgation of a Rule.* An authorized agency may present the Legislative Operating Committee with a proposed emergency rule if the following conditions are met:

(a) An emergency situation exists that requires the enactment or amendment of a rule for the immediate preservation of the public health, safety, or general welfare of the Reservation population; and

(b) The enactment or amendment is required sooner than would be possible under the normal rulemaking procedures.

106.10-2. *Submission of an Emergency Rule.* The authorized agency shall submit the following to the Legislative Operating Committee for emergency rule submission:

(a) the proposed emergency rule;

(b) justification for the emergency promulgation of the rule; and

(c) the summary report.

(1) For the financial analysis contained in the summary report, the deadline for entities' submission of financial impacts pursuant to section 106.5-2(f) may be reduced to a minimum of two (2) business days.

106.10-3. *Legislative Operating Committee Review.* Upon receipt of the emergency rule, the Legislative Operating Committee shall review the submission and take one (1) of the following actions:

(a) reject the proposed emergency rule on the basis that there is not a valid emergency; or

(b) accept that there is a valid basis for an emergency and forward the emergency rule to the Oneida Business Committee.

106.10-4. *Oneida Business Committee Adoption.* If the proposed emergency rule is forwarded to the Oneida Business Committee, the Oneida Business Committee shall review the proposed

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emergency rule, the summary report and the reasoning suggested for the emergency situation and take one (1) of the following actions:

(a) reject the proposed emergency rule on the basis that there is not a valid emergency; or

(b) accept that there is a valid basis for an emergency and adopt, by motion, the emergency rule, provided that, if the Oneida Business Committee deems it necessary, it may make revisions to the emergency rule.

(1) If the Oneida Business Committee makes revisions to the emergency rule that the authorized agency does not support, such concerns may be addressed when the authorized agency begins the process for enactment of the permanent rule.

106.10-5. An emergency rule becomes effective immediately upon its adoption by the Oneida Business Committee and remains in effect for a period of up to six (6) months.

106.10-6. *Emergency Rule Extension.* There is an opportunity for a one-time emergency extension of an emergency rule for up to six (6) months. Requests for the one-time emergency extension may be brought by the authorized agency directly to the Oneida Business Committee for consideration and shall become effective upon the Oneida Business Committee's approval and adoption by motion.

106.10-7. *Expiration of an Emergency Rule.* An emergency rule will expire when:

(a) six (6) months have passed since the emergency rule went into effect and an emergency rule extension has not been approved; or

(b) six (6) months have passed since the emergency rule extension went into effect; or

(c) a rule is permanently adopted in the emergency rule's place before the emergency rule expires under (a) or (b).

106.10-8. *Permanent Adoption of Emergency Rule.* If permanent adoption of the emergency rule is desired, the authorized agency shall follow the normal rulemaking procedures as provided under this law to adopt the permanent rule. The authorized agency may start the permanent adoption process immediately after the emergency rule is adopted.

106.10-9. The Legislative Operating Committee shall publish the emergency rule on the Oneida Register.

106.11. Administrative Record of Rules

106.11-1. *Creation of an Administrative Record.* The authorized agency shall create an administrative record of all proposed and adopted rules. The administrative record shall include the following:

(a) A memorandum provided by the authorized agency containing the rule's procedural timeline including the dates the requirements of this law were fulfilled;

(b) The summary report required under section 106.5-2;

(c) Draft of the proposed rule, and a draft of the rule considered for the required public meeting;

(d) The public meeting notice;

(e) If the rule is being amended, redline drafts from the currently effective rule illustrating the proposed amendments;

(f) Minutes from the authorized agency's meeting during which the proposed rule was considered as an agenda item, or, if the authorized agency is not a board, committee or

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commission, a memo from the authorized agency's highest level of management approving the proposed rule;

(g) A memorandum provided by the authorized agency containing the public comments that were received, both orally and written, and the authorized agency's response to each comment; and

(h) The effective dates of the original rule and any rule amendments subsequently made as established by the authorized agency; and

(i) Any other supporting information that may be requested by the Legislative Reference Office;

106.11-2. *Maintenance of the Administrative Record.* The authorized agency shall provide the Legislative Reference Office a complete administrative record for each proposed and adopted rule. The Legislative Reference Office shall maintain a complete administrative record for all proposed and adopted rules.

106.11-3. Prior to publishing approved rules on the Oneida Register the Legislative Operating Committee shall create and/or update the administrative history on each rule which shall include the original effective date of the rule and the effective date of any amendments made to the rule.

106.12. Review by the Authorized Agency

106.12-1. *Biennial Review.* The authorized agency shall conduct a review of each adopted rule promulgated by the authorized agency at least once every two years after the rule is adopted by the Oneida Business Committee.

106.12-2. *Consideration during Review.* During the review the authorized agency may consider, but is not limited to the consideration of, whether the rule continues to serve its intended purpose and if any amendments to the rule are necessary.

106.12-3. The authorized agency shall have the authority to decide if amendments to a rule are necessary to pursue. The Oneida Business Committee shall not compel an authorized agency to amend a rule.

106.13. Judicial Review of a Rule

106.13-1. The Oneida Nation Trial Court may render a declaratory judgment to determine the validity of a rule in the same manner that the Judiciary may do so for a law; as identified in the Nation's Judiciary law. No rule may be contested based on non-compliance with the procedural requirements of this law after one (1) year has elapsed from the effective date of the rule.

106.13-2. Upon the authorized agency's receipt of notice that an appeal has been filed regarding a rule of the said agency, the authorized agency that promulgated the rule shall request the administrative record of the rule created under section 106.11 from the Legislative Reference Office and shall submit the administrative record to the Oneida Nation Trial Court.

106.14. Standard of Review for Actions Taken by Authorized Agencies

106.14-1. Any entity of the Nation hearing an appeal or contest of an action taken pursuant to rules created under the authority delegated to an authorized agencies and the requirements of this law, upon consideration of the rule and the circumstances regarding the action taken may take any one (1) of the following actions:

(a) Uphold the action taken;

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(b) Reverse or modify the action taken; or

(c) If at the second level of appeal, remand the matter for further consideration.

106.14-2. When hearing an appeal or contest of an action, the hearing body shall recognize that the authorized agency is accepted by the Nation as the subject matter expert in the given field and shall provide the authorized agency with deference by upholding the action unless it finds that the action:

(a) Amounts to a violation of the Nation's Constitution;

(b) Was in excess of the authorized agency's rulemaking authority or is otherwise unlawful;

(c) Was clearly erroneous in view of the entire administrative and factual records;

(d) Was arbitrary or capricious; or

(e) Exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision and if said irregularity were not present, the decision would have been different.

End.

Adopted – BC-02-24-16-C

Amended – BC-



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING
Administrative Rulemaking Law Amendments**
Business Committee Conference Room-2nd Floor Norbert Hill Center
June 26, 2017 12:15 p.m.

Present: Brandon Stevens, Tehassi Hill, David P. Jordan, Fawn Billie, Candice Skenandore, Clorissa Santiago, Danelle Wilson, Tani Thurner, Maureen Perkins, Leyne Orosco, Ed Delgado.

Brandon Stevens: Okay, I'll call this public meeting to order. Today's date is June 26, 2017. And it is 12:25 p.m. and today's date is Thursday May 18, 2017. The public meeting here is for the following laws:

- Administrative Rulemaking law amendments
- Child Care Department Consumer Complaint law
- General Tribal Council Meetings law
- Comprehensive Policy Governing Boards, Committees, and Commissions amendments

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding these legislative proposals. The public meeting is not a question and answer period. All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Friday June, July 17, the 7th. July 7, 2017. Friday.

In attendance today we have councilman David Jordan, council woman Fawn Billie, and Tehassi Hill, councilman Tehassi Hill, sorry.

The LOC may impose a time limit for all speakers pursuant to section 16.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons, for all public meetings today.

Alright, Ed, did you want to sign in or provide any comment on any of these?

Ed Delgado: Yes

Brandon Stevens: Alright. First up is the Administrative Rulemaking law amendments. We will begin today's public meeting for Administrative Rulemaking law amendments. This is a proposal to amend the Administrative Rulemaking law which would:

- Clarify that a rule developed pursuant to this law shall not conflict or supersede a law,

policy, or rule of the Nation or a resolution passed by the Oneida Business Committee or Oneida General Tribal Council.

- Provide that if the authorized agency provides a service to a defined base of customers or individuals the authorized agency may make reasonable efforts to provide additional notice of the public meeting to that base of customers or individuals that may be substantially affected by the proposed rule.
- Require additional public meetings to occur if substantial changes are made to the proposed rule after a public meeting.
- Clarify what requirements the Legislative Operating Committee must ensure are met before certification of the proposed rule.
- Provide that after certification by the Legislative Operating Committee, the proposed rule must be adopted by the Oneida Business Committee before it may become effective.
- Require an authorized agency to conduct a review of each adopted rule every two (2) years after the rule is adopted.

So Ed, do you want to speak on behalf of the Administrative Rulemaking Law amendments? Okay.

Ed Delgado: Five minute?

Brandon Stevens: Alright go ahead, five minutes.

Ed Delgado: I will be submitting some written. Unfortunately this is the first one, and I would rather start out on a happy note. On the front of this I have written obstinate. The reason for that is I find this almost shocking. I mean, the most shocking part would be that the Business Committee appears and this uhh, I read this three times. And it still, I am a slow reader but I am a good reader. And this idea about exclusion, excluding or a similar word. That's scary. That the Business Committee could remove elected people. That's the way I read it towards the end. Exclusion. That's what it seems like it's all about, exclusion.

Brandon Stevens: This one is the Administrative Rulemaking law. This is the law that grants authority to the agencies.

Ed Delgado: Ohh okay.

Brandon Stevens: Alright. So I'll stop your time for a second and let you get ready.

Ed Delgado: First page, it says, where it says, on the front page, review. What's your, this is all about. Provides that if the authorized agency provides a service to a defined base of customers or individuals the authorized agency may make reasonable efforts to provide additional notice of the public meeting to the base of customers or individuals. This is good, but add that number, the number of non-department employees be added in the report. Rulemaking, you know, the agency is making the rules, you know, supposed public hearing. But you don't know the number of people from the public who are providing testimony there. I mean this is big time here for the

Business Committee and you have limited participation. You don't know how many people responding for some of these rulemaking actions by the departments. And you should. Maybe there is absolutely no participation. I fear that a lot of the times we are making rulemaking and policy based on the whiter outside world that has populations of millions, and when you get a very very small percentage of your people participating it's still in the hundreds maybe. Here we have nobody maybe. When you're adopting these rules maybe you should consider how many people participated. I won't mention which one, but I think that's, the report should include the number of people participating.

Okay it says in line 17 of the red draft, I forget what you call them, this one with all the colors in it.

Brandon Stevens: The redline.

Ed Delgado: The old, the new and the proposed. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect the provisions of this law which are considered to have legal force. I don't know, some of these are, may need to go to General Tribal Council. Those laws that may affect the General Tribal Council past law, they need to go to General Tribal Council to be considered law, they need to go back to General Tribal Council.

Notice. It appears that we've diminished the requirement of notice. It used to be that General Tribal Council would be noticed of a change, or when there is going to be a meeting, or just, never mind, I forgot. Exclude that. That's why I need to do this.

Brandon Stevens: Thirty seconds.

Ed Delgado: Huh?

Brandon Stevens: Thirty seconds.

Ed Delgado: Okay. Again, I've got under line 470, it should be included, if the rule is contrary to Oneida Nation law adopted by GTC, that GTC input needs to be, it needs to go to GTC if it violates or is contrary to a rule or an amendment type thing to a rule established by GTC.

Brandon Stevens: Okay, time. The question that you had was whether the list of people testifying in a public meeting, that is provided in the public notice, the packet that is sent to the LOC. We review that and the list, and the sign in sheet is actually in the packet. So that's one of the answers.

And then one of the amendments we did make in here was that if it is in contrary or in direct violation of an existing law or directive that the rule cannot move forward. And that's one of the checklist that we so as LOC specifically. So yeah, thank you for comments and we'll, it's a definitely new change having rulemaking authority within the Tribe.

If there is not anyone else that is wishing to provide oral testimony, I will close this public meeting for the Administrative Rulemaking Law amendments.

[Note: A public meeting for the Child Care Department Consumer Complaint law was held at 12:26 p.m. and closed at 12:28 p.m., a public meeting for the General Tribal Council Meetings law was opened at 12:28 p.m. and closed at 12:36 p.m., and a public meeting for the Comprehensive Policy Governing Boards, Committees, and Commissions amendments was held open at 12:36 p.m. and closed at 12:44 p.m. after the public meeting on the Administrative Rulemaking law amendments was specifically closed. The general opening and closing statements apply to all public meetings held June 26, 2017.]

Brandon Stevens: Written comments may be submitted until close of business on Friday, July 7, 2017. Just for those in attendance, I just want to make sure, there was confusion on the public notice it said, “Monday, June 29” and so today is the 26th. So since there was a miscommunication in the notice we are providing two public meetings for the same items. Today Monday, I guess today “Monday the 29th” and Thursday, the 29th. So we are providing the two days just so the confusion is met, so if you would like another shot at you know kicking the can on Thursday you are very welcome to come and provide.

Ed Delgado: When you’re retired you don’t even notice those details.

Brandon Stevens: Yeah, so just for the confusion we made sure we said both on a Monday and then Thursday, the 29th. And so I just wanted to make that clear for the record as well. So thank you for your attendance and your testimony today Ed. So we will close today, and thank you everyone.

-End of Meeting-



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING**

Administrative Rulemaking Law Amendments

Business Committee Conference Room-2nd Floor Norbert Hill Center
June 29, 2017 12:15 p.m.

Present: Brandon Stevens, Tehassi Hill, Jennifer Webster, Candice Skenandore, Clorissa Santiago, Tani Thurner, Maureen Perkins, Ed Delgado, Bonnie Pigman, Lisa Liggins, Lisa Summers, Steve Webster, Mike Denny, Daniel Guzman.

Brandon Stevens: Greetings. The time is 12:15 p.m. Today's date is June 29, 2017. I will now call this public meeting to order for the following laws:

- Administrative Rulemaking law amendments
- Child Care Department Consumer Complaint law
- General Tribal Council Meetings law
- Comprehensive Policy Governing Boards, Committees, and Commissions amendments

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding these legislative proposals. The public meeting is not a question and answer period. All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Friday July 7, 2017.

In attendance today we have council woman Jennifer Webster, and Tehassi Hill, councilman Tehassi Hill.

The LOC may impose a time limit for all speakers pursuant to section 16.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons, for all four public meetings.

We will begin today's public meeting for Administrative Rulemaking law amendments. This is a proposal to amend the Administrative Rulemaking law which would:

- Clarify that a rule developed pursuant to this law shall not conflict or supersede a law, policy, or rule of the Nation or a resolution passed by the Oneida Business Committee or Oneida General Tribal Council.
- Provide that if the authorized agency provides a service to a defined base of customers or individuals the authorized agency may make reasonable efforts to provide additional notice of the public meeting to that base of customers or individuals that may be

substantially affected by the proposed rule.

- Require additional public meetings to occur if substantial changes are made to the proposed rule after a public meeting.
- Clarify what requirements the Legislative Operating Committee must ensure are met before certification of the proposed rule.
- Provide that after certification by the Legislative Operating Committee, the proposed rule must be adopted by the Oneida Business Committee before it may become effective.
- Require an authorized agency to conduct a review of each adopted rule every two (2) years after the rule is adopted.

Alright, let's see, we have two signed in. Alright, no one on the sign-in sheet has designated that they wanted to provide oral testimony, but if there is at any time anyone would like to provide oral testimony at this time I will open up the floor.

Bonnie Pigman: I just want to confirm that this is for the Administrative Rulemaking law?

Brandon Stevens: Oh yeah you are, Bonnie is, yea.

Bonnie Pigman: Am I on the right one?

Brandon Stevens: Yes.

Bonnie Pigman: Umm as a General Tribal Council member I want to identify that I do not feel that the Oneida Business Committee should need to adopt rules since they adopt the laws. And the documents, the rules, as far as the rules go, um should only require certification from the LOC. I think that is too heavy of a level of going through things to get things approved. So I think if the Business Committee is not aware of the laws that they are adopting, I think people on the, the five members on the LOC should be working in coordination with the Business Committee in order to make sure they are aware that these rules exist. It shouldn't have to be coming before the LOC to get them certified and then to get them formally adopted by the Business Committee. So that is my opinion.

And then, on the review of the authorized agency underneath section 106.12, a biennial review. It doesn't go into detail, unless you're creating some kind of rules, but it doesn't say you're creating, after the rule is adopted. It doesn't say you're creating rules on who is going to be doing those reviews. Who is going to have responsibility to enforce that those reviews go on. There is nothing in the document that identifies that process. That's it. Thank you.

Brandon Stevens: Thank you. Okay, Lisa. Alright, I'm just trying to, this chart is a little confusing.

Lisa Liggins: I said no on the sign-in sheet but I changed my mind.

Brandon Stevens: Okay.

Lisa Liggins: So this is a comment as Lisa Liggins, a comment as a tribal member. On line 61 of draft two I am seeing that the authorized agency provides a service to a defined base of customers or individuals of the authorized agency may make reasonable efforts to provide additional notice. I just think that “may” should be “shall”. Umm I think that if there is a rule that affects people who rent or people who own homes, that they should be noticed. That there has to be that effort, not they could do the effort. So I think the word should be shall. Thank you.

Brandon Stevens: Thank you. Okay, I’ll open up the floor again is there is anyone else who would like to provide comment. That is not on the list. Okay, seeing none, I will close this meeting for the Administrative Rulemaking law amendments at 12:22 p.m.

[Note: A public meeting for the Child Care Department Consumer Complaint law was held at 12:22 p.m. and closed at 12:23 p.m., a public meeting for the General Tribal Council Meetings law was opened at 12:23 p.m. and closed at 12:51 p.m., and a public meeting for the Comprehensive Policy Governing Boards, Committees, and Commissions amendments was held open at 12:51 p.m. and closed at 1:04 p.m. after the public meeting on the Administrative Rulemaking law amendments was specifically closed. The general opening and closing statements apply to all public meetings held June 29, 2017.]

Brandon Stevens: I will close this meeting at 1:04 p.m. Just a reminder that written comments may be submitted until close of business on Friday, July 7, 2017. Thank you for attending the meetings today, and have a good day.

-End of Meeting-



Legislative Operating Committee July 19, 2017

Sanctions and Penalties Law

Submission Date: 10/15/14	Public Meeting: n/a
LOC Sponsor: Brandon Stevens	Emergency Enacted: n/a

Summary: *This item is a proposal for a consistent process that would provide for members of the Oneida Business Committee and other Boards, Committees and Commissions to face sanctions for misconduct. Currently, the only penalty that OBC members may be subject to, is removal from office – meaning that less serious misconduct would either go unpunished or would result in a penalty that might be considered too extreme for a particular violation.*

10/15/14 LOC: Motion by Tehassi Hill to add the OBC Sanctions Policy to the Active Files List; seconded by Jennifer Webster. Motion carried unanimously.

Note: Brandon Stevens will be the sponsor for this item.

11/5/14 LOC: Motion by Jennifer Webster to forward the BC Sanctions and Penalties to an LOC work meeting, with invitations to be sent to the rest of the Oneida Business Committee; seconded by Fawn Billie. Motion carried unanimously.

1/15/15: *Work meeting held.* Attendees include: Candice Skenandore, Danelle Wilson, Tani Thurner, Fawn Billie, Fawn Cottrell, Jennifer Webster, RC Metoxen, Brandon Stevens, Tehassi Hill, Jacob Metoxen, Melinda Danforth.

10/19/16: *Quarterly Sponsor Update Meeting.* Present: Brandon Stevens, Jennifer Falck, Clorissa Santiago, Maureen Perkins, and Tani Thurner. Tehassi wants to meet with LOC Chair to discuss how this item relates to the Code of Ethics. That meeting is scheduled for 11/10/16.

11/10/16: *Work Meeting held.* Present: Tehassi Hill, Tani Thurner, Clorissa Santiago, Brandon Stevens, Jennifer Falck. Group agreed that we need a work meeting to discuss; Sanctions & Penalties, Comprehensive Policy, Removal Law(s), and Code of Ethics.

11/29/16: *Work Meeting held.* Present: Fawn Billie, Brandon Stevens, Clorissa Santiago, Tehassi Hill, Tani Thurner, Jenny Webster, David Jordan, Jo Anne House, Candice Skenandore, Lisa Liggins, Jen Falck. Meeting was facilitated by Jessica Wallenfang. This was a facilitated meeting designed to discuss; Sanctions & Penalties, Removal, Code of Ethics, and Comprehensive Policy simultaneously. The group reviewed each law or draft for similarities, and discussed shared elements. The group asked that 1) the LRO complete that work, 2) then check with Jenny Webster as the sponsor of Comprehensive Policy, and 3) schedule another work meeting.

2/15/17 LOC: Motion by Jennifer Webster to upgrade the Domestic Animals Ordinance Amendments, the Children's Code, Code of Ethics Amendments, and the Sanctions and Penalties Law from medium priority to high priority; seconded by Tehassi Hill. Motion carried unanimously.

2/17/17: *Work meeting held.* Attendees include Fawn Billie, Jennifer Falck, Leyene Orosco, Brandon Stevens, Tani Thurner, Jennifer Webster, Tehassi Hill, Candice Skenandore, Cathy Bachhuber

5/2/17: *Work meeting held.* Attendees include Fawn Billie, Jennifer Falck, Brandon Stevens, Tani Thurner, Jennifer Webster, Tehassi Hill, David P. Jordan, Danelle Wilson, Jo Anne House

5/5/17: *Work meeting held.* Attendees include Jennifer Webster, Jennifer Falck, and Tani Thurner.

6/7/17 LOC: Motion by Fawn Billie to forward the Sanctions and Penalties Law to the Legislative Reference Office for a legislative analysis to be brought back for the July 5, 2017 LOC meeting; seconded by David P. Jordan. Motion carried unanimously.

7/7/17: *Work meeting held.* Present: Steve Webster, Tani Thurner, Jen Falck, Candice Skenandore

Next Steps:

- Accept the memorandum as FYI and defer the Sanctions and Penalties law to the LRO to further develop the analysis and bring back when ready.



TO: Legislative Operating Committee (LOC)
FROM: Jennifer Falck, Director, Legislative Reference Office
DATE: July 19, 2017
RE: Sanctions and Penalties Law Update

On June 7, 2017, the LOC made a motion to forward the Sanctions and Penalties Law to the Legislative Reference Office (LRO) for a legislative analysis to be brought back for the July 5, 2017 LOC meeting. The July 5, 2017 LOC meeting was canceled due to scheduling conflicts.

A work meeting between the LRO and Records Management was held on July 7, 2017 and the outcome of that meeting resulted in revisions to the proposed law. In addition, requests were sent out to the appropriate individuals asking for 1) information regarding the number of complaints received against elected and appointed officials and 2) feedback on the proposed law from affected entities. At the time this memorandum was written, responses to the requests have not been received. The LRO is asking for an extension to allow more time to further develop the legislative analysis.

Next Steps: Accept the memorandum as FYI and direct the LRO to bring back the legislative analysis when ready.



Legislative Operating Committee
July 19, 2017

Comprehensive Policy Governing Boards, Committees and Commissions Amendments

Submission Date: 9/17/14	Public Meeting: 1/7/16 and 6/26/17 and 6/29/17
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a Expires: n/a

Summary: *This item was carried over into the current term by the LOC. Amendments were originally requested to: prohibit individuals from serving on multiple boards, committees and commissions at one time; set term limits; and prohibit Tribal employees from serving on Tribal boards, committees and commissions. Additional changes have been proposed in various other sections.*

8/13/14 OBC: Motion by Melinda J. Danforth to accept the HRD manager's interpretation on BC members and political appointments leaving office which is dated Aug. 12 to the Business Committee as information and assign the LOC to work to create laws and policies around elected officials and political appointments, seconded by Brandon Stevens. Motion carried with one abstention (Tina Danforth).

9/10/14 OBC: Motion by Lisa Summers to direct the Tribal Secretary's Office to send formal correspondence to the Land Claims Commission requiring them to submit their reports by Friday and to request the LOC to bring back a recommendation on how to amend the Comprehensive Policy Governing Boards, Committees, and Commissions to include the withholding of stipends payments to Boards, Committees, and Commissions who do not provide their reports in a timely manner, seconded by Fawn Billie. Motion carried unanimously.

9/17/14 LOC: Motion by Jennifer Webster to add the Comprehensive Policy Governing Boards, Committees and Commissions Amendments to the Active Files List; seconded by Fawn Billie. Motion carried unanimously.

Note: Jennifer Webster will be the sponsor for this item.

4/22/15 OBC: Motion by Lisa Summers to direct the Comprehensive Policy Governing Boards, Committees, and Commissions appointment process be sent back to the Legislative Operating Committee for amendments and to bring back a recommendation on clarifying the process, seconded by Fawn Billie. Motion carried unanimously.

5/6/15 LOC: Motion by Jennifer Webster to defer the Comprehensive Policy Governing Boards, Committees and Commission to a Legislative Operating Committee work meeting; seconded by David P. Jordan, motion carried unanimously.

5/27/15 OBC: Motion by Jennifer Webster to accept the report from the Secretary's Office as information and to request the LOC to make the necessary policy amendments to the Comprehensive Policy Governing Boards, Committees and Commissions to address this issue, seconded by Lisa Summers. Motion carried unanimously. (*under B.I. Vacancy Posting*)

- 5/29/15 OBC:** Motion by Lisa Summers to send the issue of what to do with the entities that do not submit semi-annual reports to a Business Committee work meeting, seconded David Jordan. Motion carried unanimously.
- 6/8/15:** *Work Meeting held.* Attendees: Danelle Wilson, Melanie Burkhart, Brandon Stevens, Rae Skenandore, David Jordan, Jacob Metoxen, Tehassi Hill, Fawn Billie, Jenny Webster, Kathy Metoxen, Candice Skenandore, Tani Thurner, Fawn Cottrell, Lynn Franzmeier, Daril Peters, Jordan Rasmussen
- 8/19/15 LOC:** Motion by Jennifer Webster to defer the Comprehensive Policy Governing Boards, Committees and Commissions Amendments to the Legislative Reference Office for legislative analysis and to the Finance Department for a fiscal impact statement; seconded by David P. Jordan. Motion carried unanimously.
- 10/21/15 LOC:** Motion by Fawn Billie to defer the Comprehensive Policy Governing Boards, Committees and Commissions Amendments to the sponsor to address the concerns and considerations and to prepare for a December 3, 2015 public meeting; seconded by David P. Jordan. Motion carried unanimously.
- 11/4/15 LOC:** Motion by Jennifer Webster to forward the draft of Comprehensive Policy Governing Boards, Committees and Commissions Amendments with the noted changes to a public meeting held on December 3, 2015; seconded by Tehassi Hill. Motion carried unanimously.
- 12/16/15 LOC:** Motion by David P. Jordan to enter the Administrative Rulemaking Law and Comprehensive Policy Governing Boards, Committees and Commissions Amendments e-poll into the record; seconded by Jennifer Webster. Motion carried unanimously.
- 12/23/15 LOC:** *(under Review update regarding Complaint # 2015-CC-08)*
 Motion by Lisa Summers to accept as information and to defer this item to the Legislative Operating Committee for implementation. Motion failed for lack of support.
 Motion by Trish King to accept the updates as information and to request the recommendation of the tribal e-mails for the Boards, Committees, and Commissions be included in the amendments to the Comprehensive Policy Governing Boards, Committees, and Commissions to the Legislative Operating Committee, seconded by Lisa Summers. Motion carried unanimously.
- 1/7/16:** *Public Meeting held.*
- 2/3/16 LOC:** Motion by David P. Jordan to accept the Public Meeting comments and defer consideration of the comments to a work meeting to be held on Friday February 5, 2016 at 10:00 am; seconded by Tehassi Hill. Motion carried unanimously.
- 2/5/16:** *Work meeting held.*
- 2/10/16 OBC:** Motion by Jennifer Webster to appoint Bradley Graham to the Oneida Personnel Commission, seconded by Melinda J. Danforth. Motion carried with one opposed and three abstentions.
For the record: Councilman Brandon Stevens stated I abstained for family conflict of interest, but as well as just to further go on, we are amending the Comprehensive Policy to reflect how this process would change in the near future on what happens next in these instances which have come up and will come up if we don't address them.
- 3/2/16 LOC:** Motion by Jennifer Webster to accept the updated draft of the Comprehensive Policy Governing Boards, Committees and Commissions Amendments and to forward the draft to the Legislative Reference Office for an updated legislative analysis; seconded by Tehassi Hill. Motion carried unanimously.
For the record: The changes to the Comprehensive Policy Governing Boards, Committees and Commissions Amendments are technical rather than substantive and do not require a second public meeting.
- 4/13/16 OBC:** Motion by Lisa Summers to adopt resolution 4-13-16-A Revising the Standard Oath for Elected and Appointed Positions, seconded by Fawn Billie. Motion carried unanimously
 Motion by Lisa Summers to send the Comprehensive Policy Governing Boards, Committees and Commissions section 8-4(d) to the Legislative Operating Committee to bring back a

recommendation on how to clarify reporting requirements for Boards, Committees, and Commissions, seconded by Fawn Billie. Motion carried unanimously. (*Motion under C.1. Accept Land Commission FY '16 1st quarter report*)

9/20/16 *Work meeting held.* Jenny Webster, Tani Thurner, Pat Garvey, Jen Falck attended. LRO Director will work with Finance Office to identify stipend types and amounts for boards, committees, and commission. Then work group will review that and meet again to discuss the discrepancies between what this draft says and what other bylaws say about stipends.

11/14/16: *Work Meeting held.* Present: Brandon Stevens, Tani Thurner, David Jordan, Jenny Webster, Candice Skenandore, Pat Garvey, Cathy Bachhuber. Policy decisions were made and an updated draft and analysis are forthcoming.

11/29/16: *Work Meeting held.* Present: Fawn Billie, Brandon Stevens, Clorissa Santiago, Tehassi Hill, Tani Thurner, Jenny Webster, David Jordan, Jo Anne House, Candice Skenandore, Lisa Liggins, Jen Falck. Meeting was facilitated by Jessica Wallenfang. This was a facilitated meeting designed to discuss; Sanctions & Penalties, Removal, Code of Ethics, and Comprehensive Policy simultaneously. The group reviewed each law or draft for similarities, and discussed shared elements. The group asked that 1) the LRO complete that work, 2) then check with Jenny Webster as the sponsor of Comprehensive Policy, and 3) schedule another work meeting.

1/20/17: *Work Meeting Held.* Attendees: Brandon Stevens, Jennifer Webster, Jennifer Falck, Tani Thurner, Candice Skenandore. Next steps: schedule meeting with LOC to discuss accountability memo, Removal Law and Sanctions & Penalties.

2/17/17: *Work meeting held.* Attendees include Fawn Billie, Jennifer Falck, Leyne Orosco, Brandon Stevens, Tani Thurner, Jennifer Webster, Tehassi Hill, Candice Skenandore, Cathy Bachhuber

5/24/17 OBC: Motion by Lisa Summers to direct the Legislative Operating Committee to include in the Comprehensive Policy Governing Boards, Committees, and Commissions a requirement that all Boards, Committees, and Commissions be required to keep standard operating procedures on file with the Secretary's Office, seconded by Tehassi Hill. Motion carried unanimously.

6/7/17 LOC: Motion by Tehassi Hill to approve the public meeting packet with the changes discussed yesterday and forward the Comprehensive Policy Governing Boards, Committees and Commissions Amendments to a public meeting to be held on June 29, 2017; noting that the fiscal impact statement be submitted to the Legislative Reference Office by June 28, 2017; seconded by Fawn Billie. Motion carried unanimously.

6/26/17: *Public Meeting held.*

6/29/17: *Public Meeting held.*

Next Steps:

- Accept the Public Meeting Comments and defer to a work meeting.



TO: Legislative Operating Committee (LOC)
FROM: Taniquelle J. Thurner, Legislative Reference Office Staff Attorney
DATE: July 19, 2017
RE: Comprehensive Policy Governing Boards, Committees and Commissions
Amendments: Public Meeting Comment Review

On June 26, 2017, and June 29, 2017, public meetings were held regarding amendments to the Comprehensive Policy Governing Boards, Committees and Commissions. This memorandum is submitted as a review of the oral and written comments received within the public meeting and public comment period. The public meeting draft, public meeting transcript, and written comments received are attached to this memorandum for review.

On June 26, 2017, member Ed Delgado provided spoken comments at the public meeting. However, at the June 29, 2017 public meeting, Mr. Delgado withdrew those comments and asked that they be redacted. The attached transcript from that public meeting includes his comments, however per his request, those comments were not included in this public comment review memo.

Comment 1 – General Comment about process in the law

Lisa Summers (spoken comment at the 6/29 public meeting): The other thing is there looks to be like there is quite a bit of process in here, which is fine, I'm just wondering if they actually just need to be rules, instead of actually process, in the policy itself. So, I kind of went back and forth a little bit on that, but I think there is so much process in here – and it's good, because it provides additional guidance – but I also think that, it's almost to the point where it's not general enough. So I kind of think we almost maybe tipped back the other way a little bit.

Response

The law does contain various procedural requirements, and the amount of process contained in this law has been discussed in work meetings. From those discussions, the intent is for the level of process to remain in this law.

When the Administrative Rulemaking law was enacted, one of the purposes of the law was to allow for various process-related provisions to be removed from laws and set out in rules instead. Process-related provisions were subject to more frequent changes; and this would allow for changes to be made more frequently without needing to amend the law each time. The process that is set out in this law is not expected to change frequently in the future. There isn't as much need to remove those provisions from this law.

However, if the LOC wishes to reduce the amount of process set out in the law, the LOC may consider scheduling another work meeting to review the law and determine which provisions should be placed in rules and/or internal operating procedures.

LOC Consideration

Comment 2 – Definition for “Application”

Lisa Summers (spoken comment at the 6/29 public meeting): At this point, again... something very basic... applications in the definition. I would prefer that to be “the form that’s approved by the Oneida Business Committee” so an app means a form approved by the OBC which a person seeks to be appointed or filled.

Response

Currently, 105.3-1(a) defines “Application” as “the form by which a person seeks to be appointed to fill a vacancy or considered as a candidate for an election to serve on an entity.”

The commenter is requesting that the provision be revised to state: “the form that is approved by the Oneida Business Committee by which a person seeks to be appointed to fill a vacancy or considered as a candidate for an election to serve on an entity.”

Section 105.4-1 includes the requirement that the OBC must approve this application form. That section states:

“105.4-1. The Secretary shall generate, and the Oneida Business Committee shall approve, the application required to be used by all applicants.”

There is no recommended revision based on this comment.

LOC Consideration

Comment 3 – Conflict of Interest Definition

Lisa Summers (oral at 6/29 public meeting): I think the conflict of interest definition just needs to be again cross referenced with our current conflict of interest policies and provisions to make sure that those definitions are all consistent because sometimes that still occurs and it seems like that was the case here based on the first review.

Response

The definition for Conflict of Interest in the Comprehensive Policy is intentionally broader than the definition in the Conflict of Interest law. The Conflict of Interest law addresses one narrow type of conflict of interest – it sets specific limitations for persons who are representing the Nation, or working for, or on behalf of, the Nation, where those persons have access to information or materials that are confidential or that could be used by the Nation’s competitors. [See the Conflict of Interest law, 217.1-1]

However, there are other types of conflicts of interest that an elected or appointed official may face while in office – the definition for Conflict of Interest in the Comprehensive Policy is intended to not only address the conflicts of interest addressed by the Conflict of Interest law, but also any other type of conflict of interest that could arise while in office.

In the Comprehensive Policy draft, there are three subsections for the definition of conflict of interest. The first two mirror the language that is used in the Conflict of Interest law, except that the definition only applies to “members”, to reflect the terminology in the Comprehensive Policy; instead of applying to each “elected official, officer, political appointee, employee, contractor, or appointed or elected member.”

The third subsection, which is not found in the Conflict of Interest law, includes:

(c) any other situation that has the potential to corrupt an member’s motivation or decision making, because of an actual, or apparent divergence between the member’s self-interests, and the best interests of the entity or Nation. Conflicts of interest may include, but are not limited to, personal bias, financial interests of the member’s or the member’s immediate family; or responsibilities to other entities or areas of the Nation.”

This broader definition in the Comprehensive Policy is tailored to use the same basic definition found in the Conflict of Interest law, but also expanded to ensure that other types of conflict were addressed.

This broader definition also is necessary because it applies to the term “Conflict of interest” as it is used in the law. For example, in 105.8-4(a)(7), bylaws for each entity may identify “Any additional or particular requirements related to when a member should recuse himself or herself due to a conflict of interest” – and this is intended to not only mean any conflicts of interest related to the release of confidential or sensitive information that could harm the Nation, but also any conflicts of interest that fall under the third definition.

There is no recommended revision based on this comment.

LOC Consideration

Comment 4 – Qualifications of Individuals

Susan White (written): Line 125: Please remove the words "of any individual". This section is talking about the qualifications on the application, not about the individual filling it out.

Response

This comment is referencing section 105.4-1(a), which says:

“The application shall contain questions needed to obtain information necessary to make an informed decision as to the qualifications of any individual to fill a vacancy; including, at a minimum, questions to obtain the applicant’s [...]”

The application is not talking about the qualifications on the application, it is in fact talking about the individual filling it out. The intent of the application is to assist decisionmakers, in making informed decisions about whether each individual applicant is qualified to fill a vacancy.

There is no recommended revision based on this comment.

LOC Consideration

Comment 5 – Requiring Social Security Numbers

Lisa Summers (oral at 6/29 public meeting): In the application section [...] One of the things that's missing is a social security number requirement. I think that's something that we have to change in our process because there are some boards, committees, and commissions that do require us to do backgrounds. And in order to do that we need to have those social security numbers. There's always an issue and I think we would have to change our process and make sure that those applications now become private; that they're something that can't be disclosed... or we need to find an alternative way of collecting that information, but right now it's not officially needed and I think that's something that actually needs to change and it needs to be officially needed especially for those backgrounds. So that's one of the things I wanted to highlight.

Response

The commenter is requesting that applications require an applicant to provide their social security number. The relevant section could be revised as follows:

105.4-1(a) The application shall contain questions needed to obtain information necessary to make an informed decision as to the qualifications of any individual to fill a vacancy; including, at a minimum, questions to obtain the applicant's:

- (1) name;
- (2) address;
- (3) date of birth;
- (4) phone number;
- ~~(5)~~ (5) position applied for; and
- ~~(6)~~ (6) Social Security Number.

Whether to require applicants to provide their social security number is a policy call.

- If the LOC determines that it is appropriate to require all applicants to provide their social security number, then it may also be necessary to add a provision requiring the Secretary's Office or the OBC Support Office to establish standard operating procedures or rules to ensure the social security numbers are maintained confidentially and protected.
- A background check is not required as a condition of membership for all entities. It may be more efficient to only require a social security number for applicants for those entities where it is required. This could be done by revising 105.4-1(b) to add language as follows:

105.4-1(b). Along with the application, applicants may also be required to submit additional information demonstrating that the applicant meets any additional qualifications established in a specific entity's bylaws, including but not limited to:

- (1) proof of tribal enrollment or documentation from the Trust Enrollments Department verifying that the applicant is an Oneida descendant, and/or
- (2) a release enabling the Secretary to obtain relevant education

records, if the entity has established education requirements;
and/or

(3) proof of address, if a residency requirement is established in the entity's bylaws.

(4) the applicant's social security number, if an entity's bylaws require a background check.

- Also, there may be situations where an applicant does not have a social security number – i.e. if the applicant is Canadian. The LOC may want to consider adding language into this law to address what would happen in those situations.

LOC Consideration

Comment 6 – Correcting a terminology error

Susan White (written): Line 135: Please correct "Enrollments Department" to "Trust Enrollment Department".

Response

The commenter is requesting that 104.5-1(b)(1) be revised as follows:

“proof of tribal enrollment or documentation from the Trust Enrollments Department verifying that the applicant is an Oneida descendant [...]

It is recommended that this change be made.

LOC Consideration

Comment 7 – Application Deadline by Mail

Lisa Summers (oral at 6/29 public meeting): The other thing is the application process itself, in 105.4-2 it talks about there being a 4:30 p.m. deadline on the date of the ... on that business day. One of the things though that it does indicate in that same section – and I think this is just something that we haven't discussed – is that the Secretary is still allowed to accept applications five days after that deadline if it comes by mail. And I have a problem with that a little bit, because that means somebody can ...not make the deadline and put it in the mail by midnight that night and still submit it, and it still can be accepted. There's so many electronic ways now to submit applications – via fax, via online applications, things like that... I think it's a way around the deadline requirement. And I don't think that's fair to all the applicants who get their information in on time. So I think that's something that needs to be re-evaluated ... postmarking it by a specific deadline just isn't sufficient, I don't think, anymore, in this day and age. One of the other things too is that, if that doesn't change then I think there needs to be a very specific way to figure out ... I think the mail provision just needs to be taken out completely if we're not willing to adjust those... that information.

Response

This comment is referring to the following provision:

105.4-2. Applications shall be filed with the Secretary by 4:30 p.m. of the deadline date. The Secretary shall accept applications arriving by mail so long as the envelope is postmarked by the deadline date and received by the Secretary within five (5) business days of the deadline.

The commenter is stating that with the numerous ways applications can be submitted (including fax, online applications, etc;) that it may no longer be necessary to require the Secretary to accept mailed applications for five days after the deadline, as long as the mail is postmarked by the deadline date.

This is a policy call. If this is a change the LOC wishes to make, the provision could be revised as follows:

105.4-2. ~~Any application that is not~~ ~~Applications shall be filed with~~ ~~received by~~ the Secretary by 4:30 p.m. of the deadline date ~~shall not be considered.~~ ~~The Secretary shall accept applications arriving by mail so long as the envelope is postmarked by the deadline date and received by the Secretary within five (5) business days of the deadline.~~

LOC Consideration

Comment 8 – Posting Notice of Vacancies

Lisa Summers (oral at 6/29 public meeting): Another one that I wanted to touch on is about the notice for the terms. So we've been practicing – and it's been a process – that the notice is done... we do it a year in advance. So, we know all the terms that are coming up for the entire year and we have a schedule. The only real thing that we have consideration for at this point are when vacancies occur. So in that particular section about the vacancies, it's making sure that not only we are providing it 30 days ahead of time, I think there needs to be just a little bit more consideration of what that backwards schedule looks like because I think the timeline wasn't built in properly. So if we're providing notice and then we have to collect ... process the applications, give them to the Chair's office and have them back on the agenda, it looks like it's a 45 day timeline, the way that I read it in here, and it's actually going to be longer than that. So you know, as we live and breathe backwards schedules, I think that that's one of the things that we just need to think about a little bit more. But again, I'll submit those things in detail in writing.

Response

The proposed draft addresses vacancies in the following provision:

105.5-3. The Secretary shall request and receive permission from the Oneida Business Committee prior to posting notice of vacancies on any entity.

(a) *Vacancies due to term expiration.* On an annual basis, the Secretary may request permission from the Oneida Business Committee to post notice of vacancies for all positions that are expected to become vacant due to regular term expirations. Once the Oneida Business Committee has granted permission, the Secretary shall post notice for each individual term completion thirty (30) days in advance of each term completion.

(b) *Vacancies that occur for any other reason.* For any vacancy that occurs for any reason other than the end of a term, the Secretary shall request permission to post notice of the vacancy at the first available Oneida Business Committee meeting after the seat becomes vacant; and shall post

the notice within a reasonable time after receiving permission from the Oneida Business Committee.

This language requires the Secretary to request and receive permission from the OBC before posting notices of vacancy. There are two types of vacancies – end-of-term (scheduled) vacancies, and vacancies for all other reasons (unscheduled). For all scheduled vacancies, the Secretary may request permission from the OBC once a year, to post notice of all scheduled vacancies that are expected over the next year. Then, the Secretary must post notice for each scheduled vacancy 30 days before the date the term is scheduled to end.

The commenter has identified concerns about a backward timeline, indicating that the Secretary's office may need to post notice of the vacancy at least 45 days, or more, in advance of each term completion, in order to get the applications processed, submitted to the Chair's Office and then placed on an upcoming OBC meeting agenda, in order to ensure the vacancy is filled before the new term is scheduled to start.

The language in the proposed law is flexible. This provision is only stating that end-of-term vacancy notices must be posted at least 30 days before the end of the term, it is not prohibiting the Secretary's Office from posting notices of vacancy earlier than that. This law does not prohibit the Secretary from establishing a backwards schedule that results in notice being published more than 30 days in advance – the Secretary can develop any internal processes and procedures that s/he feels are appropriate; as long as the minimum requirements of this law are met.

Whether to revise the minimum advance notice that must be posted (i.e. requiring the notice to be posted 45 days before the term ends, instead of 30 days) — is a policy call for the LOC.

LOC Consideration

Comment 9 – Noticing entities when notice of vacancy must be re-posted.

Susan White (written): Lines 197 - 205: The Secretary should be noticing entities when administrative/clerical errors occur, so the entities know all the timelines that affect filling vacancies.

Response

The commenter is requesting that the Secretary be required to notify an entity when administrative/clerical errors occur that result in a notice of vacancy needing to be re-posted for a position on that entity.

The LOC could choose to revise 105.5-5 to say:

105.5-5. In the event that there is an administrative/clerical error in the Secretary's posted notice of vacancy; the Secretary may correct such error by reposting the notice of vacancy as soon as practicable after noticing such error. Under these limited circumstances, the Secretary may re-post notice without first obtaining permission from the Oneida Business Committee, provided that the Secretary shall provide notice of the reposting to the Oneida Business Committee at the

first available Oneida Business Committee meeting after learning of the error requiring the reposting. When ~~If a notice of vacancy is reposted;~~

(a) the notice timeline shall begin at the repost date.

(b) Prior applicants shall be considered to have filed applications within the deadline period.

(c) The Secretary shall promptly notify the entity that notice of the vacancy has been reposted, including any changed deadlines or timelines that apply. ~~If a notice of vacancy is reposted, the notice timeline shall begin at the repost date.~~

~~Under these limited circumstances, the Secretary may re-post notice without first obtaining permission from the Oneida Business Committee, provided that the Secretary shall provide notice of the reposting to the Oneida Business Committee at the first available Oneida Business Committee meeting after learning of the error requiring the reposting. In the event of reposting, prior applicants shall be considered to have filed applications within the deadline period.”~~

LOC Consideration

Comment 10 – Oath of Office for OBC members

Bonnie Pigman, (oral at 6/29 public meeting): Based on recent activity and discussion, I was here at the recent Business Committee meeting, there was a lot of discussion going on about different things that the Business Committee members themselves have responsibilities for and it reached out to the job descriptions that General Tribal Council approved, etcetera. I see in this document that there are oath of offices and the oath of offices that are listed - one is for appointed and one is for elected officials. They are very similar in nature. I think that the Business Committee oath of office should be revised to include very descriptive information regarding some of the things that were brought up in that discussion. Point in case would be in fact that you have things that are identified in specific job descriptions or as Business Committee collective that you have a responsibility – and I think a lot of the questions were “What do you feel is your responsibility to the General Tribal Council? So I think that some thought needs to go into looking at that oath of office to be more specific in regards to how you will carry out your duties, because a lot of weight is carried in that oath of office and that was one of the things that was said yesterday by one of the councilpersons – that they read off their oath of office that they took. So if there’s a lot of weight to that oath of office then I think there should be changes to it, to include and incorporate all of those things, because you’re using that as a means to follow your job and fulfill your responsibilities to the General Tribal Council.

Response

The commenter is suggesting that the oath of office taken by OBC members should be revised to include more descriptive information regarding the responsibilities of the OBC; and to be more specific in regards to how the OBC members will carry out their duties.

The oath of office that is taken by OBC members is the same oath of office that is used for all other elected officials, which is identified in 105.7-3:

“I, (name), do hereby promise to uphold the laws and regulations of the Oneida Nation, the General Tribal Council, and the Nation’s Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor,

respect, dignity, and sincerity and with the strictest confidentiality. I will carry out the duties and responsibilities as a member of the (entity name), and shall make all recommendations in the best interest of the Oneida Nation as a whole.”

If the LOC wishes to revise the oath of office for OBC members, then the LOC may want to consider scheduling a separate work meeting with the entire Oneida Business Committee in order to develop a more detailed oath of office just for OBC members.

This is a policy call for the LOC.

LOC Consideration

Comment 11 – Entities’ ability to amend bylaws to exclude members

Ed Delgado (oral at 6/29 public meeting): Again, please redact what I said on Monday. It’s this one that I was wrong about the exclusion part. But redact the whole thing anyway. I hope to provide some written testimony, but one thing that I am concerned about there, the whole thing, the main concern, is this rewriting of bylaws and then using those to exclude fellow members. I think before they rewrite those bylaws, it should come before the Business Committee; to state the reason why they want to do that. And then you take some responsibilities for those writings. Otherwise it could... some people, some people got some really wild ideas that they can sell upon their committees. Before the latest revision of the policy governing boards... poli..., commissions and whatever, it was very common to have appointed boards, committees, and commissions removing their members for a variety of reasons. You think you guys argue up here, they used to argue in those committees bigtime. And it’s just, I guess it’s part of human nature... when they get a little power under their hands. So... to make sure that those bylaws are reviewed... are initiated for a good reason, I think they should get permission from the BC, stating specific reasons why they want to change their bylaws. And...which would lead to some of their members being excluded and ineligible.

Response

The commenter is concerned that entities could revise their bylaws to cause existing members to become ineligible to serve on the entity. To prevent this, the commenter is requesting that entities not be allowed to revise their bylaws without good reason – and without first obtaining permission from the OBC - if the changes could cause existing members to become excluded and/or ineligible to serve on the entity.

The proposed law does have some protections built in to ensure that entities cannot change their bylaws simply to exclude a member:

- 105.8-4 (a)(4)(D)(ii) states: “If an entity amends its bylaws to establish more stringent requirements for qualifications, then any existing members who do not meet the more stringent qualifications shall be exempt from those requirements until their present term expires. Provided that, such members shall not be eligible for re-election or re-appointment to the entity unless they can meet the more stringent requirements.”
- 105.8-4 (e) identifies how entities may amend their bylaws, stating in relevant part: “Provided that, amendments shall conform to the requirements of this law and any other

law or applicable rule; and shall be approved by the Oneida Business Committee prior to implementation.”

This means that:

- An entity cannot immediately oust an existing member simply by changing their bylaws to include more strict qualifications for membership – at a minimum, 105.8-4(a)(4)(D)(ii) protects all members by specifically permitting them to be exempt from the more strict qualifications for the remainder of their term.
- Bylaws cannot be amended without OBC approval.

Taken together, these two provisions provide protection for existing members.

Under the current legislative process, entities who wish to amend their bylaws submit their requested changes through the LOC. Then, the Legislative Reference Office works with the entity to craft the desired changes, and prepares a legislative analysis which identifies all of the changes that are being made to the entity’s bylaws. The legislative analysis (and usually a redline showing the changes) accompanies the bylaws when they are presented to the OBC for consideration. The analysis ensures that the OBC is clearly aware of what changes they are approving, and reduces the risk of an entity making changes to its qualification requirements just to prevent an existing member from continuing to serve on an entity.

Whether to require entities to obtain permission from the OBC prior to amending their bylaws is a policy call for the LOC.

LOC Consideration

Comment 12 – Minimum education requirements for hearing bodies

Lisa Summers (spoken comment at 6/29 public meeting): The other thing is I think there needs to be a very clear requirement for hearing bodies from an educational perspective. That’s one of the things that it touches on a little bit in here, however it’s not 100% required that an associates or a bachelor’s degree be required for hearing bodies. I think that’s something that needs to be taken into consideration, just make it mandatory.

Response

The commenter is requesting that additional qualifications be added in whereby any person who wishes to serve on an entity that is a hearing body must have, at a minimum, an associates or a bachelor’s degree.

First, it should be noted that the OBC and LOC have begun the process of transferring hearing body authority away from most of the Nation’s lower hearing bodies, to the Judiciary. There are only a few entities who are expected to continue to operate as hearing bodies: the Oneida Gaming Commission, Oneida Police Commission, Pardon and Forgiveness Screening Committee, and the Oneida Nation School Board.

Second, each individual entity still has the power to revise their bylaws to include more stringent qualifications for their members (subject to OBC approval, as discussed in the previous comment.)

Also, imposing more stringent qualifications for specific entities may result in an inability to fully seat the entity, as there would be fewer qualified candidates.

Whether to impose more stringent education requirements for entities that are hearing bodies is a policy call for the LOC. If the LOC wishes to add this requirement, 105.8-4(a)(4)(D) could be revised as follows:

(4) Membership.

- (A) Number of members;
- (B) Whether the entity is an elected or appointed body and how members are elected or appointed;
- (C) How vacancies are filled
- (D) The requisite qualifications for membership. At a minimum, members shall be an enrolled member of the Oneida Nation or another federally-recognized Indian tribe; or an Oneida descendant; and all members of entities that are hearing bodies shall have an associate's (or bachelor's) degree.
 - (i) Entities may, in their bylaws, establish more stringent requirements for qualifications; including but not limited to:
 - (a) Blood quantum or generational requirements for descendants (i.e. first-generation, second-generation, etc.);
 - (b) Any minimum education requirements; which may include, but are not limited to; a high school diploma or equivalent; an associate's degree or equivalent, or a bachelor's degree; and/or
 - (c) Any other requirements that may enable the entity to best perform the responsibilities delegated to the entity by Oneida law

LOC Consideration

Comment 13 –

Lisa Summers (oral at 6/29 public meeting): The other thing is ... the bylaws, I think there needs to be a section added that requires the minutes to be included. That's one of the things that has to happen as part of the stipend requirement anyway, that the minutes are turned in. With the stipend payment requests. And the minutes are not included in the bylaws section. So I think that's one of the requirements that needs to be added in there as well.

Response

The commenter is stating that "the minutes are not included in the bylaws section."

Minutes are addressed in requirements for bylaws. 105.8-4(d)(2) states:

"Minutes and Attachments. Minutes shall be typed in a consistent format designed to generate the most informative record of the meetings of the entity. Handouts, reports, memoranda, and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified based on the meeting in which they were presented. Meeting

materials and records shall be maintained in accordance with the Open Records and Open Meetings law.”

The commenter referred to 105.15-5, which states that “If an entity fails to comply with the requirements of this law, the Oneida Business Committee may suspend payment of stipends to members of the entity, until the entity has attained compliance with this law.”

The commenter is requesting that 105.8-4(d)(2) be revised to reiterate that entities must submit their minutes as directed or else have their stipend payments withheld.

Whether or not to add language to 105.8-4(d)(2) to reiterate that stipends can be withheld if an entity does not submit minutes as directed, is a policy call.

LOC Consideration

Comment 14 – Trust Enrollment Committee responsibilities

Susan White (written): Lines 436 - 486: This law cannot direct Oneida Trust Enrollment Committee (OTEC) to provide reports to an Oneida Business Committee (OBC) liaison. General Tribal Council (GTC) gave direction to OTEC to provide reports at the annual and semi-annual GTC meetings. Any other reporting requirements are agreed upon annually through a Memorandum of Agreement between the OTEC and OBC, unless stated otherwise.

Response

Section 105.8-4(d)(3) states:

“Reporting. Entities shall report to the Oneida Business Committee member who is their designated liaison intermittently as the entity and the liaison agree to, but not less than as required in any law, rule, or other reporting requirement developed by the Oneida Business Committee or Oneida General Tribal Council. Entities shall also make quarterly reports to the Oneida Business Committee; and annual and semi-annual reports to the Oneida General Tribal Council. All reports shall be approved by official entity action before they are submitted.”

The commenter is stating that the law cannot direct the Trust Enrollment Committee (OTEC) to provide reports to their OBC liaison, and appears to be stating that OTEC is only subject to any reporting requirements identified in the Memorandum of Agreement between the OTEC and the OBC. The current Memorandum of Agreement between the two entities does mention the annual and semi-annual reports to GTC, but does not require quarterly reports to the OBC.

Chief Counsel of the Oneida Law Office was consulted about this potential conflict, and explained that, notwithstanding any Memorandum of Agreement, OTEC is still subject to the laws of the Nation. If this law requires all entities to provide quarterly reports to the OBC, then OTEC would be subject to that requirement as well.

If the LOC wishes to specifically exclude OTEC from the requirements of reporting to their OBC liaison, and making quarterly reports to the OBC, then language could be added to the law specifically identifying which requirements OTEC is exempt from. Alternately, the entities could

work together to modify the Memorandum of Agreement to ensure the reporting requirements therein reflect the reporting requirements in this law.

Regardless, it appears OTEC would be subject to the requirements of this law, including all reporting requirements. If more information is needed, the LOC may want to consider requesting a legal opinion from the Law Office regarding this matter.

No change is recommended based on this comment.

LOC Consideration

Comment 15 – Minimum one hour meeting requirement for elected member stipend eligibility

Susan White (written): Line 647: Please retain the one (1) hour meeting time requirement. This is to discourage frivolous meetings for stipends.

Response

The commenter is referring to the following provision. Under the Comprehensive Policy currently in effect, meetings are required to last at least one hour, however that requirement was removed so that the proposed law only states:

105.12-2(a)(6)(B) Elected Entities. Members may be paid a stipend for each meeting which has established a quorum in accordance with the duly adopted bylaws of that entity. In order to qualify for the stipend, the member shall be present for the entire meeting.

This issue has been discussed at several LOC work meetings. At the most recent work meeting, the LOC decided that the one-hour minimum meeting time requirement would be removed, because it could force an entity to conduct a longer meeting that would otherwise be necessary, just to ensure a stipend would be paid.

Whether to re-add a minimum one-hour requirement for meetings for elected entities is a policy call for the LOC.

LOC Consideration

Comment 16 – Sanctions and Penalties

Susan White (written): Line 701: Please add “or in accordance with entity By-laws” to the end of this line. This is because the Sanctions and Penalties for Elected and Appointed Officials draft may not get passed and the language in this section is moot. If the Sanctions and Penalties for Elected and Appointed Officials draft doesn’t get passed, the Removal law would still apply. However, the Removal Law is no longer being amended because LOC is anticipating the proposed Sanctions and Penalties for Elected and Appointed Officials law will get adopted.

Response:

The commenter wants the following provision to be revised, to add “or in accordance with entity by-laws” at the end:

105.15-1. Members who violate the laws and policies of the Nation may be subject to sanctions or other penalties, including termination of appointment and removal from office, pursuant to applicable law.

It is true that a specific Sanctions and Penalties law for elected and appointed officials has not been adopted yet. However, other laws (such as the Removal law and this law) still apply. This provision is stating that sanctions and penalties may be imposed in accordance with any law that is in effect and that applies. The language in this section will not become moot if the Sanctions and Penalties law is not adopted.

The commenter is requesting that “or in accordance with entity bylaws” be added, which would allow entities to establish sanctions and penalties, or processes for sanctioning and penalizing members, into their bylaws.

Allowing entities to establish separate sanctions and penalties, or related processes, in their bylaws, is a policy call for the LOC. At recent work meetings, the LOC considered this option and decided against it.

There is no recommended revision based on this comment.

LOC Consideration

PM Draft (Draft 20)
2017 06 29

Title 1. Government and Finances - Chapter 105
Governance of Boards, Committees and Commissions
Yolihwakwe-k& Kayanl'hsla> yethiya>tan&nha tsi> ka-y^ lonatlihu-t&=

all of the matters – laws and policies – they're watching over them – the ones that have been appointed

105.1. Purpose and Policy	105.10. Minutes
105.2. Adoption, Amendment, Repeal	105.11. Dissolution of Entities
105.3. Definitions	105.12. Stipends, Reimbursement and Compensation for Service
105.4. Applications	105.13. Use of the Nation's Assets.
105.5. Vacancies	105.14. Conflicts of Interest and Other Ethical Requirements,
105.6. Appointed Entities	Adherence to Oneida Laws
105.7. Elected Entities	105.15. Enforcement and Penalties
105.8. Bylaws	
105.9. Official Oneida E-mail Address Required for all Entity Members	

105.1. Purpose and Policy

105.1-1. It is the purpose of this law to govern the standard procedures regarding the appointment and election of persons to boards, committees and commissions of the Oneida Nation; the creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. This law does not apply to the Nation's corporations due to the corporate structure and autonomy of those entities.

105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

105.2. Adoption, Amendment, Repeal

105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-8-2-95-A and amended by resolutions BC-5-14-97-F, BC-09-27-06-E, BC-09-22-10-C and BC-

105.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

105.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

105.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, the requirements of the Oneida Nation Gaming Ordinance supersede the provisions of this law in regards to the Oneida Gaming Commission.

105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

105.3. Definitions

105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Application” means the form by which a person seeks to be appointed to fill a vacancy or considered as a candidate for an election to serve on an entity.
- (b) “Appointment” means a person who is selected and approved by the Oneida Business Committee to serve on an entity.
- (c) “Business day” means Monday through Friday from 8:00 a.m. - 4:30 p.m., excluding holidays recognized by the Nation.
- (d) “Chairperson” means the current elected chairperson of the Nation or his or her designee.
- (e) “Conference” means any seminar, meeting, or other assembly of persons which is not an assembly of the entity.
- (f) “Confidential information” means all information or data, whether printed, written, electronic or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by members in confidence at any time during their elected or appointed term or during their employment; and includes, but is not limited to, the resources of the Nation, its enterprises, programs, business interests, financial information, trade secrets and any other information that could be used against the Nation or those duly authorized to represent its interests.
- (g) “Conflict of interest” means:
- (1) any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which a member, or their immediate family, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Oneida Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Oneida Nation,
 - (2) any financial or familial interest that a member or their immediate family may have in any transaction between the Oneida Nation and an outside party, and
 - (3) any other situation that has the potential to corrupt an member’s motivation or decision making, because of an actual, or apparent divergence between the member’s self-interests, and the best interests of the entity or Nation. Conflicts of interest may include, but are not limited to, personal bias, financial interests of the member’s or the member’s immediate family; or responsibilities to other entities or areas of the Nation.
- (h) “Descendant” means a person who is registered with the Oneida Enrollment Department as a lineal descendant of enrolled members of the Nation.
- (i) “Entity” means a board, committee or commission of the Nation created by the General Tribal Council or the Oneida Business Committee with members appointed by the Oneida Business Committee or elected by the Nation’s membership.
- (j) “Immediate family” means the husband, wife, mother, father, step mother, step father, son, daughter, step son, step daughter, brother, sister, step brother, step sister grandparent, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law.
- (k) “Interim position” means a position on an entity that is created by a vacancy and that may be filled only for the remainder of a term.
- (l) “Member” means any person appointed or elected to serve as a member of an entity.
- (m) “Nation” means the Oneida Nation.
- (n) “Official media outlets” means all media outlets identified in BC Resolution 03-22-17-B which include the Nation’s website and the Kalihwisaks.
- (o) “Rule” means a set of requirements enacted in accordance with the Administrative

Rulemaking law in order to implement, interpret and/or enforce a law of the Nation.

(p) "Secretary" means the current elected secretary of the Nation or his or her designee.

(q) "Stipend" means that amount paid by the Nation to members as compensation for services provided. Stipends are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards.

(r) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.

(s) "Task force or ad hoc committee" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one (1) year, but the goal itself may be long-term.

(t) "Transaction" means any activity wherein a provider of goods and/or services is compensated in any form.

(u) "Vacancy" means any position on an entity that is available and not filled by a member.

105.4. Applications

105.4-1. The Secretary shall generate, and the Oneida Business Committee shall approve, the application required to be used by all applicants.

(a) The application shall contain questions needed to obtain information necessary to make an informed decision as to the qualifications of any individual to fill a vacancy; including, at a minimum, questions to obtain the applicant's:

(1) name;

(2) address;

(3) date of birth;

(4) phone number;

(5) position applied for.

(b) Along with the application, applicants may also be required to submit additional information demonstrating that the applicant meets any additional qualifications established in a specific entity's bylaws, including but not limited to:

(1) proof of tribal enrollment or documentation from the Enrollments Department verifying that the applicant is an Oneida descendant, and/or

(2) a release enabling the Secretary to obtain relevant education records, if the entity has established education requirements; and/or

(3) proof of address, if a residency requirement is established in the entity's bylaws.

105.4-2. Applications shall be filed with the Secretary by 4:30 p.m. of the deadline date. The Secretary shall accept applications arriving by mail so long as the envelope is postmarked by the deadline date and received by the Secretary within five (5) business days of the deadline.

105.4-3. The Election Board shall verify all applications for elected positions in accordance with the Oneida Election Law to ensure the eligibility and qualification requirements are met as identified in this law and the entity's bylaws. The Secretary shall verify all applications for appointed positions to ensure the eligibility and qualification requirements are met as identified in this law and the entity's bylaws.

105.4-4. Within fifteen (15) business days from the date of the application deadline, the Election Board shall provide notice to all applicants for an elected position and the Secretary shall provide notice to all applicants for an appointed position. The Election Board and Secretary may go

outside this time limit for good cause. Notice shall be formatted the same for all applicants and, at a minimum, shall include the following:

- (1) the date the applicant's application was filed;
- (2) whether the applicant meets the eligibility requirements and will be considered for the election/appointment;
- (3) a note that further information may be requested by contacting the party sending the notice and providing such contact information;
- (4) the applicable duties for the position sought by the applicant; and
- (5) if the applicant is eligible for election/appointment, the notice shall include the following provision:

"The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive the applicable tax form(s), which is also forwarded to the Internal Revenue Service; it is also your responsibility to keep documentation of expenses related to this income."

105.4-5. In the event that there are insufficient applicants after the deadline date has passed for appointed positions, the Secretary shall request permission from the Oneida Business Committee to repost the vacancy for an additional timeframe equal to the initial posting, provided that in considering the Secretary's request, the Oneida Business Committee has no discretion to waive any applicable deadlines or eligibility/qualification requirements. In the event of a reposting, the Secretary shall consider prior applicants to have filed applications within the deadline period.

105.5. Vacancies

105.5-1. This section governs when vacancies occur, and where and when to post notice of vacancies. Notwithstanding the initial determination of membership to an entity, the member's status as appointed or elected is based entirely on the entity's classification as an appointed or elected entity pursuant to the entity's bylaws.

105.5-2. Entities shall notify the Secretary as soon as the entity learns that any position has or will become vacant, so that the Secretary may post notice of vacancy to fill the vacancy.

105.5-3. The Secretary shall request and receive permission from the Oneida Business Committee prior to posting notice of vacancies on any entity.

(a) *Vacancies due to term expiration.* On an annual basis, the Secretary may request permission from the Oneida Business Committee to post notice of vacancies for all positions that are expected to become vacant due to regular term expirations. Once the Oneida Business Committee has granted permission, the Secretary shall post notice for each individual term completion thirty (30) days in advance of each term completion.

(b) *Vacancies that occur for any other reason.* For any vacancy that occurs for any reason other than the end of a term, the Secretary shall request permission to post notice of the vacancy at the first available Oneida Business Committee meeting after the seat becomes vacant; and shall post the notice within a reasonable time after receiving permission from the Oneida Business Committee.

105.5-4. After receiving permission from the Oneida Business Committee, the Secretary shall post notice of vacancies on the Nation's official media outlets and any reasonable location requested by the entity.

105.5-5. In the event that there is an administrative/clerical error in the Secretary's posted notice of vacancy; the Secretary may correct such error by reposting the notice of vacancy as soon as practicable after noticing such error. If a notice of vacancy is reposted, the notice timeline shall

begin at the repost date. Under these limited circumstances, the Secretary may re-post notice without first obtaining permission from the Oneida Business Committee, provided that the Secretary shall provide notice of the reposting to the Oneida Business Committee at the first available Oneida Business Committee meeting after learning of the error requiring the reposting. In the event of reposting, prior applicants shall be considered to have filed applications within the deadline period.

105.6. Appointed Entities

105.6-1. The Oneida Business Committee shall make all appointments at regular or special Oneida Business Committee meetings; provided that, no applicant may be appointed who fails to meet the requirements set out in the entity's bylaws.

105.6-2. The Oneida Business Committee shall use the following procedures to determine which applicant is appointed:

(a) Within five (5) business days after notice has been provided to applicants pursuant to section 105.4-4, the Secretary shall deliver to the Chairperson all applications from eligible candidates, along with a summary of each candidate's qualifications to hold office.

(b) When selecting an applicant(s) for appointment, the Chairperson may consider the entity's recommendations, if such recommendations are provided. Within thirty (30) days after receiving the applications from the Secretary, the Chairperson shall select an applicant(s) for appointment. Provided that, the Chairperson may designate another member of the Oneida Business Committee to select a candidate for appointment in situations where the Chairperson has determined there may be a conflict of interest.

(c) Once the Chairperson has made a selection, he or she shall forward the list of qualified applicants along with his or her selected applicant(s) to all Oneida Business Committee members. Based on the information provided, the Oneida Business Committee shall, by a majority vote of a quorum at any Oneida Business Committee meeting, either accept or reject the Chairperson's selected applicant(s).

(d) If the Chairperson's applicant(s) is rejected by the Oneida Business Committee, the Oneida Business Committee shall:

(1) Direct the Chairperson to make another recommendation. If the Chairperson is unable to immediately select another applicant, then the Chairperson may request to defer the decision to the next OBC meeting.

(2) If the Chairperson is unable to, or declines to, select another applicant; or if the Oneida Business Committee does not approve the second applicant by majority vote, then the Oneida Business Committee shall select and approve another applicant from the list of qualified applicants. This action may be taken immediately, or the Oneida Business Committee may defer the selection to the following Oneida Business Committee meeting.

(3) If the Oneida Business Committee is unable to select and approve another applicant from the list of qualified applicants, the Oneida Business Committee shall direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.

105.6-3. The Chairperson shall forward a list of all applicants to the Secretary and the final decision regarding the selection after the procedures in section 105.6-2 are completed. The Secretary shall then notify all applicants of the final status of their application. Notice to those selected for appointment shall identify when the appointee is required to appear for taking the

oath, and shall include the following:

“The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive the applicable tax form(s), which is also forwarded to the Internal Revenue Service; it is also your responsibility to keep documentation of expenses related to this income.”

105.6-4. All appointments are official upon taking an oath at a regular or special Oneida Business Committee meeting and all rights and delegated authorities of membership in the entity vest upon taking the oath.

(a) The Secretary shall maintain originals of the signed oath.

(b) The Secretary shall forward copies of the oath to the new member and the entity.

(c) The Oneida Business Committee shall approve the wording of oaths and the Secretary shall keep such oaths on file. The following oath is the standard oath to be used unless a specific oath for the entity is pre-approved by the Oneida Business Committee:

“I, (name), do hereby promise to uphold the laws and regulations of the Oneida Nation, the General Tribal Council, and the Nation’s Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and with the strictest confidentiality. I will carry out the duties and responsibilities as a member of the (entity name), and shall make all recommendations in the best interest of the Oneida Nation as a whole.”

(d) All oaths shall be sufficient to make the appointee aware of his or her duty to the Nation as a member of the entity.

105.6-5. *Termination of Appointment.* Appointed entities serve at the discretion of the Oneida Business Committee. Upon the recommendation of an Oneida Business Committee member, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee by a two-thirds (2/3) vote of the entire Oneida Business Committee.

(a) An appointed entity may bring a request for termination of a member to the Oneida Business Committee. When requesting termination of a member’s appointment, the entity shall provide documentation or other justification for the request, and shall identify the reason(s) the entity is seeking termination of the member’s appointment.

(b) The Oneida Business Committee’s decision to terminate an appointment is final and not subject to appeal.

105.7. Elected Entities

105.7-1. Except where an entity’s bylaws allow vacancies to be filled by appointment, in order to serve on an elected entity, a person shall either be nominated at a caucus called by the Oneida Election Board, or petition for ballot placement in accordance with the Oneida Election Law.

105.7-2. The Oneida Election Law governs all other processes. In addition to these processes, the Oneida Election Board shall notify all applicants of the final results of the election within five (5) business days from the date the Oneida Business Committee declares the official results of the election. Notice to those elected shall identify when the elected person is required to appear for taking the oath, and shall include the following:

“The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive the applicable tax form(s), which is also forwarded to the Internal Revenue Service; it is also your responsibility to keep documentation of expenses related to this income.”

105.7-3. All elected positions are official upon taking an oath at a regular or special Oneida Business Committee meeting and all rights and delegated authorities of membership in the entity vest upon taking the oath.

(a) The Secretary shall maintain originals of the signed oath.

(b) The Secretary shall forward copies of the oath to the new member and the entity.

(c) The Oneida Business Committee shall approve the wording of oaths and the Secretary shall keep such oaths on file. The following oath is the standard oath to be used unless a specific oath for the entity is pre-approved by the Oneida Business Committee:

“I, (name), do hereby promise to uphold the laws and regulations of the Oneida Nation, the General Tribal Council, and the Nation’s Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and with the strictest confidentiality. I will carry out the duties and responsibilities as a member of the (entity name), and shall make all recommendations in the best interest of the Oneida Nation as a whole.”

(d) All oaths shall be sufficient to make the elected person aware of his or her duty to the Nation as a member of the entity.

105.8. Bylaws

105.8-1. Bylaws for each entity shall conform to this outline and contain this minimum information, although more information is not prohibited.

105.8-2. Specifically excepted from this section are task forces, ad hoc committees and subcommittees. However, these entities shall, at a minimum, have mission or goal statements for completion of the task.

105.8-3. Each entity’s bylaws shall contain the following articles:

(a) Article I. Authority

(b) Article II. Officers

(c) Article III. Meetings

(d) Article IV. Reporting

(e) Article V. Amendments

105.8-4. *Sub-articles.* Articles shall be divided into sub-articles as identified herein:

(a) “Article I. Authority” shall consist of the following:

(1) *Name.* The full name of the entity and any short name that will be officially used.

(2) *Authority.* The name of the creation document and the citation for such creation document, if any.

(3) *Office.* The official office or post box of the entity.

(4) *Membership.*

(A) Number of members;

(B) Whether the entity is an elected or appointed body and how members are elected or appointed;

(C) How vacancies are filled

(D) The requisite qualifications for membership. At a minimum,

members shall be an enrolled member of the Oneida Nation or another federally-recognized Indian tribe; or an Oneida descendant.

(i) Entities may, in their bylaws, establish more stringent requirements for qualifications; including but not limited to:

(a) Blood quantum or generational requirements for descendants (i.e. first-generation, second-generation, etc.);

(b) Any minimum education requirements; which may include, but are not limited to; a high school diploma or equivalent; an associate's degree or equivalent, or a bachelor's degree; and/or

(c) Any other requirements that may enable the entity to best perform the responsibilities delegated to the entity by Oneida law.

(ii) If an entity amends its bylaws to establish more stringent requirements for qualifications, then any existing members who do not meet the more stringent qualifications shall be exempt from those requirements until their present term expires. Provided that, such members shall not be eligible for re-election or re-appointment to the entity unless they can meet the more stringent requirements.

(E) Causes for termination or removal, if any, in addition to those identified herein and in the Removal law.

(F) That members may resign from an entity by doing either of the following, and that such resignation shall be effective upon either of the following occurring:

(i) Deliverance of a resignation letter to the entity; or

(ii) The entity's acceptance by motion of a verbal resignation.

(5) *Stipends*. A comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if any in addition to those contained in this law.

(a) Stipends may only be provided for emergency meetings if the bylaws expressly authorize members to receive stipends for emergency meetings.

(6) *Trainings and Conferences*. A comprehensive list of all trainings and conferences that the entity deems necessary for members to responsibly serve the entity. In accordance with section 105.12-6, members shall only be eligible for stipends, per diem, and/or reimbursement of expenses for attending a training or conference if the training or conference is required by the entity's bylaws, Oneida law, Oneida Business Committee or General Tribal Council resolution; or if the member's attendance is pre-approved by the Oneida Business Committee.

(7) *Conflicts of Interest*. Any additional or particular requirements related to when a member should recuse himself or herself due to a conflict of interest.

(b) "Article II. Officers" shall consist of the following:

(1) *Chair and Vice-Chair*. This section creates the positions of the entity. Other positions may also be created here.

(2) *Chair Duties*. Because of the importance of this position, the duties and limitations of the entity's chairperson shall be specifically listed.

(3) *Vice-Chair Duties*. Because of the importance of this position, the duties and limitations of the entity's vice chairperson shall be specifically listed.

- 387 (4) *Additional Officers and Duties.* Additional sub-articles shall specifically list
388 duties and limitations for every officer position identified in subsection (1).
389 (5) *How Chosen.* Bylaws shall specifically state how a member of the entity will
390 be chosen to occupy an officer's position.
391 (6) *Budgetary and Travel Sign-Off Authority.* The Purchasing Department shall
392 confirm each position within the entity that has been designated as having sign-off
393 authority. Bylaws shall identify:
394 (A) The entity's varying levels of budgetary sign-off authority, including
395 which members are authorized to sign-off at each level, and
396 (B) Which members have the authority to sign off on travel on behalf of
397 the entity.
398 (7) *Personnel.* The entity's authority for hiring personnel, if any, and the duties of
399 such personnel.
400 (c) "Article III. Meetings" shall consist of the following; provided that, all meetings shall
401 be noticed and called in accordance with the Open Records and Open Meetings law:
402 (1) *Regular Meetings.* When and where the entity shall hold regular meetings, and
403 how the entity shall provide notice of the meeting, agenda, documents, and
404 minutes.
405 (2) *Special Meetings.* How the entity may call special meetings and how the
406 entity shall provide notice of special meetings. Special meetings are not scheduled
407 regular meetings, but also do not rise to the level of emergency justification
408 required for emergency meetings.
409 (3) *Emergency Meetings.* Emergency meetings are meetings that need to be called
410 sooner than a meeting could be called if the twenty-four (24) hour notice
411 requirement, as set out in the Open Records and Open Meetings law, is followed.
412 Emergency meetings may only be held when necessary to maintain order and/or
413 protect public health and safety. Bylaws shall:
414 (A) State how the entity may call emergency meetings and how the entity
415 shall notice emergency meetings, and
416 (B) Include the following provision:
417 "Within seventy-two (72) hours after an emergency meeting, [the entity]
418 shall provide the Secretary with notice of the meeting, the reason for the
419 emergency meeting, and an explanation of why the matter could not wait
420 for a regular or special meeting."
421 (4) *Quorum.* How many members create a quorum. At a minimum, a majority of
422 the entity's current members shall be required to create a quorum.
423 (5) *Order of Business.* How the agenda will be set.
424 (6) *Voting.* Voting requirements, including the requisite percentages for passing
425 different items and when, if at all, the entity's chairperson may vote.
426 (d) "Article IV. Reporting" shall consist of the following:
427 (1) *Agenda Items.* Agenda items shall be maintained in an identified and
428 consistent format.
429 (2) *Minutes and Attachments.* Minutes shall be typed in a consistent format
430 designed to generate the most informative record of the meetings of the entity.
431 Handouts, reports, memoranda, and the like may be attached to the minutes and
432 agenda, or may be kept separately, provided that all materials can be identified
433 based on the meeting in which they were presented. Meeting materials and
434 records shall be maintained in accordance with the Open Records and Open

Meetings law.

(3) *Reporting.* Entities shall report to the Oneida Business Committee member who is their designated liaison intermittently as the entity and the liaison agree to, but not less than as required in any law, rule, or other reporting requirement developed by the Oneida Business Committee or Oneida General Tribal Council. Entities shall also make quarterly reports to the Oneida Business Committee; and annual and semi-annual reports to the Oneida General Tribal Council. All reports shall be approved by official entity action before they are submitted.

(A) *Quarterly Reporting to the Oneida Business Committee.* The Secretary shall create a reporting schedule, which shall be approved by the Oneida Business Committee and posted on the Nation's website. Whenever an entity's quarterly report is placed on the agenda for an upcoming Oneida Business Committee meeting, the entity shall ensure that at least one (1) member attends the Oneida Business Committee meeting.

(B) At a minimum, quarterly reports shall include the following information:

(i) *Names:* The names of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.

(ii) *Minutes:* Any required updates to meeting minutes previously submitted and approved by the Oneida Business Committee including any actions taken that were not included in meeting minutes that were previously approved.

(iii) *Financial Reports:* Financial reports are only required to be included if specifically requested by the Oneida Business Committee or if required by the entity's bylaws.

(iv) *Special Events and Travel:* Any special events held during the reporting period and any travel by the members and/or staff that occurred during the reporting period or is anticipated in the upcoming reporting period; including:

(a) Which member(s) and/or staff traveled or will travel; including travel dates and destinations.

(b) The purpose for the travel and a brief explanation of how the travel benefited the Nation;

(c) The cost of the travel and how the cost was covered or will be covered by the entity; and

(d) Whether the cost of travel was/is within the entity's budget and, if not, an explanation as to why travel costs in excess of the entity's budget were incurred or are anticipated.

(vi) *Goals and Accomplishments:* The entity's annual goals, as established in the entity's most recent annual GTC report; including how the entity has worked towards achieving such goals during the reporting period.

(vii) *Meetings:* When and how often the entity is meeting and whether any emergency and/or special meetings have been held.

(a) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.

(b) If special meetings were held, the report shall indicate the topic of each meeting.

(viii) *Follow-up*: Actions taken in response to Oneida Business Committee and/or General Tribal Council directives, if any.

(C) *Annual and Semi-Annual Reporting – General Tribal Council*. Entities shall make annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Secretary. At a minimum, entities shall include the following information in annual reports, and shall update this information in the semi-annual reports.

(i) *Entity Reports*.

(a) *Names*: The name and purpose of the entity, a list of the members and their titles, the contact person for the entity and their contact information; including phone number, mailing address, email address, and the entity's website.

(b) *Meetings*: When meetings are held, where they are held, at what time they are held and whether they are open or closed.

(c) *Stipends*: The amount of each stipend a member may be eligible to receive.

(d) *Goals and Accomplishments*: Up to three (3) accomplishments the entity achieved in the previous fiscal year and how each accomplishment impacted the Oneida community; and three (3) strategic goals the entity will pursue in the new fiscal year.

(e) *Complaints and Dispositions*. A list of any complaints filed against individual members or against the entity; including the actions, if any, taken in response to each complaint.

(f) *Logo and Images*: The entity's logo and any other pictures or images that the entity would like to be considered by the Secretary for inclusion in the report.

(g) *Budget*. Annual reports shall also identify the entity's original budget for the previous fiscal year, what the actual budget expended was at the close of the fiscal year, and, if not within the entity's original budget, an explanation for why the budget was exceeded.

(ii) *Department Reports*. Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees. These reports shall include the following information:

(a) *Names*: The name and purpose of the department, the department's website, and the contact person for the department and their phone number, mailing address, and

e-mail address.

(b) *Employees*: How many employees the department has and how many of those employees are enrolled members of the Nation.

(c) *Service Base*: A brief description of who the department serves.

(d) *Goals and Accomplishments*: Up to three (3) accomplishments the department achieved in the previous fiscal year and how each accomplishment impacted the Oneida community; as well as three (3) strategic goals the department will pursue in the new fiscal year.

(e) *Logo and Images*: The department's logo that may be included in the report and any other pictures or images that the department would like to be considered by the Secretary for inclusion in the report.

(f) *Budget*. Annual reports shall also identify the department's:

(1) funding sources; including the Nation's contribution, grants, and other sources;

(2) total budget for the previous fiscal year; and

(3) the actual budget expensed at the close of the fiscal year, and, if not within the department's original budget, an explanation for why the budget was exceeded.

(e) "Article V. Amendments" shall identify how amendments to the bylaws may be initiated by the entity. Provided that, amendments shall conform to the requirements of this law and any other law or applicable rule; and shall be approved by the Oneida Business Committee prior to implementation.

105.9. Official Oneida E-mail Address Required for all Entity Members

105.9-1. The Secretary shall work with the Management Information Systems department to provide each entity member with an official Oneida e-mail address upon election or appointment. If a member is also an employee of the Nation, he or she shall receive a separate e-mail address from his or her regular work e-mail address. Members shall sign an acknowledgment form provided by the Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Secretary shall maintain a record of all such acknowledgment forms.

105.9-2. Members shall use their official Oneida e-mail address when conducting business of the entity electronically. Members may not use any personal or work e-mail address to electronically conduct any business of the entity.

105.9-3. Immediately upon receipt of notice of an entity vacancy, the Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position; unless the member continues to serve on another entity and uses the same e-mail address for the other entity.

105.10. Minutes

105.10-1. Entities shall submit all minutes to the Secretary within a reasonable time after approval by the entity.

105.10-2. Actions taken by an entity are valid when minutes are approved and filed in accordance with this section and the entity's approved bylaws.

105.10-3. No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the bylaws of that entity.

105.11. Dissolution of Entities

105.11-1. Entities may be dissolved according to this section; however, additional specific directions may be included in an entity's bylaws.

105.11-2. A task force, ad hoc committee or subcommittee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, within two (2) weeks of dissolution, the task force, ad hoc committee or subcommittee shall forward all of its records to the Secretary for proper record management in accordance with the Open Records and Open Meetings law.

105.11-3. All other entities may only be dissolved by motion of the Oneida General Tribal Council or the Oneida Business Committee, provided that an entity created by the General Tribal Council may only be dissolved by a motion of the Oneida General Tribal Council.

105.11-4. All chairpersons and/or secretaries of dissolved entities shall close out open business of the entities and forward, within two (2) weeks of the dissolution of an entity, all files and documents to the Secretary for proper storage and disposal in accordance with the Open Records and Open Meetings law.

105.12. Stipends, Reimbursement and Compensation for Service

105.12-1. The Nation shall compensate members and reimburse members for expenses as set out in this section and according to the Nation's procedures for payment.

105.12-2. The Nation recognizes that persons serving on entities incur some expense. Therefore, in order to attract persons to serve on entities, the Nation shall pay stipends to entity members in accordance with this section, unless otherwise declined by a member(s).

(a) Members may receive a maximum of a twenty-five dollar (\$25) stipend for each of the following:

(1) One (1) member's administration of a rulemaking public meeting pursuant to the Administrative Rulemaking law;

(2) One (1) member's attendance at a hearing before the Oneida Judiciary directly involving the entity, where attendance is at the entity's discretion;

(3) Each member's attendance at a hearing before the Oneida Judiciary where member's attendance is required by official subpoena; and

(4) One (1) member's attendance at an Oneida Business Committee meeting, or at a meeting of a standing committee of the Oneida Business Committee, for the purpose of representing the entity's business before that body, in the following situations:

(A) For the submission of quarterly reports,

(B) As requested by the Oneida Business Committee, and/or a standing committee of the Oneida Business Committee.

(b) Members conducting hearings administered by the entity may earn a maximum of a fifty dollar (\$50) stipend per four (4) hour session of the hearing. For the purposes of this section, a hearing consists of all functions related to the resolution of the matter, including, but not limited to, any continuations and decision drafting.

(c) Members may earn stipends for attending entity meetings, conferences and trainings as provided in sections 105.12-3 through 105.12-7.

(d) Members may earn additional stipends for activities not identified herein, provided

that such stipends are identified in the entity's bylaws, as approved by the Oneida Business Committee.

105.12-3. *Meeting Stipends for Members of Appointed Entities.* Except as provided in subsection (a), the Nation shall pay members serving on appointed entities a stipend of no more than fifty dollars (\$50) per month when at least one (1) meeting is conducted where a quorum has been established in accordance with the duly adopted bylaws of that entity. Such meeting shall last for at least one (1) hour and members collecting stipends shall be present for at least one (1) hour of the meeting.

(a) Should an entity require more than one (1) meeting per month and seek stipends for those additional meetings, the entity may request an exception from the Oneida Business Committee at a regularly scheduled Oneida Business Committee meeting, provided that the entity shall have the exception approved in advance of the additional meeting(s).

105.12-4. *Meeting Stipends for Members of Elected Entities.* The Nation shall pay members serving on elected entities a minimum stipend of fifty dollars (\$50) for each meeting which has established a quorum in accordance with the duly adopted bylaws of that entity for at least one (1) hour, regardless of the length of the meeting. Members collecting stipends shall be present for at least one (1) hour of the meeting, regardless of the length of the meeting.

105.12-5. The Oneida Business Committee shall periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending this law.

105.12-6. *Conferences or Trainings.* The Nation shall reimburse members' travel and per diem costs in accordance with the Oneida Travel and Expense Policy to offset members' costs for attending a conference or training, and shall provide a stipend provided that:

(a) A member is eligible for a one hundred dollar (\$100) stipend for each full day the member is present at the conference or training, when:

(1) attendance at the conference or training is required by law, bylaws or Oneida Business Committee or General Tribal Council resolution, or

(2) the member receives approval in advance from the Oneida Business Committee to receive a stipend for attendance.

(b) No stipend payments may be made for time spent traveling to and from the conference or training.

105.12-7. All members of entities are eligible for reimbursement for normal business expenses naturally related to membership in the entity.

105.12-8. Task force, ad hoc committee and subcommittee members are not eligible for stipends unless a specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

105.13. Use of the Nation's Assets

105.13-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Nation. The Nation shall reflect such accounts on its books in accordance with the Generally Accepted Accounting Principles.

105.13-2. Each member shall comply with the system of internal accounting controls sufficient to provide assurances that:

(a) all transactions are executed in accordance with procurement manual rules developed by the Purchasing Department as required in the laws and rules governing budget management and control; and

(b) access to assets is permitted only in accordance with authorization identified in the procurement manual rules; and

(c) all transactions are recorded to permit preparation of financial statements in conformity with the Generally Accepted Accounting Principles or other applicable criteria.

105.13-3. Members shall immediately report to the internal audit staff any evidence of noncompliance with any law or rule regarding the use of the Nation's assets. If the internal audit staff finds evidence of noncompliance, they shall notify the Oneida Law Office. The Oneida Business Committee and/or the Oneida Law Office shall then make a determination of further action to be taken, if any.

105.13-4. Entities shall manage all records in accordance with the Open Records and Open Meetings law.

(a) When a member is no longer serving on the entity, any official entity records possessed by the member shall be provided back to the entity.

105.14. Conflicts of Interest and Other Ethical Requirements; Adherence to Oneida Laws

105.14-1. Members are at all times subject to the ethical requirements identified in the Code of Ethics and the Conflict of Interest law.

105.14-2. Members are subject to, and shall follow, all applicable laws, policies and rules of the Nation.

105.14-3. Each entity shall educate its members about the requirements of this law, the Conflict of Interest law and the Code of Ethics; as well as any other relevant and applicable laws, rules and procedures.

105.15. Enforcement and Penalties

105.15-1. Members who violate the laws and policies of the Nation may be subject to sanctions or other penalties, including termination of appointment and removal from office, pursuant to applicable law.

105.15-2. Candidates for office, and members, shall be subject to sanctions and penalties for violations of this law, in accordance with the following:

(a) Candidates for appointment or election found to be in violation of this law may be disqualified from taking office.

(1) The Election Board is responsible for determining whether a candidate for an elected position has violated this law in such a manner that disqualification from office is warranted. However, prior to making such a determination, the Election Board shall provide the candidate with reasonable notice and an opportunity to respond to the claim(s).

(2) The Oneida Business Committee is responsible for determining whether a candidate for appointment has violated this law such that disqualification from office is warranted.

(b) Members found to be in violation of this law may be subject to sanctions and penalties in accordance with laws of the Nation governing sanctions and penalties for officials.

(1) Elected members may also be removed from office pursuant to the Nation's laws governing removal of elected officials.

(2) The Oneida Business Committee may terminate the appointment of any appointed member at any time, in accordance with 105.6-5.

105.15-3. *Exclusion.* Except as provided in 105.8-4(a)(4)(D)(ii), if a member no longer meets the eligibility requirements for office, as identified in the entity's bylaws, Oneida laws, and/or the Oneida Constitution; then the member shall be excluded from office, and his or her position

shall be declared vacant. Exclusion is not a form of punishment.

(a) When a member's eligibility is questioned, the Oneida Business Committee shall determine if the member meets the specific eligibility requirements. The Oneida Business Committee shall declare the member excluded when appropriate.

(b) Within two (2) business days after the Oneida Business Committee declares a member excluded, the Secretary shall notify the excluded member of the Oneida Business Committee's decision. If the seat is an elected position; the Secretary shall also notify the excluded member of his or her right to appeal the exclusion to the Judiciary in accordance with (c).

(1) *Appointed Officials.* After notifying an appointed official of his or her exclusion, the Secretary shall promptly ensure that any administrative duties related to the vacancy are completed; including but not limited to, removing the former member's name from the list of current members, disabling the former member's e-mail address, and re-posting the vacancy.

(2) *Elected Officials.* After notifying an elected official of his or her exclusion, the Secretary shall ensure that any administrative duties related to the vacancy are completed; provided that, no administrative actions shall be performed until one (1) of the following occurs:

(A) The deadline for filing an appeal has passed and the former elected member has not filed an appeal; or

(B) The Trial Court has issued a final ruling upholding the exclusion.

(c) *Elected member appeals.*

(1) Within five (5) business days after receiving notice of his or her exclusion; a former elected member may appeal the Oneida Business Committee's decision to the Trial Court of the Judiciary. Within twenty (20) business days after the appeal is filed, the Trial Court shall conduct a hearing and issue a ruling as to whether the member meets the qualifications for office.

(2) An elected position shall not be re-filled while an appeal is pending. From the time that the appeal is filed until the Trial Court issues a final ruling, the member shall retain all rights and privileges of being a member including voting, participating in decision making, attending entity meetings.

105.15-4. *Ineligibility for other appointment or election.*

(a) *Termination of appointment or removal.* A member who has been terminated or removed is ineligible for appointment or election to any entity for one (1) year from the effective date of the termination or removal. Provided that, if an individual entity's bylaws provide for a longer period of ineligibility; then that longer period shall apply.

(b) *Exclusion.* Exclusion from office; in accordance with 105.15-3; shall not affect a member's eligibility for appointment or election to any entity; as long as the member meets the specific eligibility qualifications for office.

105.15-5. If an entity fails to comply with the requirements of this law, the Oneida Business Committee may suspend payment of stipends to members of the entity, until the entity has attained compliance with this law. The Oneida Business Committee Treasurer shall notify the Accounting Department when stipends shall be stopped, and when stipend payments may resume. Unless the Oneida Business Committee directs otherwise, stipends shall accrue during a suspension and shall be paid out when stipend payment resumes. The Oneida Business Committee may adopt, by resolution, additional or alternative enforcement actions that may be imposed upon an entity for noncompliance with this law.

771 *End.*
772

Adopted - BC-8-2-95-A
773 Amended - BC-5-14-97-F
774 Emergency Amendments - BC-03-06-01-A (expired)
775 Emergency Amendments - BC-04-12-06-JJ
776 Emergency Amendments - BC-11-12-09-C
777 Emergency Amendments Extension - BC-05-12-10-I (expired)
778 Amended - BC-9-27-06-E (permanent adoption of emergency amendments)
779 Amended - BC-09-22-10-C
780 Amended -



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING
Comprehensive Policy Governing Boards, Committees and Commissions
Amendments**

Business Committee Conference Room-2nd Floor Norbert Hill Center
June 26, 2017 12:15 p.m.

Present: Brandon Stevens, Tehassi Hill, David P. Jordan, Fawn Billie, Candice Skenandore, Clorissa Santiago, Danelle Wilson, Tani Thurner, Maureen Perkins, Leyne Orosco, Ed Delgado.

Please note: At this public meeting, member Ed Delgado provided spoken comments for the Comprehensive Policy Governing Boards, Committees and Commissions. However, at the June 29, 2017 public meeting, Mr. Delgado withdrew those comments and asked that they be redacted. This transcript includes his comments; however per his request, those comments were not included in the public comment review memo or presented to the LOC for consideration.

Brandon Stevens: Okay, I'll call this public meeting to order. Today's date is Monday June 26. It is 12:15. The public meeting is here for the following laws:

- Administrative Rulemaking law amendments
- Child Care Department Consumer Complaint law
- General Tribal Council Meetings law
- Comprehensive Policy Governing Boards, Committees, and Commissions amendments

The Legislative Operating Committee is hosting these public meetings to gather feedback from the community regarding these legislative proposals. The public meeting is not a question and answer period. All persons who wish to present oral testimony need to register on the sign-in sheet at the back of the room. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business Friday July 7, 2017. Friday.

In attendance today we have councilman David Jordan, council woman Fawn Billie, and Tehassi Hill, councilman Tehassi Hill, sorry.

The LOC may impose a time limit for all speakers pursuant to section 16.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons, for all public meetings today.

Alright, Ed, did you want to sign in or provide any comment on any of these?

Ed Delgado: Yes

[Note: A public meeting for the Administrative Rulemaking Law was held at 12:15 p.m. and closed at 12:25 p.m. A public meeting for the Child Care Department Consumer Complaint law was held at 12:26 p.m. and closed at 12:28 p.m., a public meeting for the General Tribal Council Meetings law was opened at 12:28 p.m. and closed at 12:36 p.m., and a public meeting for the Comprehensive Policy Governing Boards, Committees, and Commissions amendments was held open at 12:36 p.m. and closed at 12:44 p.m. (22:19-30:35) The general opening and closing statements apply to all public meetings held June 26, 2017.]

Brandon Stevens: I'll now begin today's public meeting for the amendments to the Comprehensive Policy Governing Boards, Committees, and Commissions at 12:36. This is a proposal to amend the Comprehensive Policy Governing Boards, Committees, and Commissions which would update various requirements for the Nation's boards, committees and commissions, including:

- The appointment process.
- The requirement for what must be contained in each entity's bylaws.
- Adding new language to address what happens when a person is elected or appointed to an entity but then fails to meet the qualifications required for members.
- Adding a detailed process for reporting to GTC.
- Updating requirements related to posting for vacant positions.
- Removing language that overlaps with the requirements already found in the Code of Ethics and the Conflict of Interest Policy.

Brandon Stevens: So we have nobody signed up to provide oral testimony, I'll allow... or, I will ask, anyone in attendance would like to provide oral testimony for the Comprehensive Policy Governing Boards Committees and Commissions. Ed? Ok, the floor is yours.

Ed Delgado: Like I said, I have "obstinate" written on the front there, so I don't forget how actually weirded out I got reading this. I don't believe, couldn't believe, that this was being proposed. I'll start with the end because that's when I got really weirded out. Starting on line 1059 you start talking about "exclusion." And this whole section kind of talks about exclusion. Taking people out. Take you out this way and take you out that way. When people are elected... they're... it should be hard to get rid of them. It shouldn't be... and I don't think the Business Committee on elected positions, should have the authority to take somebody out. I know a lot of this is based on changes in bylaws. And I think changes in bylaws have to be changed for a specific reason. Important. Not to get rid of somebody, but to improve those bylaws. But it seems to provide a way for boards, committees and commissions to get rid of people who may be obstinate themselves or have different ideas or believe in transparency. I know there've been movements to make these boards, committees and commissions where they are elected and appointed, to muzzle them. I know... And this would really muzzle it. And if this was practiced, people elected would be afraid to come forward or be different or to challenge or to be creative because they would be stopped. And the bylaws could be changed and they could be thrown off. The way I understand it - like I said, I read this three times and I keep coming up with that same thing. The Business Committee... even kind of challenges the Removal law. Yeah, the Removal law doesn't touch the Removal law, but it goes around the Removal law. And it appears that the BC ... you can could get rid of each other, by changing bylaws... it also says if you violate any

A good mind. A good heart. A strong fire.



Tribal law, you could be removed or ... part of this exclusion, part where you can be thrown off because you don't qualify anymore because you broke a law. Our current Removal law says, you know, it's gotta be important... you have to violate that conflict of interest, which is comprehensive. But every law... I mean, you're gonna be, you're gonna be... its' gonna be a nightmare. I mean, there's fighting as it is, and now you can target individuals who may think different. And one particular part here, so I think it is a way to circumvent the Removal law. And the Constitution says the BC can be removed through the Removal law. That's the only provision that mentions... I don't know if you guys have the authority to create new ones, but you've got to respect that Removal law and the Constitution.

Ed Delgado: But here it says, under 1094, "A member who has been terminated or removed is ineligible for appointment or election to any entity for one year from the effective date of the termination or removal. BC members under the Constitution... you only have to be ... live within Brown and Outagamie county and be 18 or whatever it is, to run for BC. Now, that becomes a Constitutional right and when it comes to violating that, you can be removed one month.... And you're still 21, or 18 and a GTC member. Or voting member of GTC, whatever it is. You're eligible to run. You are eligible to run in that next election. So this would be a violation of the Constitution. Saying you can't run.

Ed Delgado: There's another provision here where on appointments for the Chair, again, under the Constitution, has the right to carry out the normal functions of a Chair. Under the job description passed by General Tribal Council. Here, the appointment process changes, whereby the Chair has two cracks at it, or maybe three. Then the appointment process goes to the BC as a whole. Now, GTC says the Chair has the responsibilities of a Chair. Now you're saying the BC after the third try, can circumvent that. That's why I wrote 'obstinate' – the BC can become like Republicans when Obama was president. They can be obstinate and not work with the Chair and they can hold off until that third time and then they can override the Chair. That's not the normal functions of a Chair and you would have to, I believe, take that back to GTC to get permission to deviate from the normal functions of a Chair. Because normally the Chair makes those appointments in accordance to the current practice. I've got more and I'll provide that. Thank you.

Brandon Stevens: Ok. Thank you, Ed. All right, anyone else who would like to provide oral testimony today? Seeing none, I will close this public meeting on the Comprehensive Policy Governing Boards, Committees and Commissions at 12:44.

Brandon Stevens: And written comments may be submitted until the close of business on Friday, July 7. Just for those in attendance, I just want to make sure, there was confusion on the public notice, that it said, "Monday, June 29th" and so today is the 26th. So since there was a miscommunication in the notice we are providing two public meetings for the same items. Today Monday, I guess today Monday the 29th and Thursday, the 29th. So we are providing the two days just so the confusion is met, so if you would like another shot at, you know kicking the cat on Thursday you are very welcome to come and provide.

Ed Delgado: When you're retired you don't even notice those details.

Brandon Stevens: Yeah, so just for the confusion we made sure we said both on a Monday and then Thursday the 29th. And so I just wanted to make that clear for the record as well. So thank you for your attendance and your testimony, Ed. So we will close today, and thank you everyone.

-End of Meeting-



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING
Comprehensive Policy Governing Boards, Committees and Commissions
Amendments**

Business Committee Conference Room-2nd Floor Norbert Hill Center
June 29, 2017 12:15 p.m.

Present: Brandon Stevens, Tehassi Hill, Jennifer Webster, Candice Skenandore, Clorissa Santiago, Tani Thurner, Maureen Perkins, Ed Delgado, Bonnie Pigman, Lisa Liggins, Lisa Summers, Steve Webster, Mike Denny, Daniel Guzman.

Brandon Stevens: Greetings. The time is 12:15. Today's date is Thursday June 29. I will now call this public meeting to order for the following laws:

- Administrative Rulemaking law amendments
- Child Care Department Consumer Complaint law
- General Tribal Council Meetings law, and
- Comprehensive Policy Governing Boards, Committees, and Commissions amendments\

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding these legislative proposals. The public meeting is not a question and answer period. All persons who wish to present oral testimony need to register on the sign-in sheet at the back of the room. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by the close of business on Friday, July 7, 2017.

In attendance today from the LOC is council woman Jennifer Webster, and Tehassi Hill, councilman Tehassi Hill.

The LOC may impose a time limit for all speakers pursuant to section 16.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons, for all four public meetings.

[Note: A public meeting for the Administrative Rulemaking law amendments was held at 12:15 p.m. and closed at 12:22 p.m., a public meeting for the Child Care Department Consumer Complaint law was opened at 12:22 p.m. and closed at 12:23 p.m., a public meeting for the General Tribal Council Meetings law was opened at 12:23 p.m. and closed at 12:51 p.m., and a public meeting for the Comprehensive Policy Governing Boards, Committees, and Commissions amendments was opened at 12:53 p.m. and closed at 1:04 p.m. The general opening and closing statements apply to all four public meetings held June 29, 2017.]

Brandon Stevens: Okay, so now we'll begin the last and final public meeting for the Comprehensive Policy Governing Boards, Committees, and Commissions amendments. It is 12:53. This is a proposal to amend the Comprehensive Policy Governing Boards, Committees, and Commissions which would update various requirements for the Nation's boards, committees and commissions including:

- The appointment process.
- The requirements for what must be contained in each entity's bylaws.
- Adding new language to address what happens when a person is elected or appointed to an entity but then fails to meet the qualification required for the members.
- Adding a detailed process for reporting to GTC.
- Updating requirements related to posts for vacant positions.
- Removing language that overlaps with requirements already found in the Code of Ethics and the Conflict of Interest Policy.

Brandon Stevens: All right, first up, Bonnie? All right, the floor is yours.

Bonnie Pigman: Thank you. I'm Bonnie Pigman. I'm doing two things. One I have written comments submitted from Susan White, director of the Trust Enrollment Department, which I'll present to you in a minute. The second is my own comments on the Comprehensive Policy Governing Boards, Committees, and Commissions. Based on recent activity and discussion, I was here at the recent Business Committee meeting, there was a lot of discussion going on about different things that the Business Committee members themselves have responsibilities for and it reached out to the job descriptions that General Tribal Council approved, etcetera. I see in this document that there are oath of offices and the oath of offices that are listed - one is for appointed and one is for elected officials. They are very similar in nature, I think that the Business Committee oath of office should be revised to include very descriptive information regarding some of the things that were brought up in that discussion. Point in case would be in fact that you have things that are identified in specific job descriptions or as Business Committee collective that you have a responsibility - and I think a lot of the questions were "What do you feel is your responsibility to the General Tribal Council? So I think that some thought needs to go into looking at that oath of office to be more specific in regards to how you will carry out your duties, because a lot of weight is carried in that oath of office and that was one of the things that was said yesterday by one of the councilpersons - that they read off their oath of office that they took. So if there's a lot of weight to that oath of office then I think there should be changes to it, to include and incorporate all of those things, because you're using that as a means to follow your job and fulfill your responsibilities to the General Tribal Council. So, that's all I had to say. Thank you.

Brandon Stevens: Okay, thank you. All right, I'll open up for anyone else that has not signed in for to provide oral testimony. All right, Secretary Summers?

Lisa Summers: Good morning again. Thank you very much, I'll try to go... now that I realize I've got less time than I thought, I'll go as quickly as I can. I'll submit my other comments in writing. I'll try to just hit the high points. At this point, again... something very basic... applications in the definition. I would prefer that to be "the form that's approved by the Oneida Business Committee" so an app means a form approved by the OBC which a person seeks to be

appointed or filled. I think the conflict of interest definition just needs to be again cross referenced with our current conflict of interest policies and provisions to make sure that those definitions are all consistent because sometimes that still occurs and it seems like that was the case here based on the first review. In the application section, and I'm going to have lots of comments so I'm just going to hit the highlights. One of the things that's missing is a social security number requirement. I think that's something that we have to change in our process because there are some boards, committees, and commissions that do require us to do backgrounds. And in order to do that we need to have those social security numbers. There's always an issue and I think we would have to change our process and make sure that those applications now become private, that they're something that can't be disclosed... or we need to find an alternative way of collecting that information but right now it's not officially needed and I think that's something that actually needs to change and it needs to be officially needed especially for those backgrounds. So that's one of the things I wanted to highlight. The other thing is the application process itself, in 105.4-2 it talks about there being a 4:30 p.m. deadline on the date of the ... on that business day. One of the things though that it does indicate in that same section – and I think this is just something that we haven't discussed – is that the Secretary is still allowed to accept applications five days after that deadline if it comes by mail. And I have a problem with that a little bit, because that means somebody can ...not make the deadline and put it in the mail by midnight that night and still submit it, and it still can be accepted. There's so many electronic ways now to submit applications – via fax, via online applications, things like that... I think it's a way around the deadline requirement. And I don't think that's fair to all the applicants who get their information in on time. So I think that's something that needs to be re-evaluated ... postmarking it by a specific deadline just isn't sufficient I don't think, anymore, in this day and age. One of the other things too is that, if that doesn't change then I think there needs to be a very specific way to figure out ... I think the mail provision just needs to be taken out completely if we're not willing to adjust those... that information. Another one that I wanted to touch on is about the notice for the terms. So we've been practicing – and it's been a process – that the notice is done... we do it a year in advance. So, we know all the terms that are coming up for the entire year and we have a schedule. The only real thing that we have consideration for at this point are when vacancies occur. So in that particular section about the vacancies, it's making sure that not only we are providing it 30 days ahead of time, I think there needs to be just a little bit more consideration of what that backwards schedule looks like because I think the timeline wasn't built in properly. So if we're providing notice and then we have to collect ... process the applications, give them to the Chair's office and have them back on the agenda, it looks like it's a 45 day timeline, the way that I read it in here, and it's actually going to be longer than that. So you know, as we live and breathe backwards schedules, I think that that's one of the things that we just need to think about a little bit more. But again, I'll submit those things in detail in writing. The other thing is there looks to be like there is quite a bit of process in here, which is fine, I'm just wondering if they actually just need to be rules, instead of actually process, in the policy itself. So... I kind of went back and forth a little bit on that, but I think there is so much process in here – and it's good, because it provides additional guidance – but I also think that, it's almost to the point where it's not general enough. So I kind of think we almost maybe tipped back the other way a little bit. The other thing is, the oath of... the bylaws, I think there needs to be a section added that requires the minutes to be included. That's one of the things that has to happen as part of the stipend requirement anyway, that the minutes are turned in. With the stipend payment requests. And the minutes are not included in the bylaws

section. So I think that's one of the requirements that needs to be added in there as well. The other thing is I think there needs to be a very clear requirement for hearing bodies from an educational perspective. That's one of the things that it touches on a little bit in here, however it's not 100% required that an associates or a bachelor's degree be required for hearing bodies. I think that's something that needs to be taken into consideration, just make it mandatory. And again I will submit the rest of the comments in writing. Thank you.

Brandon Stevens: All right, thank you. All right, last call for any of those that would like to give oral testimony on the Comprehensive Policy Governing Boards, Committees, and Commissions amendments? Ed?

Ed Delgado: Again, please redact what I said on Monday. It's this one that I was wrong about the exclusion part. But redact the whole thing anyway. I hope to provide some written testimony, but one thing that I am concerned about there, the whole thing, the main concern, is this rewriting of bylaws and then using those to exclude fellow members. I think before they rewrite those bylaws, it should come before the Business Committee; to state the reason why they want to do that. And then you take some responsibilities for those writings. Otherwise it could... some people, some people got some really wild ideas that they can sell upon their committees. Before the latest revision of the policy governing boards... poli..., commissions and whatever, it was very common to have appointed boards, committees, and commissions removing their members for a variety of reasons. You think you guys argue up here, they used to argue in those committees bigtime. And it's just, I guess it's part of human nature... when they get a little power under their hands. So... to make sure that those bylaws are reviewed... are initiated for a good reason, I think they should get permission from the BC, stating specific reasons why they want to change their bylaws. And. Which would lead to some of their members being excluded and ineligible. Thank you.

Brandon Stevens: All right, thank you, Ed. All right, I'll open the floor up again, if anyone would like to provide comment on the Comprehensive Policy Governing Boards, Committees, and Commissions? Seeing none, I will close this meeting at 1:04 p.m. Just a reminder that written comments may be submitted until close of business on Friday, July 7, 2017. And thank you for attending the meetings today, and have a good day.

-End of Meeting-

Date: June 29, 2017

To: Lisa Summers, Oneida Tribal Secretary

From: Susan White Trust Enrollment Director 

RE: Written Testimony for June 29, 2017 Comprehensive Policy Governing Boards,
Committees and Commissions Public Meeting

Dear Madam Secretary,

I request the following changes be considered to the clean version of Draft 20 of the Comprehensive Policy Governing Boards, Committees and Commissions presented for Public Meeting June 29, 2017.

1. Line 125: Please remove the words "of any individual". This section is talking about the qualifications on the application, not about the individual filling it out.
2. Line 135: Please correct "Enrollments Department" to "Trust Enrollment Department".
3. Lines 197 – 205: The Secretary should be noticing entities when administrative/clerical errors occur, so the entities know all the timelines that affect filling vacancies.
4. Lines 436 – 486: This law cannot direct Oneida Trust Enrollment Committee (OTEC) to provide reports to an Oneida Business Committee (OBC) liaison. General Tribal Council (GTC) gave direction to OTEC to provide reports at the annual and semi-annual GTC meetings. Any other reporting requirements are agreed upon annually through a Memorandum of Agreement between the OTEC and OBC, unless stated otherwise.
5. Line 647: Please retain the one (1) hour meeting time requirement. This is to discourage frivolous meetings for stipends.
6. Line 701: Please add "or in accordance with entity By-laws" to the end of this line. This is because the Sanctions and Penalties for Elected and Appointed Officials draft may not get passed and the language in this section is moot. If the Sanctions and Penalties for Elected and Appointed Officials draft doesn't get passed, the Removal law would still apply. However, the Removal Law is no longer being amended because LOC is anticipating the proposed Sanctions and Penalties for Elected and Appointed Officials law will get adopted.



Legislative Operating Committee July 19, 2017

Children's Code

Submission Date: 9/17/14	Public Meeting: 5/4/17
LOC Sponsor: Fawn Billie	Emergency Enacted: n/a Expires: n/a

Summary: *This item was carried over into the current term by the LOC. The proposal seeks to develop a Children's Code which would enable the Tribe to take jurisdiction of child welfare matters involving Tribal children. The proposal seeks establishment of a Child Welfare Office and the Oneida Child Protective Board, and would address child welfare proceedings including CHIPS; termination of parental rights; adoption; and foster home licensing.*

9/17/14 LOC: Motion by Fawn Billie to add the Children's Code to the Active Files List; seconded by Jennifer Webster. Motion carried unanimously. *Note: Fawn Billie will be the sponsor for this item.*

12/17/14 LOC: Motion by Jennifer Webster to move forward with requesting a fiscal analysis; seconded by Tehassi Hill. Seconder withdraws the second, motioner withdraws the motion; motion withdrawn. Motion by Tehassi Hill to direct the Legislative Operating Committee Chair to work with the appropriate staff to develop a memorandum directing the Governmental Services Division Director to fulfill the Finance Department's request for information regarding the Children's Code in order to prepare the fiscal analysis; seconded by Fawn Billie. Motion carried unanimously.

1/28/15 OBC: Motion by Lisa Summers to direct the Law Office to create a policy statement and to request the Legislative Operating Committee consider the Children's Code a priority, seconded by Tehassi Hill. Motion carried unanimously. [under F.2. Review Tribal Member Complaint Re: Child Protective Board]

2/18/15: *Work meeting held (with Social Services.) Attendees include: Brandon Stevens, Fawn Billie, Tehassi Hill, Jessica Wallenfang, Fawn Cottrell, Taniquelle Thurner, Danelle Wilson, Michelle Mays, Rae Skenandore, Kathleen Laplant, Jennifer Kruse, Roxann Pazdera, Candice Skenandore, Lynn Franzmeier*

4/15/15 LOC: Motion by Tehassi Hill to defer the Children's Code for 60 days for the fiscal and administrative analysis; seconded by Fawn Billie. Motion carried unanimously.

6/17/15 LOC: Motion by David P. Jordan to grant the 30-day extension requests and to accept the memorandum as FYI; seconded by Fawn Billie. Motion carried unanimously.

7/15/15 LOC: Motion by Fawn Billie to continue developing the Children's Code; seconded by David P. Jordan. Motion carried unanimously.

1/20/16 LOC: Motion by David P. Jordan to approve the Children's Code memorandum and to forward it to the Oneida Business Committee; seconded by Tehassi Hill. Motion carried unanimously.

1/27/16 OBC: Motion by Lisa Summers to accept the update from the Legislative Operating Committee on the new Children's Code timeline, seconded by Trish King. Motion carried unanimously.

- 2/11/16:** *Work meeting held.* Attendees include Jennifer Berg-Hargrove, Heather Lee, Michelle Mays, Patricia Garvey, Douglass McIntyre, Maureen Perkins.
- 10/7/16:** *Quarterly Sponsor Update Meeting Held.* Present: Fawn Billie, Cathy Bachhuber, Jennifer Falck, Maureen Perkins, Tani Thurner, Clorissa Santiago. Drafter (MG) was not present but updated the LRO Director before the mtg. She hopes to have a new draft in November or December 2016. Fawn will continue to update the Judiciary on this law, so they can begin to plan for a judge, admin. Staff, etc. if this is adopted.
- 12/19/16:** *Work Meeting Held.* Present: Jennifer Webster, Brandon Stevens, Jennifer Berg-Hargrove, David Jordan, Tehassi Hill, Fawn Billie, Maureen Perkins, Clorissa Santiago, Michelle Gordon, Candice Skenandore, Danelle Wilson, Heather Lee
- 1/23/17:** *Work Meeting w/ ICW.* Present: Jennifer Berg-Hargrove, Heather Lee, Jennifer Falck, Clorissa Santiago, Candice Skenandore, Cathy Bachhuber. Discussion surrounding implementation needs. Next steps include discussion with sponsor on adding exception in jurisdiction with blended families, discussion with Law Office about expanding jurisdiction to allow non-Oneidas to utilize the Family Court when they live on the Reservation and have Oneida parents/siblings, and set up a work meeting with ICW to begin going through Code and identifying ICW's roles and responsibilities.
- 1/23/17:** *Work Meeting w/ OFC.* Present: Hon. Marcus Zelenski, Patricia "Pixie" DeGrand, Jennifer Falck, Cathy Bachhuber, Clorissa Santiago, Candice Skenandore. Discussion surrounding implementation needs. Next steps include obtaining videoconferencing estimates, getting hearing numbers in Brown & Outagamie Counties that involve ICW and discussion with sponsor to determine if Children's Code should include court appointed counsel and juries as provided in State court.
- 2/15/17 LOC:** Motion by Jennifer Webster to upgrade the Domestic Animals Ordinance Amendments, the Children's Code, Code of Ethics Amendments, and the Sanctions and Penalties Law from medium priority to high priority; seconded by Tehassi Hill. Motion carried unanimously.
- 2/23/17:** *Work meeting w/ OFC.* Present: Hon. Marcus Zelenski, Pixie DeGrand, Rae Skenandore, Clorissa Santiago, Candice Skenandore.
Work meeting w/ ICW. Present: Jennifer Berg-Hargrove, Heather Lee, Rae Skenandore, Clorissa Santiago, Candice Skenandore.
- 3/1/17 LOC:** Motion by Fawn Billie to forward the Children's Code to the Legislative Reference Office for a legislative analysis and a fiscal impact statement, to bring back the analyses or an update by the April 5th LOC meeting; seconded by Tehassi Hill. Motion carried unanimously.
- 3/1/17:** *Work meeting w/ OFC.* Present: Hon. Marcus Zelenski, Pixie DeGrand, Raeann Skenandore, Rae Skenandore, Candice Skenandore, Clorissa Santiago
- 3/3/17:** *Work meeting w/ ICW.* Present: Jennifer Berg-Hargrove, Heather Lee, Alebra Cornelius, Roxanne Pazdera, Jen Falck, Clorissa Santiago, Candice Skenandore, Rae Skenandore, Fawn Billie, Cathy Bachhuber
- 3/17/17:** *Work meeting w/ OPD.* Present: Candice Skenandore, Clorissa Santiago, Eric Boulanger, Rich Vanboxtel, Cathy Bachhuber.
- 4/5/17 LOC:** Motion by David P. Jordan to approve the public meeting packet with the noted change and forward the Child Welfare law to a public meeting to be held on May 4, 2017; seconded by Jennifer Webster. Motion carried unanimously.

Noted Change:

708.5-3. *Jurisdiction over other Matters Relating to Children.* If ~~personal~~ jurisdiction ~~over the child~~ has been established under section 708.5-1 and section 708.5-2 the Court may:

- (a) terminate parental rights to a child;
- (b) appoint, revise, and/or remove a guardian; and
- (c) hold adoption proceedings.

- 4/7/17:** *Work meeting held.* Attendees include: George Skenandore, Danelle Wilson, Candice Skenandore, Clorissa Santiago, Jen Falck, Pat Garvey, Tehassi Hill, Jessica Wallenfang, Jennifer Webster, Brandon Stevens
- 4/11/17:** *Work meeting w/ Child Support & ICW.* Present: Lisa Peck, Heather Lee, Rae Skenandore, Clorissa Santiago, Jen Falck, Candice Skenandore
- 4/14/17:** *Work meeting w/ DCF.* Attendees include: Heather Lee, Jennifer Berg-Hargrove, Candice Skenandore, Clorissa Santiago, Jennifer Webster, Michelle Gordon, Rich VanBoxtel, Nathan King, David P. Jordan, Jen Falck, George Skenandore, Rae Skenandore, Tania Cornelius, Stephanie Lozano, Tehassi Hill, Brandon Stevens, Cathy Bachhuber
- 4/17/17:** *Work meeting held.* Attendees include: Jennifer Berg-Hargrove, David P. Jordan, Rich Vanboxtel, Jennifer Webster, Brandon Stevens, Nathan King, Ralinda Ninham-Lamberies, Heather Lee, Hon. Marcus Zelenski, Michelle Gordon, Jen Falck, Fawn Billie, Tehassi Hill, RC Metoxen, Clorissa Santiago, Candice Skenandore
- 4/19/17:** *Work meeting w/ OCPB.* Attendees include: Carol Silva, Evander Delgado, Jeanette Ninham, Wes Martin, Lois Strong, Fawn Billie, Jennifer Webster, Candice Skenandore, Clorissa Santiago, Rae Skenandore, Tehassi Hill, David P. Jordan, Brandon Stevens, Lisa Liggins, Jo Anne House, Melinda K. Danforth
- 4/21/17:** *Work meeting w/ ICW & Trust Enrollments.* Attendees include: Cheryl Skolaski, Susan White, Robert Collins, Bonnie Pigman, Jennifer Berg-Hargrove, Candice Skenandore, Clorissa Santiago, Heather Lee, Rae Skenandore, Cathy Bachhuber, Michelle Gordon
- 4/21/17:** *Work meeting w/ ICW.* Attendees include: Michelle Gordon, Fawn Billie, Jennifer Berg-Hargrove, Rae Skenandore, Cathy Bachhuber, Candice Skenandore, Clorissa Santiago, Heather Lee
- 4/21/17:** *Work meeting w/ ICW, OFC & Court Administrator.* Attendees include: Candice Skenandore, Clorissa Santiago, Jennifer Berg Hargrove, Rae Skenandore, Raeann Skenandore, Heather Lee, Trina Schulyer, Fawn Billie
- 4/21/17:** *Work meeting (Presentation).* Attendees include: Candice Skenandore, Clorissa Santiago, Veronica Bruesch, Nasbah Hill, Heather Vandenlangenberg, Roxann Pazdera, Pixie DeGrand, Marcus Zelenski, Trina Schuyler, Lois Strong, Raeann Skenandore, Jodie Skenandore, Lea Padron-Plass, George Skenandore, Tsyoshaht Delgado, Heather Lee, Jennifer Berg-Hargrove, Rae Skenandore, Fawn Billie, Wes Martin
- 4/24/17:** *Work Meeting w/ OCPB.* Wes Martin, Lois Strong, Melinda K. Danforth, Evander Delgado, Jen Falck
- 5/2/17:** *Work meeting w/ ICW & Finance:* Jennifer Berg-Hargrove, Rae Skenandore, Clorissa Santiago, Candice Skenandore
- 5/3/17:** *Work meeting w/ OCPB:* Dale Powless, Wes Martin, Candice Skenandore, Clorissa Santiago, Melinda K. Danforth, Jeanette Ninham, Evander Delgado
- 5/9/17:** *Work meeting w/ ICW:* George Skenandore, Jennifer Berg-Hargrove, Heather Lee, Candice Skenandore, Clorissa Santiago, Rae Skenandore
- 5/12/17:** *Work meeting w/ LOC, OFC & ICW:* Attendees include: Candice Skenandore, Clorissa Santiago, Jennifer Falck, David P. Jordan, Tehassi Hill, Fawn Billie, Jennifer Webster, Jennifer Berg-Hargrove, Heather Lee, Rae Skenandore, Hon. Marcus Zelenski, Pixie DeGrand, Cathy Bachhuber, George Skenandore, Tsyoshaht C. Delgado.
- 5/17/17 LOC:** Motion by Jennifer Webster to accept the public meeting comments and defer to a work meeting; seconded by Fawn Billie. Motion carried unanimously.
- 5/17/17:** Work Meeting. Present: Clorissa Santiago, Candice Skenandore, Jen Falck, Tehassi Hill, David P. Jordan, Jennifer Webster, Fawn Billie. LOC reviewed and considered comments.
- 5/18/17:** *Work meeting w/ ICW & Housing:* Scott Denny, Krystal John, Heather Lee, Jennifer Berg-Hargrove, Clorissa Santiago, Candice Skenandore.
- 5/18/17:** *Work Meeting.* Present: Clorissa Santiago, Candice Skenandore, Jen Falck, Tehassi Hill, David P. Jordan, Jennifer Webster, Fawn Billie, Cathy Bachhuber, Danelle Wilson. LOC reviewed and considered comments.

- 6/1/17:** *Work Meeting with the OCPB.* Present: Clorissa Santiago, Candice Skenandore, Jen Falck, Brandon Stevens, Tehassi Hill, David P. Jordan, Fawn Billie, Patricia King, Melinda K. Danforth, Carmenita Escamea.
- 6/2/17:** *Work Meeting with ICW & OFC.* Present: Clorissa Santiago, Candice Skenandore, Michelle Gordon, Jennifer Berg-Hargrove, Heather Lee, Fawn Billie, Rae Skenandore, Hon. Marcus Zelenski, Pixie DeGrand, Tsyoshaht C. Delgado.
- 6/5/17:** *Work Meeting Held.* Present: Candice Skenandore, Clorissa Santiago, Jen Falck, Michelle Gordon, Jennifer Berg-Hargrove, Heather Lee, Fawn Billie, Rae Skenandore, Tsyoshaht C. Delgado, George Skenandore.
- 6/7/17 LOC:** Motion by Fawn Billie to accept the public meeting comment response memorandum and to direct the Legislative Reference Office to update the legislative analysis based on the changes resulting from public meeting comment consideration; seconded by Tehassi Hill. Motion carried unanimously.
- 6/9/17:** *Work Meeting w/ OFC.* Present: Jen Falck, Candice Skenandore, Clorissa Santiago, Brandon Stevens, Fawn Billie, Hon. Marcus Zelenski, Pixie DeGrand.
- 6/22/17:** *Work Meeting with OBC.* Present: Candice Skenandore, Clorissa Santiago, Brandon Stevens, Fawn Billie, Tehassi Hill, David P. Jordan, Patricia King, Lisa Summers, Brian Duxtator, Mike Debraska, Jamel Ness, Dakota Oskey, Cathy Bachhuber. Updated OBC on the progress of the Children's Code.
- 6/26/17:** *Work Meeting with ICW and LOC.* Present: Brandon Stevens, Tehassi Hill, David P. Jordan, Fawn Billie, Clorissa Santiago, Candice Skenandore, Jennifer Berg-Hargrove, Heather Lee, Alebra Cornelius, George Skenandore, Michele Gordon, Patricia Hoeft. The ICW Department provided the LOC with a presentation on Oneida Indian Child Welfare.


Next Steps:

- Approve the adoption packet and forward the Children's Code to the Oneida Business Committee for consideration.



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



TO: Oneida Business Committee
 FROM: Brandon Stevens, LOC Chairperson 
 DATE: July 26, 2017
 RE: Adoption of the Children's Code and the Nation's Indian Child Welfare Act Policy

Please find the following attached backup documentation for your consideration of the Children's Code:

1. Resolution: Adoption of the Children's Code and the Nation's Indian Child Welfare Act Policy
2. Statement of Effect: Adoption of the Children's Code and the Nation's Indian Child Welfare Act Policy
3. Children's Code Legislative Analysis
4. Children's Code Draft
5. Children's Code Fiscal Impact Statement

Overview

This resolution adopts the proposed Children's Code. The proposed Children's Code would allow the Nation to exercise jurisdiction over its children who are in need of protection or services. The goal of the proposed Children's Code is to ensure that child welfare matters involving Oneida children are handled on the Reservation where more family members and Oneida foster homes are located and the traditions and culture of the Nation can be better preserved. The Children's Code intends to bring and maintain Oneida children and their families closer to the Nation's resources which may result in a higher percentage of reunifications and lower the number of out-of-home placements.

The proposed Children's Code extensively details the roles and responsibilities of those entities involved in child welfare matters, and the processes which will be followed by the Oneida Family Court, including:

- The roles of the Nation's Indian Child Welfare Department *[see 708.7]*;
- The order of placement preferences to be followed when it is necessary to place a child outside of the home under this law *[see 708.11]*;
- The process and procedures for a child in need of protection or services proceeding *[see 708.17 through 708.28]*;
- The process and procedures of a guardianship for certain children in need of protection or services proceeding *[see 708.29 through 708.31]*;

- The process and procedures for the termination of parental rights *[see 708.32 through 708.40]*; and
- The process and procedures for adoption *[see 708.41 through 708.44]*.

In accordance with the Legislative Procedures Act, a public meeting on the proposed law was held on May 4, 2017, with a comment period closing on May 11, 2017. All comments received during the public comment period were accepted by the Legislative Operating Committee at the May 17, 2017, Legislative Operating Committee meeting. All comments received were reviewed and considered at work meetings on May 17, 2017, May 18, 2017, and May 25, 2017. Any changes made based on those comments have been incorporated into this draft.

The resolution also amends the Nation's Indian Child Welfare Act Policy. With the adoption of the Children's Code and the dissolution of the Oneida Child Protective Board, it is critical for the protection of Oneida Children to establish an updated policy statement regarding placement preferences to provide direction to the Nation's Indian Child Welfare Department and the Oneida Law Office on how to handle Indian child welfare matters pending in outside jurisdictions.

Requested Action

Approve the Resolution: Adoption of the Children's Code and the Nation's Indian Child Welfare Act Policy

Oneida Nation

HANDOUT

Post Office Box 365

Phone: (920)869-2214

Oneida, WI 54155



BC Resolution # _____

Adoption of the Children's Code and the Nation's Indian Child Welfare Act Policy

WHEREAS, the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and

WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

The Nation's Children's Code

WHEREAS, the Children's Code recognizes the authority of the Oneida Nation to exercise the fundamental right of sovereignty and self-determination by setting forth procedures to provide for the welfare, care, and protection of Oneida children through the preservation of the family unit; and

WHEREAS, the Children's Code allows the Nation to exercise jurisdiction over children who are in need of protection or services so that the Nation can ensure that child welfare matters involving Oneida children are handled on the Reservation where more family members and Oneida foster homes are located and the traditions and culture of the Nation can be better preserved; and

WHEREAS, the Children's Code strengthens family life by assisting parents in fulfilling their responsibilities as well as facilitating the return of Oneida children closer to the Nation's resources which may result in a higher percentage of reunifications, lower the number of out-of-home placements, and increase family stability; and

WHEREAS, the Children's Code extensively details the roles and responsibilities of those entities involved in child welfare matters and the processes which will be followed by the Oneida Family Court, including proceedings for children in need of protection or services, guardianship for certain children in need of protection or services, termination of parental rights, and adoption; and

WHEREAS, the passage of the Children's Code and the Nation's updated Indian Child Welfare Act Policy will dissolve the Oneida Child Protective Board and re-delegate the Oneida Child Protective Board's authority and responsibilities to the Nation's Indian Child Welfare Department and the Nation's Child Welfare attorney; and

WHEREAS, a public meeting on the proposed law was held on May 4, 2017, in accordance with the Legislative Procedures Act, and comments received were accepted and reviewed by the Legislative Operating Committee on May 17, 2017, May 18, 2017, and May 25, 2017; and

The Nation's Indian Child Welfare Act Policy

WHEREAS, the Oneida Business Committee adopted resolution BC-09-25-81, entitled "Oneida Child Protective Board Ordinance," which delegated the powers conferred upon the Nation by the Congress of the United States under the Indian Child Welfare Act to the Oneida Child Protective Board; and

WHEREAS, the resolution BC-09-25-81 did not set forth the policy of the Oneida Nation to provide direction to the Oneida Child Protective Board for how the Board should approach such cases; and

WHEREAS, the Oneida Business Committee recognized in resolution BC-05-24-84-C that it took "steps to protect the best interests of children and to promote the stability and security of Indian tribes and families by establishing the Oneida Child Protective Board"; and

WHEREAS, the State of Wisconsin, on December 7, 2009, codified the Wisconsin Indian Child Welfare Act, which strengthens and enhances the Indian Child Welfare Act and adopts the minimum standards referenced in the Indian Child Welfare Act; and

WHEREAS, 25 U.S.C. §1915(c), the Indian Child Welfare Act, allows an Indian Tribe to establish a different order of placement preference for foster care placements and adoptive placements than those set out in §1915(a) and (b) of the federal Indian Child Welfare Act; and

WHEREAS, the Oneida Business Committee recognized in resolution BC-05-13-15-A that it is critical for the protection of our Oneida children to establish a policy statement regarding placement preferences to provide direction to the Oneida Child Protective Board, the Nation's Indian Child Welfare Department, and the Oneida Law Office; and

WHEREAS, with the adoption of the Children's Code and the dissolution of the Oneida Child Protective Board, the Oneida Business Committee finds it critical for the protection of our Oneida Children to establish an updated policy statement regarding placement preferences to provide direction to the Nation's Indian Child Welfare Department and the Oneida Law Office on how to handle Indian child welfare matters pending in outside jurisdictions; and

Adoption of the Children's Code and Effective Date

NOW THEREFORE BE IT RESOLVED, that the Children's Code is hereby adopted and shall become effective four hundred and fifty-five (455) calendar days from the approval date of the Fiscal Year 2018 Budget.

BE IT FURTHER RESOLVED, that the Oneida Business Committee is authorized to make such modifications and additions to the effective date and Implementation Plan as it deems necessary to implement the Children's Code in accordance with the proposed timelines, and shall ensure that the Children's Code does not become effective until all proper infrastructure is in place.

Implementation Plan for the Children's Code

BE IT FURTHER RESOLVED, that the Oneida Business Committee is hereby directed to develop an Implementation Plan to include the following:

- 1) *Acquisition and Training of Required Personnel.* The Oneida Nation entities affected by the adoption of this Children's Code, including the Oneida Family Court and the Nation's Indian Child Welfare Department, shall include the expenses associated with the new positions required to

implement the Children's Code in the Fiscal Year 2018 Budget. The affected entities shall begin the hiring process and training new staff upon approval of the Fiscal Year 2018 Budget.

- 2) *Negotiation of 161 Agreements and Memorandums of Understanding and/or Agreement.* The Nation shall seek to enter into all appropriate 161 Agreements and memorandums of understanding and/or agreement.
 - a. *161 Agreements.* The Nation shall continue to work towards negotiations with Brown County and Outagamie County for the development of 161 Agreements which clarify the relationship between the Nation and the county in providing for the health, safety and welfare of children by determining the circumstances in which the county department will make payments for costs of out-of-home placements of children when the placement is ordered by the Oneida Family Court.
 - b. *Memorandum of Understanding and/or Agreement with Brown County and Outagamie County.* The Nation may seek to enter into a memorandum of understanding and/or agreement with Brown County and Outagamie County to detail all responsibilities, procedures, interactions, and use of foster homes, shelter care facilities, and treatment facilities.
 - c. *Memorandum of Understanding and/or Agreement with Entities of the Nation.* The Indian Child Welfare Department shall enter into memorandums of understanding and/or agreement with the Oneida Trust Enrollment Committee and/or Department, Oneida Police Department, Oneida Nation Child Support Agency, and any other appropriate department in order to carry out the provisions of this law.
- 3) *Transfer of Cases.* The following determination has been made for the transfer of cases from Brown and Outagamie County jurisdiction to the jurisdiction of the Oneida Family Court:
 - a. When the Children's Code becomes effective all new cases in Brown and Outagamie County shall begin in or transfer to Oneida Family Court.
 - b. Any case in Brown and Outagamie County that has started within the most recent three (3) months may transfer to the Oneida Family Court.
 - c. All other current cases may remain in Brown and Outagamie County, unless the Nation's Indian Child Welfare Department determines the case would be better suited in the Oneida Family Court or another party motions the Court to transfer jurisdiction.

Before the Children's Code becomes effective, the Indian Child Welfare Department will meet with each affected family to discuss the status of their case, what jurisdiction the case would be better suited in, and the family's feelings on transfer to the Oneida Family Court. At least sixty (60) days before the Children's Code becomes effective the Legislative Operating Committee and the Indian Child Welfare Department shall hold a work meeting to discuss the number of cases seeking transfer to the Oneida Family Court.

- 4) *Recruitment of Foster Homes and Guardians ad Litem.* The Nation's Indian Child Welfare Department shall continue efforts to develop effective recruitment methods to increase the number of foster homes available for the Nation. The Oneida Family Court shall make recruitment efforts to increase the number of guardians ad litem available for use by the Oneida Family Court. The Oneida Family Court shall develop appropriate training for guardians ad litem involved in child welfare proceedings.
- 5) *Dissolution of the Oneida Child Protective Board.* The Oneida Child Protective Board shall be dissolved and no longer responsible for any involvement with Indian child welfare matters, including those matters that fall under the jurisdiction of the Oneida Nation Judiciary, ICWA or WICWA, effective September 30, 2017. The Nation's Indian Child Welfare Department and the Nation's Child Welfare attorney shall be responsible for following the Nation's Indian Child Welfare Act Policy.

The Chairperson and Secretary of the Oneida Child Protective Board shall be responsible for closing out open business of the Oneida Child Protective Board and forwarding the materials generated by the Oneida Child Protective Board to the Nation's Secretary's Office for proper disposal by October 16, 2017, pursuant to the Nation's Comprehensive Policy Governing Boards, Committees and Commissions.

Adoption of the Nation's Indian Child Welfare Act Policy – For those cases outside the Jurisdiction of the Nation

BE IT FURTHER RESOLVED, the Oneida Business Committee hereby sets forth the following as the policy of the Oneida Nation as it pertains to those cases that fall outside the jurisdiction of the Nation and under the jurisdiction of the federal Indian Child Welfare Act (ICWA) and the Wisconsin Indian Child Welfare Act (WICWA):

- 1) The Oneida Nation shall intervene in all ICWA/WICWA cases pending in outside jurisdictions involving children that are enrolled members of the Nation or eligible for enrollment unless such intervention would be impracticable under the circumstances of the case as decided by the Nation's Indian Child Welfare Department and the Nation's Child Welfare attorney.
- 2) The Oneida Nation hereby establishes the following as the placement preferences should it be necessary to place a child outside the child's home:
 - a. A member of the child's immediate or extended family;
 - i. Extended family member means a person who has reached the age of eighteen (18) and who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first, second, third or fourth cousin, stepparent.
 - b. A family clan member;
 - c. A member of the Oneida Nation;
 - d. Descendants of the Oneida Nation;
 - e. A member of another federally recognized tribe;
 - f. Fictive kin within the Oneida Nation community;
 - i. Fictive Kin means a person or persons who, to the biological parents of the minor child at issue, have an emotional tie to that parent wherein they are like family.
 - g. Fictive kin outside the Oneida Nation community; or
 - i. Fictive Kin means a person or persons who, to the biological parents of the minor child at issue, have an emotional tie to that parent wherein they are like family.
 - h. Any other person or persons not listed above as approved by the Nation's Indian Child Welfare Department.

BE IT FURTHER RESOLVED, all those who work with Indian Child Welfare Cases, including the Indian Child Welfare Department, the Social Services Department, and the Oneida Law Office shall be bound by and required to follow the above policy statement.

BE IT FURTHER RESOLVED, that the Nation shall continue to follow and adhere to Federal law, Court opinions which interpret Federal law, the Bureau of Indian Affairs Guidelines, and the Bureau of Indian Affairs Regulations.

BE IT FINALLY RESOLVED, that the Nation's Indian Child Welfare Act Policy is hereby adopted and will become effective September 30, 2017.



Statement of Effect

Adoption of the Children's Code and the Nation's Indian Child Welfare Act Policy

Summary

This resolution adopts the Children's Code and amends the Nation's Indian Child Welfare Act Policy.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

This resolution adopts a new Children's Code and amends the Nation's Indian Child Welfare Act Policy.

The Children's Code recognizes the authority of the Oneida Nation to exercise the fundamental right of sovereignty and self-determination by setting forth procedures to provide for the welfare, care, and protection of Oneida children through the preservation of the family unit. The Children's Code allows the Nation to exercise jurisdiction over children who are in need of protection or services so that the Nation can ensure that child welfare matters involving Oneida children are handled on the Reservation where more family members and Oneida foster homes are located and the traditions and culture of the Nation can be better preserved. The Children's Code will strengthen family life by assisting parents in fulfilling their responsibilities as well as facilitating the return of Oneida children closer to the Nation's resources which may result in a higher percentage of reunifications, lower the number of out-of-home placements, and increase family stability.

In addition to the adoption of the Children's Code, which governs child welfare proceedings that fall under the jurisdiction of the Nation, the resolution addresses those cases that will be heard in outside jurisdictions by amending the Nation's Indian Child Welfare Act Policy. It is critical for the protection of Oneida Children to establish an updated policy statement regarding placement preferences and other standards to provide direction to the Nation's Indian Child Welfare Department and the Oneida Law Office on how to handle Indian child welfare matters pending in outside jurisdictions.

The adoption of the Children's Code and the amendments to the Nation's Indian Child Welfare Act Policy will dissolve the Oneida Child Protective Board, and repeal the following resolutions:

- Resolution # BC-09-25-81 *Oneida Child Protective Board Ordinance*;
- Resolution # BC-10-07-81-A *Appointing Members to the Oneida Child Protective Board*;
- Resolution # BC-05-24-84-C *Definition of Extended Family Member*;
- Resolution # BC-01-14-15-A *Amendment of Oneida Child Protective Board Ordinance*;
- Resolution # BC-05-13-15 *Indian Child Welfare Act Policy*; and

▪ Resolution # BC-12-10-03-A *Oneida Child Protective Boards Stipends.*

The Oneida Child Protective Board was created by Oneida Business Committee Resolution BC-09-25-81 to represent the interests of Oneida children and accept the delegation of authority and responsibility conferred on the Nation by the Indian Child Welfare Act (ICWA). The creation of the Oneida Child Protective Board was necessary because the Nation did not have an Indian Child Welfare (ICW) Department or Judiciary to take on the responsibility of handling child welfare cases. The Oneida Child Protective Board has played an integral and important role in child welfare cases for the Nation, and it is because of this hard work and dedication that the Nation is at a point where it is capable of exercising jurisdiction over child welfare cases.

The Nation is now at a place where it can exercise authority and responsibility over child welfare cases and adopt the Children's Code. The Nation's ICW Department workers, Oneida Law Office attorneys, and Family Court judge(s) are highly trained subject matter experts on child welfare issues and will ensure that placement preferences and other standards are properly followed. In addition to the ICW Department, Oneida Law Office attorneys and Family Court judges, the Nation provides guardians ad litem to the children and allows for parents to be represented by attorneys or advocates. This ensures the best interests of the child and the Nation as a whole are adequately represented.

The dissolution of the Oneida Child Protective Board is included in the resolution because with the implementation of the new processes and procedures contained in the Children's Code, it was determined that the Board is providing a duplication of services which is no longer efficient, effective or fiscally responsible. Information the Oneida Child Protective Board supplies now can be provided by the Trust Enrollment Department. The Trust Enrollment Department maintains accurate and complete records of enrollments and family trees and the Children's Code requires the Trust Enrollment Department and/or Committee to enter into a memorandum of agreement and/or understanding with the ICW Department to ensure this information continues to be shared.

The Nation's updated Indian Child Welfare Act Policy contained in the resolution will address those cases that do not fall under the jurisdiction of the Nation's Children's Code. All authority and responsibility previously delegated to the Oneida Child Protective Board, including the placement preferences, definition for extended family and other standards the Oneida Child Protective Board currently operates under, will be delegated to the Nation's ICW Department and Oneida Law Office attorney to guarantee that the placement preferences and all standards are followed. This allows all decisions and recommendations to be made by subject matter experts and prevents a duplication of services.

Conclusion

Adoption of this resolution would not conflict with any of the Nation's laws.



Children's Code Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: Oneida Child Protective Board	SPONSOR: Fawn Billie	DRAFTER: Clorissa N. Santiago	ANALYST: Candice E. Skenandore
Intent of the Amendments	Develop a Children's Code (Code) which would enable the Nation to take jurisdiction of child welfare matters involving the Nation's children.		
Purpose	Provide for the welfare, care and protection of Oneida children through the preservation of the family unit, while recognizing that in some circumstances it may be in the child's best interest to not be reunited with his/her family. This Code strengthens family life by assisting parents in fulfilling their responsibilities as well as facilitating the return of Oneida children to the jurisdiction of the Nation and acknowledging the customs and traditions of the Nation when raising an Oneida child.		
Affected Entities	Indian Child Welfare Department (Department), Trust Enrollment Committee, Oneida Police Department (OPD), Oneida Family Court (OFC), Trust Enrollment Department, Oneida Law Office (OLO), Oneida Child Protective Board (Board), Oneida Nation Child Support Agency.		
Affected Legislation	This Code makes references to the Rules of Civil Procedure; Rules of Evidence; Rules of Appellate Procedure; Child Support law; Wisconsin Statutes 940, 948, 48, 938 & 1708; Indian Child Welfare Act (ICWA), Wisconsin Indian Child Welfare Act (WICWA).		
Enforcement/Due Process	Any order issued under this Code is appealable to the Court of Appeals pursuant to the Rules of Appellate Procedure <i>[See Children's Code, 7 O.C. 708.46]</i> . Anyone that does not abide by an order of the Court can be held in contempt.		
Public Meeting	A public meeting was held on May 4, 2017.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. This Code applies to all child welfare cases and legal proceedings in which the Nation has jurisdiction. This Code does not restrict or limit another court from hearing matters involving an Indian child *[See Children's Code, 7 O.C. 708.4-1]*. An Indian child is a member of a federally recognized Tribe or eligible for membership in a federally recognized Tribe and has a biological parent who is a member *[See U.S. Department of Interior, Bureau of Indian Affairs, Final Rule: Indian Child Custody Proceedings, 25 CFR 23]*.
- B. The expected benefits of this Code will allow the Nation to exercise its sovereignty and jurisdiction while at the same time strengthening the family unit and ensuring that Oneida children are raised with the customs and traditions of the Nation.

SECTION 3. CONSULTATION

- A. The following departments were involved in consultations/discussions when developing this Code and legislative analysis:
- Finance Department
 - Oneida Child Protective Board
 - Oneida Indian Child Welfare Department
 - Oneida Family Court

- 19 ▪ Oneida Judiciary
- 20 ▪ Oneida Law Office
- 21 ▪ Oneida Nation Child Support Agency
- 22 ▪ Oneida Police Department
- 23 ▪ Legislative Affairs
- 24 ▪ Trust Enrollment Department
- 25 B. The following experts were consulted during the development of this Code and legislative analysis:
- 26 ▪ Anita Fineday, Managing Director, ICWP at Casey Family Programs
- 27 ▪ Matthew Morton, former Deputy Director, National Indian Child Welfare Association
- 28 ▪ Tania Cornelius, Tribal Affairs Specialist, Division of Safety and Permanence, Wisconsin
- 29 Department of Children and Families
- 30 ▪ Stephanie Lozano, Tribal Liaison, Wisconsin Department of Children and Families
- 31 ▪ Lisa Skenandore, former Director of ICW & Child Support, current Vice President of
- 32 Business Development, Systems & Methods, Inc.
- 33 ▪ Gary Huebner, Connecting Point AV & Security, Camera Corner
- 34 ▪ Bridget Bauman, Children's Court Improvement Program Director, Director of State Courts
- 35 Office
- 36 ▪ Justin Wolff, Policy Analyst, Children's Court Improvement Program
- 37 ▪ Raeann Skenandore, Court Administrator, Oneida Judiciary
- 38 ▪ Jacqueline M. Moen-Kadlec, Lead Administrative Social Worker, Ho Chunk Nation Child
- 39 and Family Services
- 40 ▪ Teresa Juga, Indian Child Welfare Manager, Stockbridge-Munsee
- 41 ▪ Samantha Wagner, Assistant Corporation Counsel, CHIPS, Brown County
- 42 ▪ Scott Wilson, Tribal Prosecutor, Menominee Indian Tribe of Wisconsin
- 43 ▪ Kristin Allen, Family Services Manager (ICW), Lac du Flambeau Band of Lake Superior
- 44 Chippewa Indians
- 45 C. A number of child welfare Codes and related documents were reviewed in the development and/or
- 46 implementation of the Code and legislative analysis, these Codes and documents include:
- 47 ▪ Confederated Salish and Kootenai Tribes, Title III, Chapter 2 – Child Abuse and Neglect
- 48 ▪ Forest County Potawatomi Children's Code Ordinance (Chapter 3-1)
- 49 ▪ Fort McDowell Yavapai Nation, Court and Procedure (Chapter 1, Section 1-25 (C))
- 50 ▪ Ho Chunk Nation Code Title 4 – Children, Family, and Elder Welfare Code, Section 3 Hocak
- 51 Nation Children and Family Act
- 52 ▪ Indian Child Welfare Act of 1978 (25 U.S.C 21)
- 53 ▪ Lac du Flambeau Tribal Code, Child Welfare Code (Chapter 31)
- 54 ▪ Menominee Indian Tribe of Wisconsin, Health & Family (Chapter 368, Articles IX, X, & XI)
- 55 ▪ P.L.105-89, Adoption and Safe Families Act of 1997
- 56 ▪ Red Cliff Children's Code (Chapter 26)
- 57 ▪ Shoshone & Arapaho Children's Code, Title III
- 58 ▪ State of Wisconsin, Children's Code (Wis. Stat. 48)
- 59 ▪ State of Wisconsin, Department of Health and Family Services, Division of Children and
- 60 Family Services Memorandums regarding 161 Agreements and High Cost Pool Funds
- 61 ▪ State of Wisconsin Foster Parent Handbook
- 62 ▪ St. Croix Chippewa Indians of Wisconsin Children's Code
- 63 ▪ Stockbridge-Munsee Tribal Code, Youth Code (Chapters 7-11)
- 64 ▪ U.S. Department of Interior, Bureau of Indian Affairs, Final Rule: Indian Child Custody
- 65 Proceedings, 25 CFR 23
- 66 ▪ White Earth Band of Ojibwe Child/Family Protection Code, Title 4: Children and Families
- 67 ▪ White Earth Band of Ojibwe Judicial Code, Title 4a: Customary Adoption Code

- 161 Agreements involving: Lac Courte Oreille Band of Lake Superior Chippewa Indians, Red Cliff Band of Lake Superior Chippewa Indians, Bad River Band of Lake Superior Tribe of Chippewa Indians, and Stockbridge-Munsee Community.

SECTION 4. PROCESS

A. Thus far, the Code has followed the process set forth in the Legislative Procedures Act.

B. The Code was added to the LOC's active files list on: April 7, 2008; February 6, 2012 and again on September 17, 2014. The Oneida Child Protective Board Ordinance made reference to a need for a Children's Code in 1981. The Nation at one time or another has had a desire to adopt a Children's Code for the past 35 years.

C. At the time this legislative analysis was developed, the following work meetings were held/scheduled in regards to the development of the current proposed Code and legislative analysis:

- December 19, 2016: LOC, ICW and OLO
- January 20, 2017: OLO
- January 23, 2017: ICW
- January 23, 2017: OFC
- January 30, 2017: LOC Sponsor
- February 10, 2017: LOC Sponsor
- February 23, 2017: ICW, Finance
- February 23, 2017: OFC, Finance
- March 1, 2017: Court Administrator, OFC, Finance
- March 3, 2017: ICW, Finance
- March 17, 2017: OPD
- April 7, 2017: LOC, OBC
- April 14, 2017: Department of Children & Families, LOC, OPD, ICW, Legislative Affairs, OLO, Finance, OFC
- April 17, 2017: LOC, OPD, ICW, Legislative Affairs, Finance, OLO, OFC
- April 19, 2017: Oneida Child Protective Board, LOC
- April 21, 2017: ICW, Trust Enrollments
- April 21, 2017: ICW
- April 21, 2017: ICW, OFC, Court Administrator
- April 21, 2017: ICW, Oneida Child Protective Board, OFC (Child Welfare Code Presentation)
- April 24, 2017: Oneida Child Protective Board
- May 2, 2017: ICW, Finance
- May 3, 2017: Oneida Child Protective Board
- May 9, 2017: ICW
- May 12, 2017: LOC, ICW, OFC, GSD Director
- May 17, 2017: LOC (public comment review)
- May 18, 2017: ICW, Housing
- May 18, 2017: LOC (public comment review)
- May 25, 2017: LOC (public comment review)
- June 2, 2017: ICW, OFC
- June 5, 2017: ICW, GSD Director, OLO
- June 9, 2017: OFC, LOC
- June 22, 2017: OBC
- June 26, 2017: ICW, LOC
- July 14, 2017: ICW, OLO, GSD Director (161 Agreements)
- July 20, 2017: ICW, OFC, Records Management

* meeting(s) between Brown & Outagamie Counties will be scheduled in the future

SECTION 5. CONTENTS OF THE LEGISLATION

- A. It is the goal of this Code to allow the Nation to exercise jurisdiction over its children who are in the need of protection or services and ensure that child welfare cases involving Oneida children are handled on the Reservation where more family members are located and more Tribal foster homes are available. Furthermore, it is the hope that the Code will bring Oneida children and their families closer to the Nation's resources and keep these families near the Reservation which may result in a higher percentage of reunifications and lower the number of unstable families.
- B. The following is a more detailed overview of the proposed Code:
1. **Jurisdiction.** The Court will have personal jurisdiction, jurisdiction over the child who is alleged to be in need of protection or services, and jurisdiction over other matters relating to the child. In addition, cases from other courts of competent jurisdiction can be transferred to the Court so long as personal jurisdiction is established. Furthermore, the Court can transfer a case under this Code to a court of competent jurisdiction if that court has a significant interest and the transfer would be in the child's best interest [*See Children's Code, 7 O.C. 708.5*].
 - a. **Personal Jurisdiction.** The Court has personal jurisdiction over a child that is present or resides in Brown and Outagamie Counties and is enrolled or eligible for enrollment with the Nation. The Court will also have personal jurisdiction over any child that is not enrolled or eligible for enrollment so long as the child 1) is present or resides on the Reservation, 2) is a sibling of a child that is enrolled or eligible for enrollment, and 3) the child's parent, guardian or legal custodian consent to personal jurisdiction [*See Children's Code, 7 O.C. 708.5-1*].
 - b. **Jurisdiction over Children Alleged to be in Need of Protection or Services.** The Court will have jurisdiction over a child alleged to be in need of protection or services if 1) personal jurisdiction has been established and 2) the child is found to be subject to any of the circumstances listed in section 708.5-2 of this Code. These circumstances include, but are not limited to the child not having a parent or guardian, is a victim of abuse or neglect, is receiving inadequate care, and more [*See Children's Code, 7 O.C. 708.5-2*].
 - c. **Jurisdiction over other Matters Relating to Children.** So long as jurisdiction is established, the Court has the authority to terminate parental rights; appoint, revise and/or remove a guardian and hold adoption proceedings [*See Children's Code, 7 O.C. 708.5-3*].
 - d. **Other.** Other tribes take jurisdiction over Indians that reside on their reservations. Indians are typically identified as any member of a federal recognized tribe, Alaskan Native or member of a regional corporation specified in 43 U.S.C. ' 1606 [*See Hocak Nation, Children & Family Act 4 HCC ' 3, Ch 1.7.a (3) (c & d); White Earth, Child/Family Protection, Ch 1, Section 1 (c), (e), (f) & (g) and Sections 2 & 3; Confederated Salish & Kootenai Tribes, Child Abuse & Neglect, 3-2-103; Stockbridge-Munsee, Youth Code, Ch 7.3 (A) (1-3); Lac du Flambeau, Child Welfare Code, 31.103 (3); and Potawatomi, Children's Code Ordinance, 3-1 ' 3.1 (c)*]. This Code limits jurisdiction to children who are enrolled or eligible for enrollment that are present or reside in Brown and Outagamie County or the child's sibling so long the sibling lives on the Reservation and the parents consent to jurisdiction. During the development of this Code it was discussed on whether or not to expand jurisdiction to include any Indian residing on the Reservation. It was decided to limit jurisdiction to ensure the Nation is properly structured to handle child welfare cases. It is unknown how many child welfare cases the Nation may take jurisdiction over; but the Children's Court Improvement Program provided the following number of cases involving Oneida children in need of protection or services. These numbers were provided by doing a search on CCAP, which may not accurately portray the number of children in need of protection or services (CHIPS) cases that are active in the identified counties. It should be noted that these numbers reflect the number of cases, not the number of children. There may be multiple children per case.

Year	Number of CHIPS Cases		
	BROWN CO.	OUTAGAMIE CO.	Total
2014	19	5	24
2015	22	9	31
2016	24	16	40

*please note that each case will most likely require multiple hearings per year

The following table illustrates how many cases the Department handles each month. The purpose of this table is to provide a better understanding of how many cases the Nation can expect to exercise jurisdiction over. The figures below include the Department's entire caseload, not just Brown and Outagamie Counties. Currently, the Department only handles cases in which the child is enrolled or eligible for enrollment. Because this Code allows the Nation to exercise jurisdiction over siblings of enrolled or eligible for enrollment children, the potential impact could increase the Department's workload. It should be noted that both the Department and Ho Chunk Nation stated the number of CHIPS cases are continuing to rise due to current drug trends and increased mental health issues. These factors will also play a role in Department's workload.

Date	On-Going Worker (# of Cases)	Intake Worker (# of Cases)	Total # of Cases per Month
October 2015	17	Not reported	17*
November 2015	11	Not reported	11*
December 2015	14	Not reported	14*
January 2016	15	6	21
February 2016	19	4	23
March 2016	17	3	20
April 2016	14	5	19
May 2016	13	0	13
June 2016	13	3	16
July 2016	12	4	16
August 2016	11	6	17
September 2016	14	2	16
October 2016	11	4	15
November	Not reported	Not reported	Not available
December 2016	18	4	22
January 2017	18	3	23
Average Monthly Cases	15	4	19

*notes missing information. It should also be noted that the Department was operating without a complete staff during a portion of 2016.

To better understand the table it is important to know that there are two types of case managers that work at the Department. The on-going worker ensures that conditions and services ordered by the Court are satisfied by providing resources to the clients. The intake worker is responsible for doing the initial investigation. The intake worker will make the initial determination to screen in a case. Typically intake workers handle cases for up to 60 days before the cases are either screened out or transferred to the on-going workers. Currently, the county's child protection services will do the investigation and make the determinations of whether or not to substantiate a case. This Code authorizes the Department's workers to make those determinations.

2. **Department's Duties & Responsibilities.** This Code specifically identifies the duties and responsibilities of the Department and the Indian Child Welfare (ICW) worker. The ICW worker

responsibilities are located in section 708.7-1 of the Code and include: receiving, examining and investigating complaints and allegations of CHIPS; determining if there is an emergency and whether the child should be taken into custody; making recommendations to the Nation's child welfare attorney and the Court; developing reports and performing functions as directed by the Court; referring clients to counseling or services; identifying and developing resources in the community that can be utilized by the Department or Court; conducting reviews; explaining court proceedings to the child when appropriate; maintaining confidentiality; participating in training, conferences and workshops; and more.

The Department's duties are found in section 708.7-2 of the Code and include identifying and referring parties to resources available in the community; investigating, inspecting and licensing foster homes as well as monitoring and supervising foster homes and children in foster care; adhering to placement preference; entering into memorandum of understandings and/or agreements with the Trust Enrollment Committee, OPD, and Oneida Nation Child Support Agency as well as any other appropriate departments; and share information with social services, law enforcement agencies, and other entities of the Nation.

a. Foster Homes. It should be noted that the Department already licenses level 2 foster homes both on and off the Reservation. As of July 2017, the Nation had nine foster homes, with the potential of four additional homes becoming available soon. The Nation's foster homes are currently caring for 13 children/ *[Information received from Foster Care Coordinator and Department Supervisor, email correspondences, January 23, 2017 and July 10, 2017]*. Implementing this Code will require more foster home recruitment. It is because of this that the Department has indicated a need of an additional foster care coordinator.

3. Guardians ad Litem. This Code will require the use of guardians ad litem (GALs). A GAL is an individual that is appointed by the Court to represent the best interest of the person in which he/she was appointed for. The Court can appoint a GAL for any child in need of protection or services but must appoint a GAL for a child that is subject to a termination of parental rights case or a contested adoption or guardianship proceeding *[See Children's Code, 7 O.C. 708.3-1 (x) and 708.8-1]*. In state court, GALs are attorneys *[See Wis. Stats. ' 48.235 (2)]*. Like many other tribal Codes, to be a GAL according to this Code, the individual must meet specific qualifications which include: being at least 21 years old, being certified and in good standing, never been convicted of a felony unless a pardon or forgiveness was received; and never been convicted of a crime against a child. The Code does not allow a GAL to be appointed if he/she has a personal interest in the case or a party; is appearing as counsel or advocate in the case or is related to a party. The Code requires GALs to complete training or be certified before participating in child welfare cases. The Code also specifies the GAL's responsibilities and addresses GAL compensation *[See Children's Code, 7 O.C. 708.8-2 through 708.8-4; Red Cliff, Children's Code, 26.6.3; Ho Chunk Nation, Children and Family Act, I.6.v; White Earth, Child/Family Protection Code, Section 3(o)]*.

a. Current GAL Numbers. The OFC has indicated that there are currently 17 GALs that have been approved to take appointments from the OFC. Of this amount, six are not being utilized because they said they no longer wish to take on any cases or have failed to respond to requests-making them inactive. Three GALs are only accepting approximately one-time per year. In total, there are eight GALs that are actively taking cases; however, two of them prefer only one appointment at a time. This may be because many of the GALs have full-time jobs which limit their ability to take on multiple cases. It is unknown how many GALs will be needed to successfully implement this Code but according to the OFC, a fair estimate would be approximately 2-3 effective GALs for every five cases. It should be noted that the current GALs will need additional training to participate in child welfare cases, if they choose to participate. Recruitment for more GALs is essential for implementation of this Code.

4. Advocates. A parent, guardian and legal custodian can obtain an advocate to represent him/her at any proceeding at his/her own expense *[See Children's Code, 7 O.C. 708.9-1]*. In order to be an

advocate under this Code, the advocate must be at least 21 years old, be admitted to practice before the Judiciary, and never been convicted of a felony unless he/she received a pardon or forgiveness, and was never convicted of a crime against a child. In addition, the advocate must comply with all Codes, rules and policies of the Nation governing advocates [*See Children's Code, 7 O.C. 708.9-2 and 708.9-3*]. It should be noted that in state court proceedings involving state and federal Indian Child Welfare Acts, parents are appointed lawyers to represent them as outlined in Chapter 48 of the Wisconsin Statutes [*See Wis. Stats. ' 48.23 (1g) and (2g)*].

In order to participate in cases before the Oneida Judiciary, the advocate must be formally approved for admission to practice. The Oneida Judiciary's Rules of Admission set out general requirements for lay advocates which require them to file a written application for admission, pass a criminal background check, be at least 21 years old, be of good character to practice, and take an oath of admission [*See Oneida Judiciary, Rules of Admission, Rule 1-2*]. In addition to the requirements above, the advocate must provide educational and/or professional background information, as well as follow the Oneida Rules of Professional Conduct for Attorneys [*See Oneida Judiciary, Rules of Admission 1-5 & 1-8*].

5. **Cultural Wellness Facilitator and Healer.** This Code allows the Department to provide a Cultural Wellness Facilitator and Healer throughout the child welfare proceedings. The Cultural Wellness Facilitator and Healer provides wellness sessions utilizing culturally based and appropriate healing methods; training on Oneida culture, language, and traditions; and any other necessary services [*See Children's Code, 7 O.C. 708.10*]. The Nation currently has two individuals that can act as Cultural Wellness Facilitators and Healers. However, the Governmental Services Division Director indicated that current staff would not be available to handle the child welfare cases in addition to their current workload and that two additional staff will be needed to implement the Code. The Cultural Wellness Facilitator and Healer will offer a unique service to families and staff that is not currently being provided in state court. In addition, the Cultural Wellness Facilitator and Healer will provide cultural training to non-Oneida Foster Homes in the hopes that Oneida children will continue to have access to their cultural and traditions.

6. **Placement Preference.** The preference for placement in CHIPS cases can be found in section 708.11-1 of the Code and includes the following prioritized order:

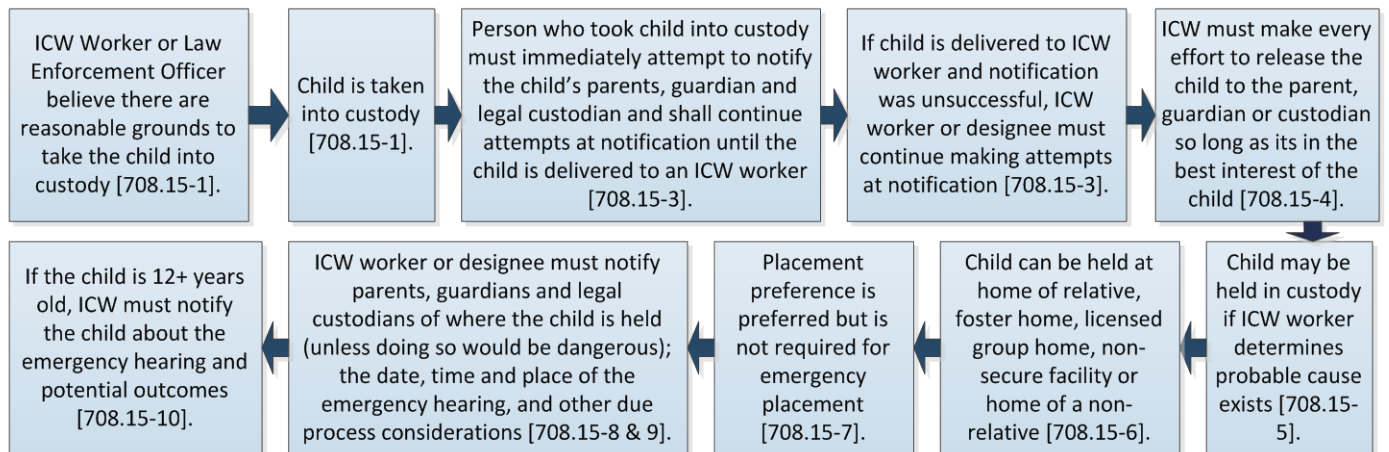
- A member of the child's immediate or extended family
- A family clan member
- A member of the Nation
- Descendants of the Nation
- A member of another federally recognized tribe
- Fictive kin within the Nation community
- Fictive kin outside the Nation community
- Any other person not listed above

The Court can deviate from this list if it is determined to be in the child's best interest and if there is good cause. Good cause is when 1) the child's parent or child, if the child is at least 12 years old and makes a request, 2) the child requires specialized treatment because of an extraordinary physical, mental, or emotional health condition, 3) there is no suitable placement for the child in any of the preferences listed above or 4) any other reason the Court deems to be in the child's best interest [*See Children's Code, 7 O.C. 708.11-3*].

7. **Notice of Petitions.** Notice of the CHIPS petition can be given to the parties directly by the Nation's Child Welfare Attorney or Department or pursuant to the Oneida Judiciary Rules of Civil Procedure. Petitions for termination of parental rights (TPR), guardianship, and adoption must follow the notice requirements found in the Oneida Judiciary Rules of Civil Procedure. Any other notification of subsequent hearings must be served by first class mail to the most recently verified last-known address of the party(ies) [*See Children's Code, 7 O.C. 708.12*].

8. **Hearings (General).** The child may be excluded from hearings if the Court determines it is in the child's best interest. The Rules of Evidence are not binding at emergency custody hearings, dispositional hearings, or a hearing about changes in placement, revisions and extensions of dispositional orders, extension, or hear termination of guardianship orders. If an alleged father appears at a hearing under this Code, the Court can refer the matter to the Oneida Nation Child Support Agency to determine paternity. In addition, during the dispositional hearing, the Court can refer the matter or require the Department to refer the matter of child support to the Nation's Child Support Agency [See *Children's Code*, 7 O.C. 708.13].
9. **Discovery & Records.** Upon written request, the parties and their counsel have a right to inspect, copy, or photograph the child's records identified in section 708.14-1 of this Code. The Court can issue an order if the request for discovery is refused. Discovery that violates privileged communication or a work product rule can be denied in whole or in part by the Court; in addition, the Court can place limits or set conditions on discovery. The person who filed a child welfare complaint must have their identity redacted in all documents that are made available to the parties. Discovery procedures identified in the Oneida Judiciary Rules of Civil Procedure will work in conjunction with this Code [See *Children's Code*, 7 O.C. 708.14].
10. **Taking a Child into Custody Process.** A child can be taken into custody if there are reasonable grounds which include 1) a warrant to apprehend the child, 2) the child is suffering from an illness or injury or is in immediate danger and removal is necessary and/or, 3) the child violated the conditions of the order [See *Children's Code*, 7 O.C. 708.15-1]. The following flow chart illustrates the process for taking a child into custody in accordance with section 708.15 of this Code:

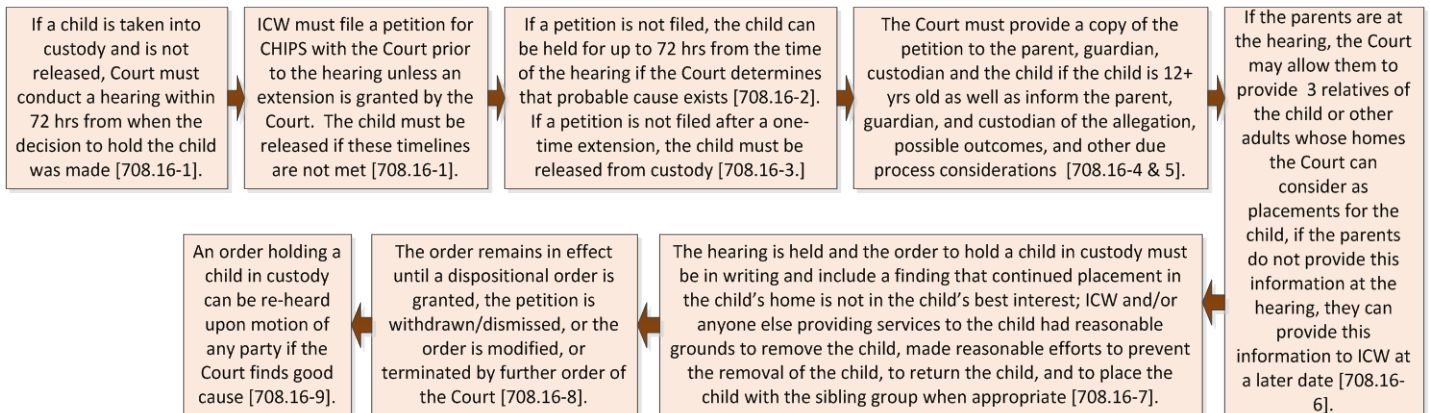
Taking Child Into Custody



- **Probable Cause.** A child can be held in custody if probable cause exists. Probable cause exists if it is believed 1) the child will cause injury to him/herself or others, 2) the child will be injured by others, 3) the parent, guardian, or legal custodian or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care and that the child's (or any child in the home) safety and well-being is not adequately provided for, and 4) the child will run away or be taken prior to the proceedings [See *Children's Code*, 7 O.C. 708.15-5].

11. **Emergency Custody Hearing.** The procedure for emergency custody hearings is shown below:

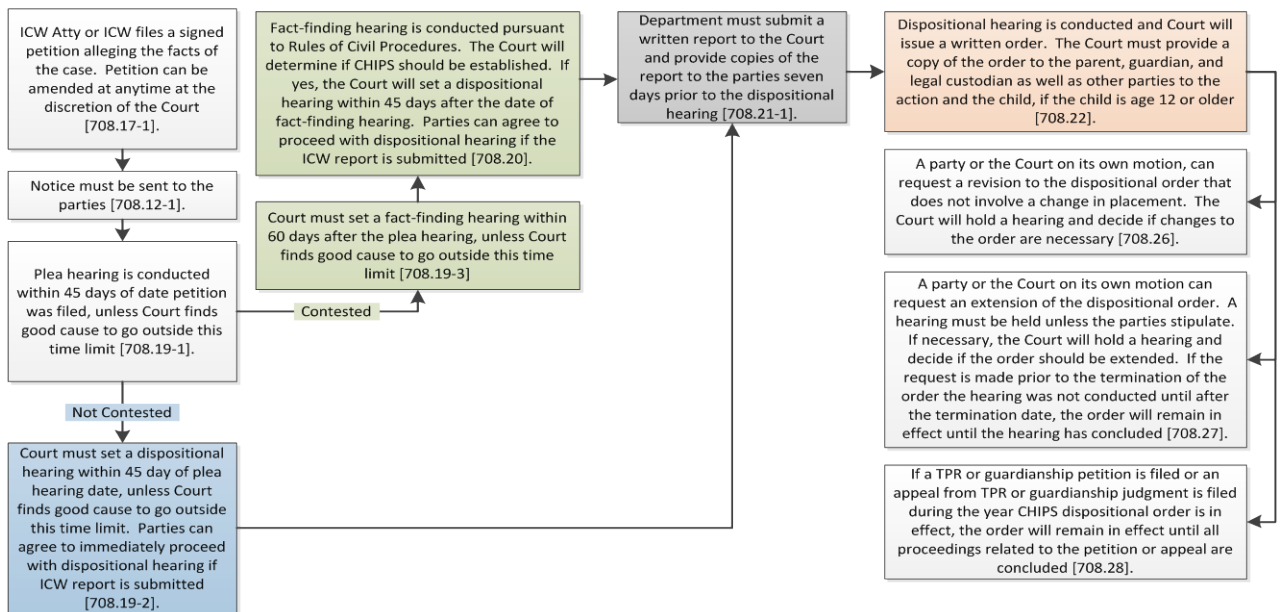
Emergency Custody Hearings



- **Probable Cause.** If a petition is not filed prior to the hearing, the Court can hold a child for up to 72 hours excluding weekends and holidays if probable cause exists. Probable cause exists if 1) additional time is needed to determine if a petition initiating the proceeding is necessary, 2) the child is imminent danger to his/herself or others, or 3) the parent, guardian, and legal custodian or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care [See Children's Code, 7 O.C. 708.16-2].

12. CHIPS Proceedings. The following illustration depicts the legal proceedings for a CHIPS case:

CHIPS Proceeding



- **CHIPS Petitions.** The petition must include the names, birth dates, and tribal affiliations of the child, parents, guardians, legal custodians, and spouse, or if no person can be identified, the nearest relative. The petition must also include whether the child is in custody and if yes, where the child is held and the date he/she was taken into custody so long as this information does not put anyone in danger. A Uniform Child Custody Jurisdiction and Enforcement Act affidavit must accompany the petition. In addition, the petition must include a statement of facts and any other information required by the Court. If any of the required facts are unknown, the petition must state this [See Children's Code, 7 O.C. 708.17-2 & 708.17-3].

- 345 ▪ *Consent Decree.* This Code allows for the use of consent decrees. A consent decree is a court
346 decree that all parties agree to [See *Black's Law Dictionary, Abridged 9th Edition, pg. 372*].
347 After a petition is filed but before a judgment is entered, the Court can suspend a CHIPS
348 proceeding and place the child under supervision within his/her home or where the child is
349 currently placed. The Court can establish terms and conditions regarding the child and the
350 parents, guardian or legal custodian. The purpose of a consent decree is to get the parents,
351 guardian or legal custodian to agree to terms and conditions in order to prevent the child from
352 being in need of protection or services. Consent decrees last up to six months with an
353 additional six month extension [See *Children's Code, 7 O.C. 708.18-3 & 708.18-4*]. During
354 this time the Department will make service referrals to the family as well as monitor the
355 circumstances to ensure there are no safety concerns and that the child's environment is
356 improving. The consent decree can end prior to the time limits noted above if the court
357 ordered conditions have been met and the safety issues are eliminated. If the court ordered
358 conditions are not met, the Department may request that the consent decree be vacated and
359 the CHIPS matter can resume at the same point it was at when the consent decree was
360 entered. According to both the Tribal Prosecutor for Menominee Indian Tribe of Wisconsin
361 and the CHIPS Assistant Corporation Counsel for Brown County, consent decrees are rare;
362 Brown County typically offers consent decrees for 4-5 families a year. Although consent
363 decrees are not used often, Brown County likes to have this option available as it provides
364 another tool when negotiating and ultimately resolving a case without going to trial.
365 According to Brown County Corporate Counsel, there are cases where facts or situations
366 change shortly after a petition is filed and consent decrees provide a way to encourage parents
367 to make changes while still monitoring the situation. It could also allow for placement with a
368 safe parent without having to get the court ordered changed. However, Brown County would
369 not recommend entering into a consent decree without a plea from a parent that would be
370 held open for the duration of the consent decree.
- 371 ▪ *CHIPS Plea Hearing.* Before the Court can accept an admission or plea of no contest, the
372 Court must address the parties and determine: if the admission or plea of no contest is made
373 voluntarily; that the parties understand the allegations and potential outcomes; that no
374 promises or threats were made to elicit the admission or plea; and inquire as to the facts of the
375 admission or plea [See *Children's Code, 7 O.C. 708.19-4*].
- 376 ▪ *CHIPS Disposition Report.* The Department must submit a written report to the Court
377 regarding CHIPS cases and provide a copy of the report to the parties at least seven days prior
378 to the disposition hearing. The report must contain the information listed in section 708.21-1
379 of this Code which includes: the social history of the child, a strategic plan for the care and
380 assistance to the child and family that will alleviate the issues addressed in the petition, a
381 detailed explanation of the plan and the benefits of such plan, and if out-of-home placement
382 is recommended and specific reasons for such recommendation. If the Department
383 recommends out-of-home placement, the Department must include all of the following in the
384 written report: 1) the location of placement and where it fits within the placement
385 preferences, 2) whether child support should be established, 3) specific information showing
386 continued placement in the child's home is not in the child's best interest, and 4) when
387 necessary, that reasonable efforts to place the child with his/her sibling group was made,
388 unless it is not in the best interests of the child or the child's siblings. The Department can
389 ask the Court to withhold identifying information if such information would result in
390 imminent danger to the child or anyone else [Children's Code, 7 O.C. 708.21-2 & 708.21-3].
- 391 ▪ *CHIPS Dispositional Hearing.* Any party can present relevant evidence, including expert
392 testimony and make alternative dispositional recommendations. If out-of-home placement is
393 recommended, the Department must 1) show that the continued placement in the child's
394 home is not in the best interest of the child, 2) the Department made reasonable efforts to
395 prevent removal of the child, and 3) if appropriate, place the child with his/her sibling group

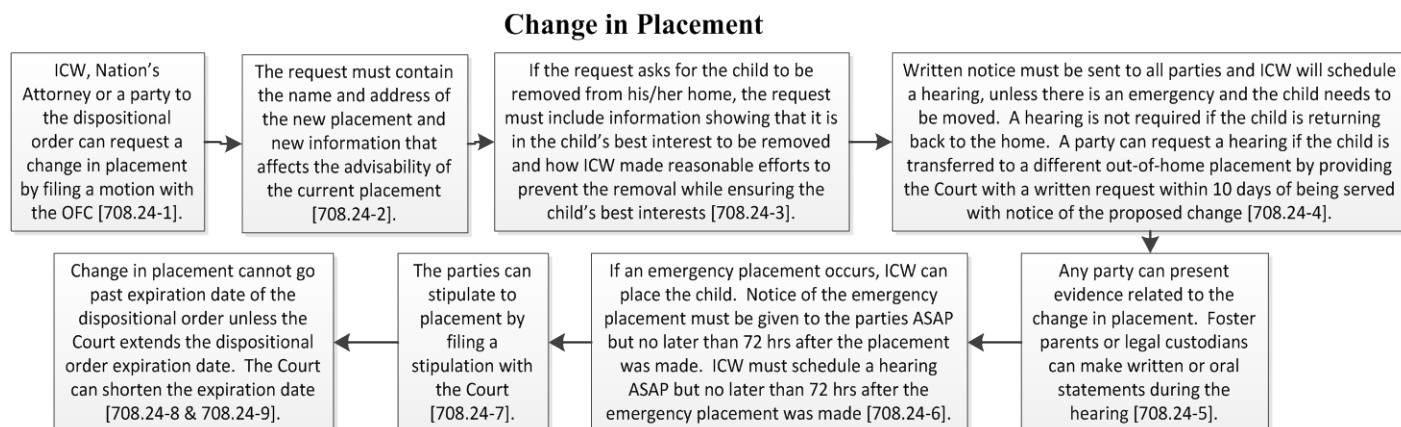
unless it is not in the best interest of the child or siblings. The Court must provide a written dispositional order which must protect the best interests of the child in a way that is least restrictive of the parents' and child's rights as well as assure the care, treatment and/or rehabilitation of the child and family. The family unit must be preserved unless it is not in the best interests of the child, in which case, the Court must consider transferring the custody pursuant to the placement preference list. The order must include a treatment plan and specific services to be provided to the child and family and legal custodian; if necessary, the location of the child so long as disclosing this information does not put the child or anyone else in imminent danger; the date when the order expires; the amount of child support to be paid, (if any); that the Department made reasonable efforts to prevent removal of the child from the home so long as it was in the child's best interests; if the child is placed under the supervision of the Department that the Department has placement and care responsibility as well as primary responsibilities for providing services to the child and family; place the child with his/her sibling group, when appropriate, so long as it is in the child's or sibling's best interest; conditions in which the parties must comply and set reasonable parental visitation as long as it is in the child's best interest [See Children's Code, 7 O.C. 708.22-1 through 708.22-4].

The Court can order the parent, guardian and legal custodian to comply with any conditions or treatment plan. The conditions or treatment plan must identify 1) the problems or conditions that resulted in child abuse or neglect, 2) the treatment goals and objectives for each condition or requirement included in the plan, including the safe return of the child to the family when applicable, 3) the specific treatment objectives that specifies the roles and responsibilities of all parties addressed in the plan, and 4) a notice that completion of the plan does not guarantee the return of the child. The treatment plan may include recommendations and the Court may require the parent, guardian and legal custodian participate in a treatment program such as mental health, substance abuse, anger management, individual or family counseling, parenting class, cultural wellness treatment and training, and/or any other treatment as deemed appropriate by the Court [See Children's Code, 7 O.C. 708.22-5].

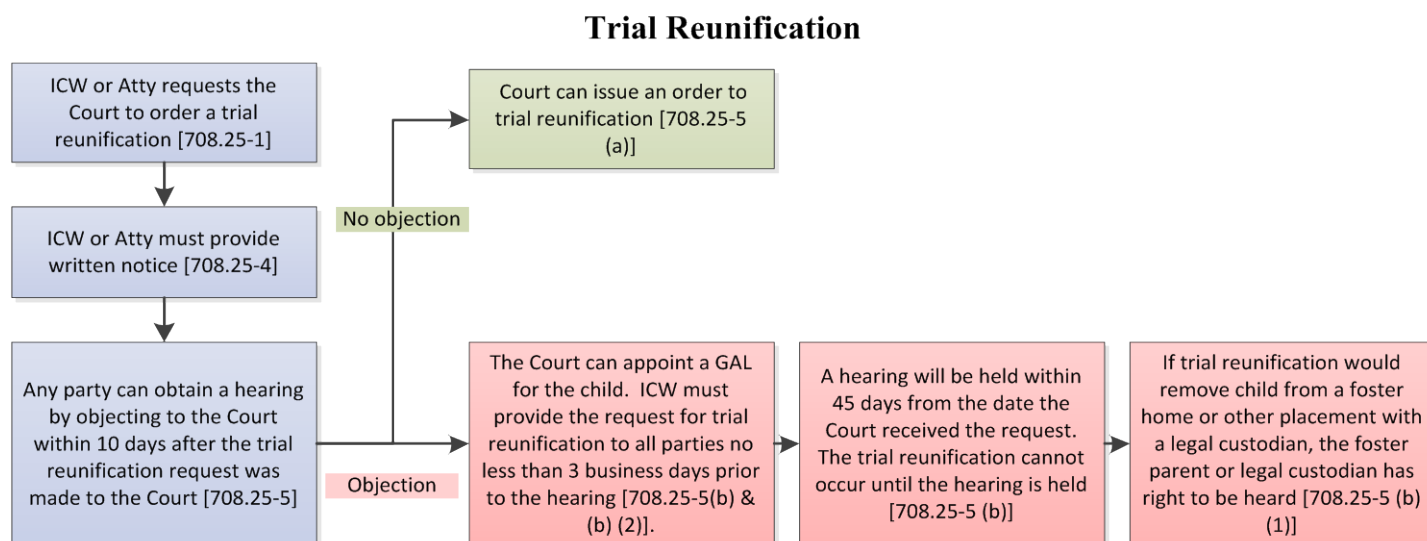
The Department may not be required to make reasonable efforts to return the child to his/her home if the parent was convicted of committing a crime contained in Chapters 940 & 948 of the Wisconsin Statutes or any other similar Codes [See Children's Code, 7 O.C. 708.22-6]. The Court must provide a copy of the disposition order to the child's parents, guardian and legal custodian as well as other parties to the action and the child, if the child is at least 12 years old. If the child is placed out-of-the home or if visitation is denied because of CHIPS, the Court must both orally inform the parent at the hearing and include in the written disposition order, any grounds for TPR and the conditions necessary for the child to be returned or for parental visitation [See Children's Code, 7 O.C. 708.22-7 & 708.22-8].

13. Permanency Plans. Any time a CHIPS dispositional order places the child outside of the home, the Department must prepare a written permanency plan. Section 708.23-1 of this Code sets out the requirements for what must be included in the plan. The initial permanency plan must be filed with the Court within 60 days after the date the child was removed from the home, unless the child was returned within that time. The Court must hold a review on the permanency plan no later than six month after the date the child was placed outside the home. After the hearing, the Court must enter a written order addressing 1) the necessity and appropriateness of the plan, 2) compliance with the plan by the identified parties, 3) efforts taken to meet the needs of the child and the parents, 4) progress on eliminating the causes of the child to be placed outside the home and returning the child or obtaining permanent placement, 5) date the child will be returned, be placed for adoption or other permanent living arrangement, 6) whether the Department made reasonable efforts to achieve the permanency plan goal and keep the sibling group together or have frequent visitation and 7) date of the next review hearing, if appropriate [See Children's Code, 7 O.C. 708.23].

14. Change in Placement. The following flow chart shows the process for changing the placement of the child:

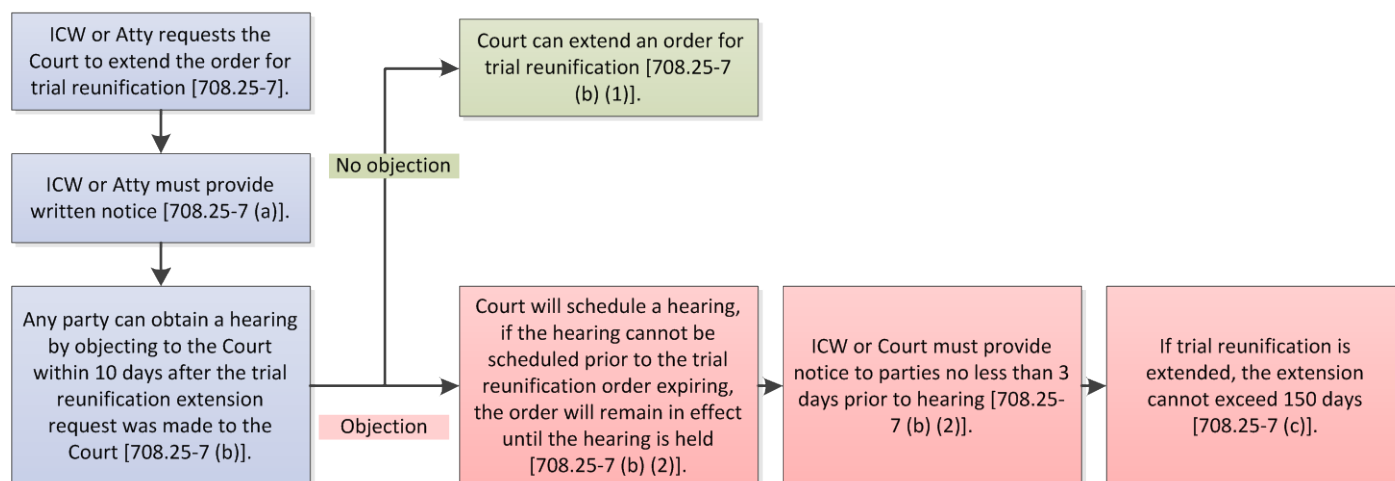


15. Trial Reunification. A trial reunification will happen when a child is placed outside of his/her home but returns to the home of the parent, guardian or legal custodian on a temporary basis. A trial reunification does not change placement as mentioned above. In addition, the trial reunification cannot be used to immediately remove a child due to an emergency, in these cases; the Department must proceed with an emergency change in placement. The following flow chart illustrates the trial reunification legal proceeding:



- a. If the Court finds the trial reunification is in the child's best interest and satisfies the objectives of the permanency plan, the Court must issue a trial reunification order. The trial reunification must be terminated 90 days after the order was issued unless the order specifies a shorter time period, an extension to the time period, or a revocation of the trial reunification. An order cannot be extended past the expiration date of the original dispositional order or any extension of the dispositional order [See *Children's Code*, 7 O.C. 708.25-6]. However, the Department can request an extension of the trial reunification if 1) the trial reunification continues to be in the best interest of the child 2) the request is made no later than 10 days prior to the expiration of the trial reunification order, and 3) the request is filed with the Court and notice of the request is provided to the parties. The trial reunification extension request is as follows:

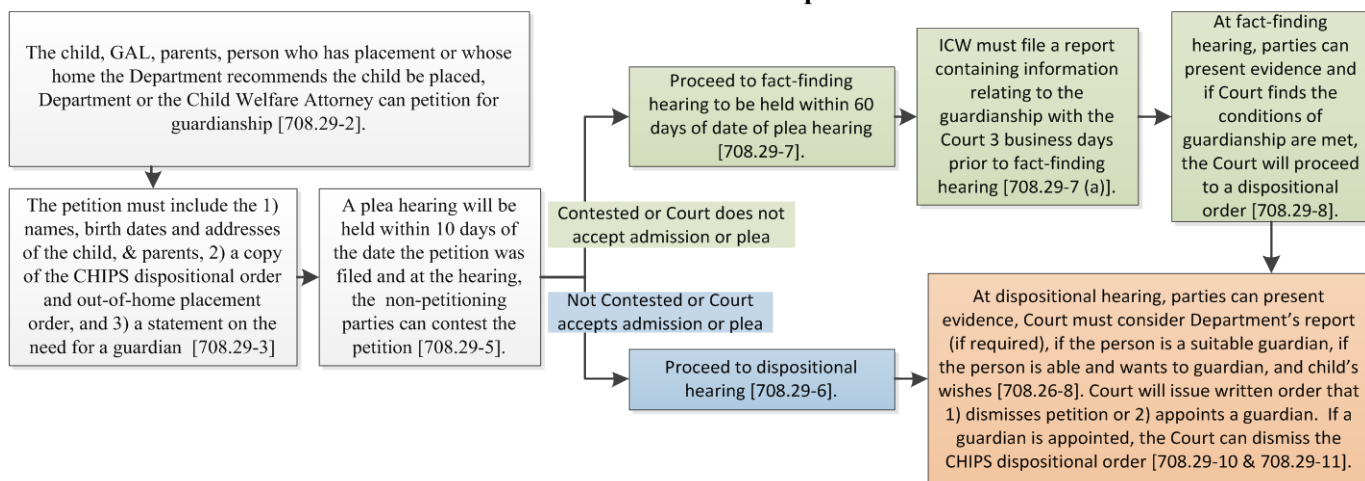
Trial Reunification Extension



- b. When the trial reunification period ends, the Department must either return the child to his/her out-of-home placement, request a change in placement to a new out-of-home placement, or request a change in placement which places the child in the trial reunification home [See *Children's Code*, 7 O.C. 708.25-7].
- c. The Department can determine that the trial reunification is no longer in the child's best interests and revoke the trial reunification before the order expires. To do so the Department can remove the child, without Court order, and place the child in the previous out-of-home placement or place the child in a new out-of-home placement. If the child is placed in his/her previous out-of-home placement, the Department must submit a request for revocation with the Court and provide notice to the parties within three business days from the date the child was removed from the trial reunification placement. If the Department places the child in a new out-of-home placement, the Department must request a change in placement within three business days from when the child was removed. The trial reunification is revoked when the change in placement is granted. If a party objects to the Court within 10 days from when the request was received by the Court, the Court must hold a hearing. If no party objects, the Court can issue a revocation order [See *Children's Code*, 7 O.C. 708.25-8 and 708.25-9].
- d. The Court cannot order a trial reunification in a home of an adult that has been convicted of 1st degree intentional homicide or 2nd degree intentional homicide of the parent or any crime against a child so long as the conviction has not been reversed, set aside, vacated or pardoned. However, if the trial reunification is in the child's best interest, the Court may order a trial reunification with the adult even though he/she has been convicted and not pardoned [See *Children's Code*, 7 O.C. 708.25-10].

16. CHIPS Guardianship. The Court can appoint a guardian for a child if certain conditions are present: child is in need of protection or services and is either placed outside the home or the Department recommends the child be placed with the guardian; the person nominated as guardian is the person the child is currently placed with or the person the Department recommends the child will likely be placed with for an extended period of time or until the child reaches 18 years of age; the person is willing and able to be the child's guardian; that termination of parental rights is not in the child's best interest; the child's parents are neglecting, refusing or unable to perform the duties of a guardian; and the Department made reasonable efforts to prevent the child from removal of his/her home and to return the child [See *Children's Code*, 7 O.C. 708.29-1]. This Code requires proposed guardians to be present at all guardianship hearing; however the Court can waive the appearance requirement for good cause [See *Children's Code*, 7 O.C. 708.29-4]. The CHIPS guardianship process is identified in the flow chart below:

CHIPS Guardianship



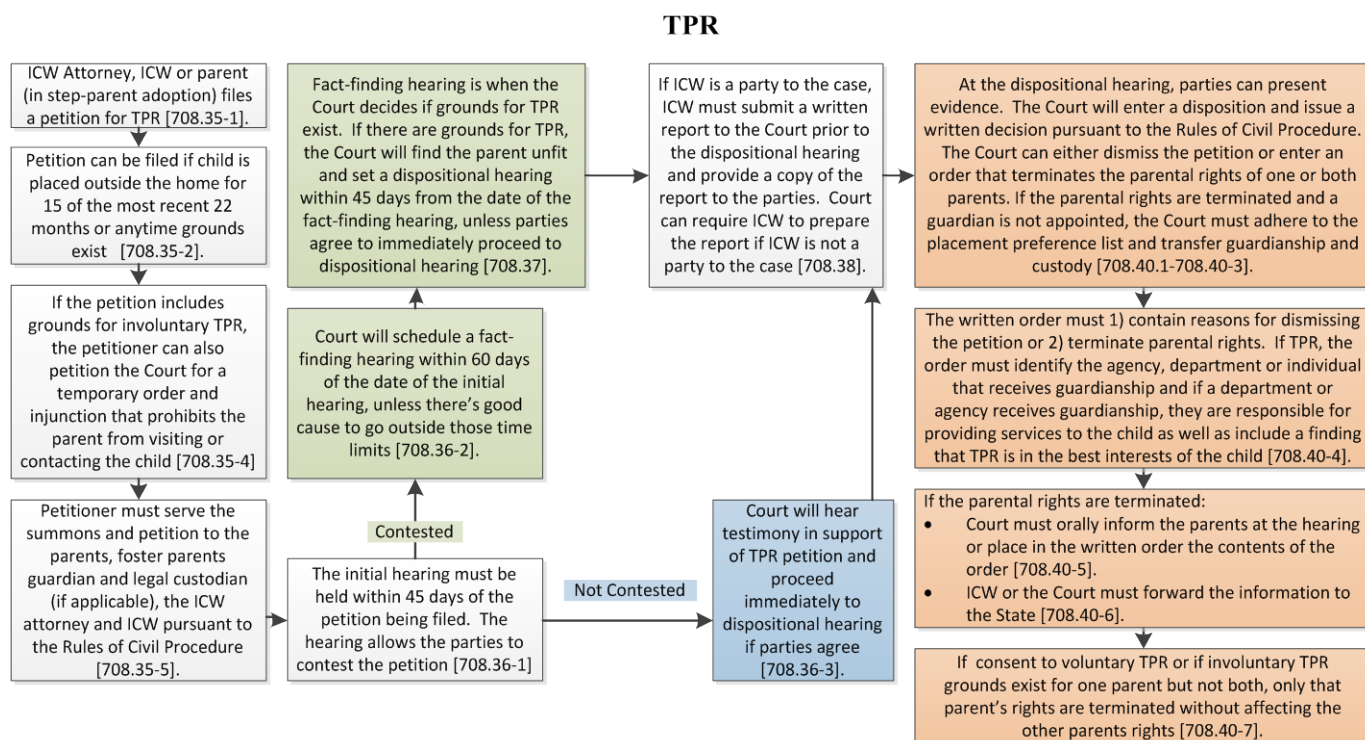
- **Revising Guardianship Orders.** Anyone that can file a petition for guardianship can also request a revision to the guardianship order. In addition, the Court can also make a revision upon its own motion. The request or Court proposal must show there is a substantial change in circumstances and that revisions are in the best interest of the child. The Court can require the Department to file a report which contains information relating to the request or proposal and the report must be provided to the parties at least three business days prior to the hearing. The Court must hold a hearing if new information is available that affects the guardianship order, unless the parties enter into a stipulation and the Court approves [See Children's Code, 7 O.C. 708.30].
- **Termination of Guardianship.** A guardianship order is in effect until the child reaches 18; or the date the child graduates high school or its equivalent or the date the child reaches 19; or the date the Court terminates the guardianship order. The parent can request the guardianship order be terminated so long as the parent is willing and able to carry out the duties of a guardian and that it is in the best interest of the child. The Court must hold a hearing on the termination request unless the parties enter into a stipulation and it is approved. The Court can require the Department to file a report containing information relating the request and a copy provided to the parties at least three business days prior to the hearing. Anyone that can petition for guardianship, or the Court by its own motion, can request/propose the guardianship appointment be terminated if the guardian is or has neglected, refused or cannot perform his/her guardianship duties. The Court must hold a hearing on the request. The guardianship order can also be terminated if the guardian submits his/her resignation and the it is accepted by the Court [See Children's Code, 7 O.C. 708.31].

17. Termination of Parental Rights. Terminating parental rights permanently severs all legal rights and duties between the parent(s) and child. However this may not affect the child's relationship with his/her biological extended family. In addition, the TPR will not have an impact on the child's enrollment status with the Nation, or interfere with the child's clanship, tradition and spiritual growth as a member of the Nation. The parents' rights can be terminated either voluntarily or involuntarily [See Children's Code, 7 O.C. 708.32].

- **Voluntary TPR.** If a parent wishes to terminate their parental rights, the Court can conduct a dispositional hearing immediately so long as the Department submitted the TPR court report. The Judge must explain the effects of TPR, question the parent and/or allowed the party(ies)' counsel to question the parent. The parent must provide his/her consent at the hearing unless the Court allows the parent to appear by phone or using a live audiovisual device. If the Judge believes consent was informed and voluntary, he/she can accept the consent. If anyone

believes the parents do not have the capacity to voluntarily consent, the Court must determine if the parent is capable of giving informed, voluntary consent. If the Court finds the parent is not capable of providing voluntary consent, the Judge must dismiss the voluntary proceedings without prejudice. However, this may not prohibit involuntary TPR proceedings from occurring. A parent that began a voluntary TPR proceeding can withdraw his/her consent at any time prior to the final TPR order. A parent cannot consent to TPR within ten calendar days after the birth of a child [See *Children's Code*, 7 O.C. 708.33].

- **Involuntary TPR.** A parent may have his/her parental rights terminated if any of the following occurs [See *Children's Code*, 7 O.C. 708.34]:
 - Abandonment
 - Relinquishment
 - Continuing need for protection or services
 - Continuing parental disability
 - Continuing denial of period of physical placement or visitation
 - Child abuse
 - Failure to assume parental responsibility
 - Incestuous parenthood
 - Homicide or solicitation to commit homicide of a parent
 - Parenthood as a result of sexual assault
 - Commission of a felony against a child
 - Prior involuntary TPR of another child
- **TRP Proceedings.** The process for terminating parental rights is as follows:



TPR Petition. A petition for TPR can be filed when the child is placed outside of his/her home for 15 of the last 22 months except if the child is cared for by a fit and willing relative, the permanency plan shows that TPR is not in the best interest of the child, the Department failed to make reasonable efforts or failed to meet the time periods set forth in the permanency plan or grounds for TPR do not exist. The petition must include the names, birth

dates, addresses, and tribal affiliation of the child and parents, a Uniform Child Custody Jurisdiction and Enforcement Act affidavit, and a statement that consent will be given voluntarily or identify the grounds for involuntary TPR [See *Children's Code*, 7 O.C. 708.35-2 & 207.35-3].

The Court can issue a temporary order and injunction that prohibits the parent from visiting or contacting the child if the Court determines it is in the child's best interest. This injunction is effective according to its terms but cannot go beyond the date the Court dismisses the petition for TPR or issues an order for TPR [See *Children's Code*, 7 O.C. 708.33-6 (a)].

Department's TPR Court Report. Whenever the Department is a party to the case or if the Court orders, the Department must submit a written report to the Court prior to the dispositional hearing and supply a copy of the report to the parties. The report must contain the following:

- Social history of the child and family including medical conditions
- Statement of facts showing need for TPR
- Steps the Department has taken to alleviate the issues for which the child was in need of protection or services as well as the reasons why the child was not returned to his/her home, if applicable
- How the standards and factors were applied
- Recommendations for TPR must include statement on how likely the child will be adopted. This includes identifying 1) factors that might prevent adoption, 2) those that may facilitate adoption, and 3) the Department must facilitate the adoption. If adoption is not likely or is not in the best interest of the child, the report must include a plan to place the child in a permanent family setting [See *Children's Code*, 7 O.C. 708.38].

Standards and Factors. When preparing the TPR dispositional order, the Court must consider the best interests of the child. The best interests of the child include, but are not limited to, the following:

- Likelihood of the child's adoption after TPR
- If the child will be raised in an environment that respects the child's race, culture, and heritage
- The age and health of the child at the dispositional hearing and when the child was removed from the home
- The child's substantial relationships with the parents and other family members and if it is harmful to the child to sever those relationships
- The wishes of the child
- The duration of separation of the parent from the child
- If the child will enter into a more stable and permanent family relationship as a result of TPR [See *Children's Code*, 7 O.C. 708.39].

18. Adoption. This Code allows for two types of adoptions; customary and closed. All adoption must be customary unless the Court determines there is good cause to use a closed adoption. Customary adoption does not permanently deprive the child of his/her biological family but instead provides a permanent home. Customary adoption orders must allow the relationship between the adoptive parent and child to have the same rights, responsibilities, and legal consequences as the relationship between the child and his/her biological parents; the child must have an absolute right to information and knowledge about his/her biological family and Oneida heritage, if applicable; that adoption does not prevent the child from inheriting from the biological parent and adoptive parent but that the biological parent cannot inherit from the child; the biological parent can retain residual rights based on agreement between the adoptive parent and biological parent or by Court order; and adoption does not extinguish the child's relationship with his/her extended biological family [See *Children's Code*, 7 O.C. 708.41-1 and 708.41-2].

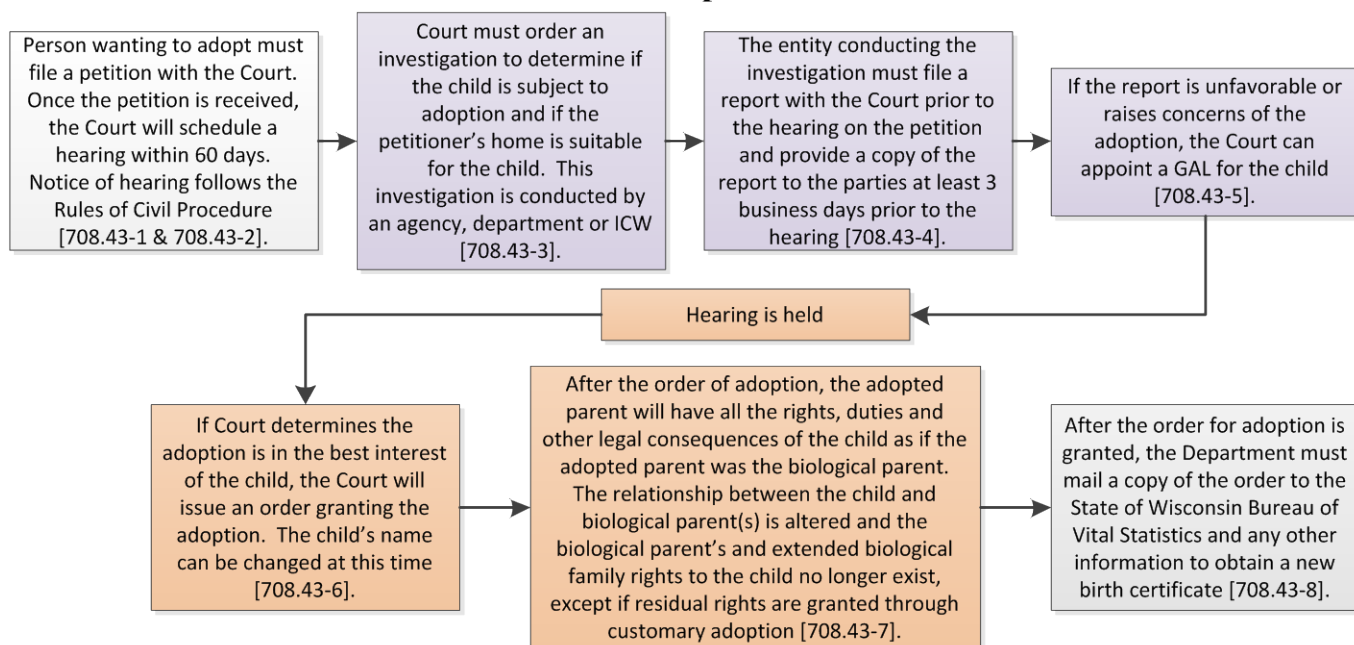
Closed adoptions happen when the Court decides a child needs to sever all ties between his/her biological family and needs a permanent home. When a closed adoption occurs, the relationship between the adopted parent and child will be the same as if the adopted parent was the child's biological parent; the relationship between the child and his/her biological parents are completely altered and all rights, duties and other legal consequences of those relationships no longer exist; the child's biological family is not entitled to or has access to any information regarding the child; and the child is entitled to information regarding his/her biological family when the child reaches the age of 18 [See *Children's Code*, 7 O.C. 708.41-3]. The comparison table shows the difference between customary adoption and closed adoption:

Customary Adoption	Closed Adoption
Adopted parent has same rights as biological parent	Adopted parent has same rights as biological parent
Child has right to information and knowledge about his/her biological family and culture	Child must be entitled to information regarding his/her biological family when the child reaches 18
Adoption does not stop child from inheriting from biological parent but biological parent cannot inherit from child, adoptive parent can inherit from child	Does not address inheritance
Biological parent has residual rights to the child (communication, visitation, support/education, consultation, & other rights ordered by the Court)	Child's biological family is not entitled to have or access the child's information
Adoption does not extinguish relationship between child and child's extended biological family	Relationship between child and biological parents and extended biological family is completely altered and all rights, duties and legal consequences no longer exist

This Code allows a child to be adopted if both parents are deceased, the parental rights of both parents are terminated, the parental rights of the only living parent are terminated or the person petitioning for adoption is the spouse of the parent and either the other parent is deceased or has his/her parental rights terminated. A married couple, spouse of the parent, or an adult can adopt a child. The Court can allow a person to adopt a child even if the person has not successfully cleared a background check or has a conviction that was not pardoned, forgiven, reversed, set aside, or vacated so long as the adoption is in the child's best interest [See *Children's Code*, 7 O.C. 708.42].

In order to start an adoption proceeding, a petition must be filed. The petition for adoption must include the names, birth dates, addresses, and tribal affiliations of the petitioner; child and biological parents of the child, as well as the name by which the child will be known; the relationship of the petitioner to the child; and a copy of the order that terminated the parental rights of the child's parents [See *Children's Code*, 7 O.C. 708.43-1]. The following chart shows the adoption procedure:

Adoption



19. Non-Compliance with Residual Rights Agreement. Any party to a residual rights agreement can petition the Court that approved the agreement to compel any person bound by the agreement to comply with the agreement. The Court will set a date for a hearing and provide notice to all parties to the agreement and may reappoint a GAL for the child. The Court can issue an order requiring the person to comply the agreement and can find the person in contempt. The Court cannot revoke TPR or an order of customary adoption because of non-compliance [See *Children's Code*, 7 O.C. 708.44].

20. Peacemaking and Mediation. The Court can refer the parties to peacemaking or mediation if the parties agree. The parties cannot participate in peacemaking or mediation if doing so will cause undue hardship or would endanger the health or safety of a party. If the parties do participate in peacemaking or mediation based by the Court's referral, the Court must suspend time limits established in this Code to allow time for the parties to go through the peacemaking or mediation process [See *Children's Code*, 7 O.C. 708.45].

21. Appeals. Any order issued under this Code can be appealed to the Court of Appeals pursuant to the Rules of Appellate Procedure [See *Child Welfare*, 7 O.C. 708.46].

22. Liability. This Code prevents liability from being attached to the Department and its workers including the attorney or anyone else that acts under their authority for statements, acts or omissions made in good faith while in the course of activities taken under this Code [See *Child Welfare*, 7 O.C. 708.47].

SECTION 6. EFFECT ON EXISTING LEGISLATION

- A. The Rules of Civil Procedure, Rules of Evidence, Rules of Appellate Procedure, and Child Support may be used in conjunction with this Code.
- B. This Code does not conflict with other laws of the Nation.
- C. This Code will repeal the following BC Resolutions:
 - 1. **Resolution # BC-09-25-81 Oneida Child Protective Board Ordinance and Resolution # BC-01-14-15-A Amendment of BC Resolution # BC-09-25-81: Oneida Child Protective Board Ordinance.** ICWA was enacted in 1978 and on September 25, 1981, OBC adopted the Oneida Child Protective Board Ordinance (Ordinance) which delegated all authorities and responsibilities for administering ICWA to the Board. BC Resolution 09-25-81 requires an

appeal of the Board's decision to be heard by the OBC and an appeal of the OBC's decision can be heard by the General Tribal Council (GTC) whose decision is final [*See Oneida Child Protective Board Ordinance, pg. 2, Be It Further Enacted Clause*]. However, this was amended by BC Resolution 01-14-15-A which states that the Oneida Child Protective Board Ordinance is amended to require that all appeals of the decisions of the Board be filed with the [Oneida] Court of Appeals pursuant to the Rules of Appellate Procedure.

The Ordinance establishing the Board states that the Board must follow the Oneida Children's Code and the Indian Child Welfare Act; however, a Children's Code was not developed until now. Under the new Code, the Board no longer has a role as cases will be brought forward by the Department. Adopting this Code will repeal BC Resolution 09-25-81 and BC Resolution 01-14-15-A and dissolve the Board.

2. ***Resolution # BC-10-07-81-A Appointing Members to the Oneida Child Protective Board.***

This resolution states that the Oneida Child Protective Board be the administrative body vested with the authority over child custody proceedings [*See BC Resolution 10-07-81-A, Therefore Be It Resolved Clause*]. Because the Board will be dissolved by passage of this Code, it may be appropriate to repeal this resolution.

3. ***Resolution # BC-05-24-84-C Definition of Extended Family Member.***

The ICWA and policies and procedures of the Oneida Child Protective Board reference the Indian child's extended family as being the first preference in the placement of an Indian child and ICWA states that an extended family member must be defined by the laws or customs of the Indian child's tribe; therefore, BC Resolution 05-24-84-C adopted a definition of extended family member. The definition has been incorporated into the Code and the Code's adopting resolution will incorporate the definition for extended family; therefore, BC Resolution 05-24-84-C is no longer needed [*See Child Welfare, 7 O.C. 708.3-1 (q)*].

4. ***Resolution # BC-12-10-03-A Oneida Child Protective Board Stipends.***

This resolution set the Child Protective Board's stipends from \$50.00 to \$75.00 for each Board member that attends each regularly schedule, special or executive meeting with the Secretary of the Board receives an additional \$25.00 each meeting. In addition, the resolution states that each Board member that participates in a child care provider hearing receives a \$75.00 stipend; and the recording clerk will receive an additional \$25.00 for each child care provider hearing conducted pursuant to the Board's bylaws. Because the Board will be dissolved by passage of this Code, it may be appropriate to repeal this resolution.

5. ***Resolution # BC-05-13-15-A Indian Child Welfare Act Policy.***

ICWA allows an Indian tribe to establish a different order of placement preference for foster care placements and adoptive placements and the OBC believed it was critical to establish a policy statement to provide direction to the Oneida Child Protective Board, Department and OLO. In addition, this resolution established the placement preference as well as defines "best interest of the child". The placement preference listed in this resolution as well as the definition of "best interest of the child" have been incorporated into this Code [*See Children's, 7 O.C. 708.3-1 (e) and 708.11-1*]. Unlike the resolution, the Code allows an order to deviate from the placement preference list if the party can show good cause by 1) a request from the child (age 12 or older) or the child's parent, 2) extraordinary physical, mental or emotional health needs of the child requires highly specialized treatment services or 3) there is no suitable placement after diligent efforts have been made to place the child in the placement preference list [*See Children's Code, 7 O.C. 708.11-2*].

Furthermore, this resolution contains language that says for cases where the parent(s) are voluntarily terminating their parental rights, if no family or other Native home is available for adoptive placement, the Nation will not seek to intervene in the adoption proceeding [*See BC Resolution 05-13-15-A, Now Therefore Be It Resolved Clause, #4*]. This resolution refers to child welfare legal matters that are outside of the Nation's jurisdiction. This Code will allow the Nation to intervene when parents voluntarily terminate their parent rights even if no

family or other Native home is available for adoption for those cases fall under the Nation's jurisdiction.

Lastly, the resolution states the Nation will continue to follow and adhere to Federal Code, Court opinions which interpret Federal Code, the Bureau of Indian Affairs Guidelines, and the Bureau of Indian Affairs Regulation [See BC Resolution 05-13-15-A, *Be It Finally Resolved Clause*]. This Code does not include this language. Tribes are not bound by ICWA and including this language would place added regulations on the OFC even though these regulations do not necessary apply to tribal courts. However, there are many provisions found in ICWA and WICWA that have been incorporated into this Code.

- D. Board Bylaws.** The Board's bylaws will no longer be in effect if this Code is adopted and the Board is dissolved.

SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

A. Impacts on Existing Rights. In State court, an attorney is provided to the parties in child welfare matters, this Code allows for parties to obtain counsel which includes an attorney or advocate at the party's own expense. The General Tribal Council recently directed that a Legal Resource Center be created to provide Tribal members and Tribal employees representation for any proceeding before the Judiciary. If a party to a child welfare case before the Court is a non-Oneida, non-employee, he/she will not be provided representation. These individuals can still seek assistance through Judicare and/or legal aid. Furthermore, none of the current tribal Children's Codes researched do not provide counsel to the parties, counsel may be obtained at the parties' expense.

SECTION 8. ENFORCEMENT

- A.** Anyone that does not abide by a Court order can be placed in contempt. Anyone who is not in compliance with the residual rights agreement can petition the Court to enforce the agreement. The Court can issue an order demanding compliance or the Court can place the non-complying party in contempt.

SECTION 9. OTHER CONSIDERATIONS

- A.** The following personnel are needed to implement this Code:

- 1. ICW Department.** After meeting with the Department, it was determined that the Department's personnel needs to expand to implement this Code, the table below depicts the current personnel compared to what is needed.

Position	Current	Needed	Total
Director	1 Family Support Services	1 ICW	1 ICW, 1 Family Support
Supervisor	1	1	1
Intake Worker (in house)	1 (does all intake duties)	1	1
Intake Worker (call 24/7)	0	2	2
On-going Worker	4	2	6
Parenting Specialist	1	1	2
Foster Care Coordinator	1	1	2
Security Officer	0	0.5*	0.5*

**a meeting will be scheduled to discuss the possibility of ICW and the Judiciary sharing a security officer.*

- 2. OFC.** After meeting with the OFC, it was determined additional staff will be required to implement this Code. The table (below) depicts the minimum staffing required to exercise jurisdiction over child welfare legal issues:

Position	Current	Needed	Total
OFC Judge	1	1	2
OFC Clerk	1	1	2

- a. Judiciary.** The LOC may want to consider is the issue of court room space. The Judiciary currently has two court rooms. At this time, the OFC does not believe space is an issue; however, there are factors that could change in the future. These factors include, but are not limited to, General Tribal Council's directive to create a Legal Resource Center (Tribal members and Tribal employees will have access to representation which may result in more contested issues and longer hearings); a possible Traffic Code, Criminal Code and Public Peace law, all of which would utilize the court rooms and the addition of administrative hearings the Trial Court will perform due to transferring boards, committees, and commissions' hearing authority to the Trial Court. It is likely the Judiciary's workload will continue to increase which may require more court room space in the future.
- b. Judiciary Workload.** The following chart illustrates the Judiciary's filing numbers since 2008:

Number of Filings							
Year	OFC	Trial Court				Appellate	Peacemaking
		Trial	Garnishment	Debt	Small Claims		
2008	17	39	204	120	0	28	8
2009	170*	24	123	130	0	25	13
2010	551**	30	190	198	0	33	28
2011	606	17	142	128	0	30	44
2012	577	21	190	109	0	25	25
2013	649	19	212	103	0	19	26
2014	581	14	162	174	0	18	42
2015	492	6	133	40	4	19	58
2016	571	19	105	61	3	12	83
2017 ⁺	106	7	26	24	0	3	15

*five months of reports missing for OFC, actually number of filings is higher

**three months of reports missing for OFC, actually number of filings is higher

⁺ All numbers are through February 2017

There are variables that impact the number of filings identified above. For example, in 2010, Brown County began transferring cases to the OFC. In 2013, Milwaukee County began transferring cases. Both of these events had an impact on the OFC's filing numbers. Another issue that impacts the number of filings for OFC is the staffing level at the Oneida Nation Child Support Agency. The table below shows the Judiciary's Hearing Numbers:

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Number of Hearings					
Year	OFC	Trial Court			
		Trial	Garnishment	Debt	Small Claims
2008	7	36	**	***	0
2009	70	47	**	***	0
2010	171	61	**	***	0
2011	300	27	**	***	0
2012	404	33	**	***	0
2013	383*	36	**	***	0
2014	509	20	**	***	0
2015	468	10	108	40	0
2016	490	21	116	56	1
2017 ⁺	85	6	25	11	1

six weeks without hearings due to transition of Appeals Commission to OFC, **Hearings held in batches every 2nd & 4th Wednesday of the month, *Hearings scheduled in batches as needed, ⁺ All numbers are through February 2017*

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According to the OFC staff, the OFC held court one day per week when operating as the Oneida Appeals Commission; however, they are now averaging three to four days of court per week with some weeks having five days of court hearings. Family Court hearings last anywhere from 15 minutes to a full day. Because this Code allows parties to call and examine witnesses, child welfare hearings have the potential to last multiple days. Family Court cases will require additional staff to satisfactorily operate the Court.

It is not anticipated that the workload of the OFC will decrease. This is mainly due to the number of child support cases that the OFC has exercised jurisdiction over. The table (right) shows the number of cases the Oneida Nation Child Support Agency has. Earlier this year, the agency had 2,861 cases. In most cases, a child support cases is up for a review hearing every two years. Many of these reviews require court hearings. Other child support cases come back sooner for modifications due to a change in employment, incarceration, or a number of other factors.

Year	# of Cases at Child Support Agency
2008	482
2009	804
2010	1434
2011	2256
2012	2549
2013	2680
2014	2872
2015	2991
2016	3016
2017	2861

The OFC anticipates that the number of child support cases will rise due to the transfer of cases from Milwaukee County and other counties within the State of Wisconsin. Milwaukee County has 614 potential transfer cases and 119 cases have transferred already. The OFC does not have statistics regarding the number of child support cases that may transfer from other counties.

In addition to the child support cases, the OFC has experienced a rise in other contested matters, most notably divorces, paternity establishments, third party custody cases, and disputes regarding legal custody and physical placement. Peacemaking has helped but many of these contested issues end up in hearings.

b. Implementation. The LOC may want to consider pursuing the addition of a second OFC judge and clerk as soon as this Code is adopted and well before the Code's implementation date. This will allow the required preparations to be completed prior to the Code becoming effective. One of the more time consuming tasks associated with this Code will be the recruiting and training of GALs. As the GAL work pursuant to this Code will differ from the work done on the other Family Court matters, a training curriculum will have to be developed and time will have to be set aside to do several multiple day training sessions. Currently, GALs focus on issues such as allocating legal custody and recommending a physical placement schedule. As this Code deals with different issues including abuse, neglect, termination of parental rights, etc., the GALs will

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have to be trained to appropriately address the complexity of the cases and seriousness of the issues. Additionally, court documents will need to be created such as the Uniform Child Custody Jurisdiction and Enforcement Act affidavit and a temporary physical custody form [See *Children's Code*, 7 O.C. 708.35-3]. A process for collecting GAL fees may also need to be developed as currently the OFC is not collecting GAL fees due to the workload and lack of process to collect the fees for those not subject to per capita attachment and wage garnishment. In addition, the Department may need to hire additional staff prior to the effective date of this Code in order to have the staff trained and ready to go prior to the Nation exercising jurisdiction over child welfare matters.

B. The following infrastructure is needed to implement this Code:

1. **161 Agreements.** The Nation will need to enter into 161 agreements with both Brown and Outagamie Counties. 161 agreements clarify relationships between tribes and the county in providing health, safety and welfare to Indian children. The purpose of these agreements is to provide and improve systems for services, referral, and mutual assistance between the tribes and the counties. The Wisconsin Department of Health and Family Services will facilitate the negotiation process between the tribes and the counties if requested. The Nation met with the State in March of 2017, to discuss the contexts of the 161 agreements and a subcommittee was formed. The subcommittee is currently meeting to discuss what out of home placements the Nation and counties will be funding. It may be necessary to meet with Brown and Outagamie County to discuss entering into a 161 agreement in order to implement this Code.

C. The following are policy considerations the LOC may want to address:

1. **GALs.** The Nation has a number of laws which address GALs [See *Children's Code*, 7 O.C. 708.8, *Oneida Family Court Rules*, 8 O.C. 807, *Rule 14, Rules of Civil Procedure*, 8 O.C. 803.37 and *Child Custody, Placement, and Visitation* 7 O.C. 705.8]. In addition, the Oneida Tribal Judiciary Canons of Judicial Conduct state that GALs have judicial immunity—immunity from civil liability [See *Oneida Tribal Judiciary Canons of Judicial Conduct*, 8 O.C. 802, *Limited Judicial Immunity*]. Because multiple laws address GALs, the LOC may want to consider removing the GAL sections from these laws and create a separate Guardian ad Litem law for the purposes of avoiding duplications and providing a more convenient way to locate, among other things, the roles, responsibilities, appointments and trainings required for GALs. If the LOC does not wish to develop a separate GAL law, they may want to consider revising this section to refer the reader to the Rules of Civil Procedure and any other laws, rules or policies governing the conduct of GALs.
2. **Permanency Plan Review.** This Code requires the OFC to hold a hearing to review the permanency plan no later than six months after the date the child was placed outside the home and every six months thereafter for as long as the child is placed outside the home and is need of protection or services [See *Children's Code*, 7 O.C. 708.23-3]. A Department of Children & Families (DCF) memorandum dated June 4, 2008 regarding 161 Agreements requires that all agreements include provisions related to permanency planning. The memo states that “It shall be agreed that for each case to be funded, an administrative review or judicial hearing will be held in accordance with State and Federal law or regulation as codified in s. 48.38 (5) and (5m), Wis. Stats. [See *DCF memorandum*, 06/04/2008, *Guidelines for Implementation of Act 161 Agreements (Out-of-Home Placements of Indian Children by Tribal Courts)*, III, (I)]. Wisconsin law allows for either the court or a review panel, appointed by the Court, comprised of three individuals that are not employed by the [Department] and who are not responsible for providing services to the child or family [See *Wis. Stats.* 48.38 (5)]. This Code requires the Court to conduct the permanency plan reviews. An alternative is to have a three-person panel conduct these six month reviews. The LOC may want to determine if the OFC or a panel conduct these reviews, and if it is decided to have a panel, provide direction on who could serve on this panel.
3. **Guardianship Law.** Other tribal Codes require their child welfare departments to transfer a child to the appropriate jurisdiction if the child is believed to be incompetent and is under the custody

of the department. The transfer must be done before the child reaches the age of 18 for the purposes of adult guardianship. The intent of this provision is to ensure an incompetent adult is not released from placement when he/she reaches adulthood. If the LOC would like to add a similar provision in the Code, then the LOC may want to consider developing a guardianship law as the Nation does not have a law that addresses guardianship over a person or estate.

D. Recommendations, alternatives and other information the LOC may want to consider:

1. **Customary Adoptions.** According to the DCF, customary adoptions are legal adoptions and placement could be eligible for adoption assistance if the child and family meet the eligibility criteria. Being a Native American child automatically qualifies a child as eligible for the Special Needs Adoption Program. Please see the Adoption Assistance Forms Checklist/Routing Instructions Tribal or Customary Adoption form for eligibility requirements.
2. **Adopting Resolution.** The LOC has identified the Code's effective date to be 15 months after the adoption of the FY 2018 budget. This will allow appropriate staff to be hired and prepare for implementation of the Code. Many issues will need to be addressed prior to implementing this Code: 161 agreements, GAL recruitment and training, legal document development, staff trainings, foster home recruitment, etc. In work meetings with the various affected entities, there was a mutual understanding that the departments will need at least a year to prepare and create the necessary infrastructure needed for successful implementation of this Code.
3. **Current ICWA Cases.** The LOC, in collaboration with both the Department and OFC have decided to gradually transfer cases currently in Brown and Outagamie counties to the OFC. It has been decided that within 60 days of the effective date of the Code, the Department and OFC will meet to discuss how many cases may possibly transfer over. It was also decided that any case that began in the county within three months of the effective date of the Code will transfer to the OFC. However, any case that has been in the county longer than three months will remain with the county. It should be noted that some parties that are currently in the county and wish to transfer to OFC will be able to do so. The Department will also identify cases that they feel may be better handled in OFC and request a transfer when the Code is effective. It is important to note that the state and federal Indian Child Welfare Acts permit a case to transfer from state court to tribal court. A transfer will not occur if 1) a parent of the child objects, 2) the court determines there is good cause to deny the transfer, 3) the child is 12 years of age or over and objects, 4) the evidence or testimony necessary to decide the case cannot be presented in tribal court without under hardship to the parties or the witnesses, 5) or the child's tribe has not intervened.
4. **Ho Chunk Nation.** As of March 24, 2017, Ho Chunk Nation had 66 open child protection cases (both CHIPS and consent decrees/66 children) that are under the jurisdiction of the tribe. They also have three informal agreements. This number does not include current open ICW cases that are in the counties. However, Ho Chunk Nation has been transferring more cases to their tribal court as have many other tribes and counties because of the high number of cases related to the current heroin/methamphetamine epidemic. Ho Chunk is modifying their Children and Family Act to make timelines more apparent and to include safety standards. In addition, Ho Chunk has a Prevention Program -funded by IV-B funding - that focuses on assisting the family to preserve the family unit.
5. **Stockbridge Munsee.** Stockbridge Munsee has approximately 35 tribal cases/35 children. On occasion Stockbridge Munsee will share a case with the county that involves enrolled children but at this time there are no shared cases. According to their Indian Child Welfare Manager, Stockbridge Munsee does not use the temporary physical custody (TPC) state form and has had difficulty placing children into custody. When placing a tribal child into shelter care, the facility requires the TPC state form. To prevent this from happening at Oneida, a TPC form may be necessary. Stockbridge has a 161 agreement with Shawano County; however, in many cases there are disagreements with the information and the decision on how the county case is screened in or out. Stockbridge screens in 100% of their tribal cases and does the investigations. When there is a safety or child protection services issue with a family, the child welfare manager will

ask the county to be involved, especially if foster care is involved in that the county pays for that service. It should be noted that Stockbridge Munsee's child welfare department consists of one employee who is both the ICW worker and director.

5. **Lac du Flambeau.** Lac du Flambeau has 112 child involved in current child welfare cases, of those 38 are ICWA cases.

6. **Red Cliff.** Red Cliff has 35 children in child welfare cases.

Please refer to financial impact statement for the fiscal impact of this Code.

Title 7. Children, Elders and Family - Chapter 708**CHILDREN'S CODE****Latiksha Laotilihwake***the children – their issues*

708.1.	Purpose and Policy	708.25.	Trial Reunification
708.2.	Adoption, Amendment, Repeal	708.26.	Revision of Dispositional Orders
708.3.	Definitions	708.27.	Extension of Dispositional Orders
708.4.	Scope	708.28.	Continuation of Dispositional Orders
708.5.	Jurisdiction	708.29.	Guardianship for Certain Children in Need of Protection or Services
708.6.	Nation's Child Welfare Attorney	708.30.	Revisions of Guardianship Order
708.7.	Indian Child Welfare Department Duties and Responsibilities	708.31.	Termination of Guardianship
708.8.	Guardian ad litem	708.32.	Termination of Parental Rights
708.9.	Advocate	708.33.	Voluntary Termination of Parental Rights
708.10.	Cultural Wellness Facilitator and Healer	708.34.	Grounds for Involuntary Termination of Parental Rights
708.11.	Order of Placement Preferences	708.35.	Petition for Termination of Parental Rights
708.12.	Notice of Petition	708.36.	Initial Hearing on the Termination of Parental Rights Petition
708.13.	Hearings (General)	708.37.	Fact Finding Hearing for a Termination of Parental Rights
708.14.	Discovery and Records	708.38.	Department's Termination of Parental Rights Report
708.15.	Taking a Child into Custody	708.39.	Standards and Factors
708.16.	Emergency Custody Hearing	708.40.	Dispositional Hearings for Termination of Parental Rights
708.17.	Petition for a Child in Need of Protection or Services	708.41.	Adoption
708.18.	Consent Decree	708.42.	Adoption Criteria and Eligibility
708.19.	Plea Hearing for a Child in Need of Protection or Services	708.43.	Adoption Procedure
708.20.	Fact-finding Hearing for a Child in Need of Protection or Services	708.44.	Non-Compliance with a Residual Rights Agreement
708.21.	Department's Disposition Report for a Child in Need of Protection or Services	708.45.	Peacemaking and Mediation
708.22.	Dispositional Hearing for a Child in Need of Protection or Services	708.46.	Appeals
708.23.	Permanency Plans	708.47.	Liability
708.24.	Change in Placement		

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2 708.1. Purpose and Policy

3 708.1-1. *Purpose.* The purpose of this law is to provide for the welfare, care, and protection of
4 Oneida children through the preservation of the family unit, while recognizing that in some
5 circumstances it may be in the child's best interest to not be reunited with his or her family.
6 Furthermore, this law strengthens family life by assisting parents in fulfilling their
7 responsibilities as well as facilitating the return of Oneida children to the jurisdiction of the
8 Nation and acknowledging the customs and traditions of the Nation when raising an Oneida
9 child.

10 708.1-2. *Policy.* It is the policy of the Nation to ensure there is a standard process for
11 conducting judicial proceedings and other procedures in which children and all other interested
12 parties are provided fair hearings in addition to ensuring their legal rights are recognized and
13 enforced, while protecting the public safety.

14

15 708.2. Adoption, Amendment, Repeal

16 708.2-1. This law was adopted by the Oneida Business Committee by resolution BC-__-__-__-
17 __.

18 708.2-2. This law may be amended or repealed by the Oneida Business Committee and/or
19 Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures
20 Act.

708.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

708.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, this law repeals the following:

- (a) Resolution # BC-09-25-81 *Oneida Child Protective Board Ordinance*;
- (b) Resolution # BC-10-07-81-A *Appointing Members to the Oneida Child Protective Board*;
- (c) Resolution # BC-05-24-84-C *Definition of Extended Family Member*;
- (d) Resolution # BC-01-14-15-A *Amendment of Oneida Child Protective Board Ordinance*;
- (e) Resolution # BC-05-13-15 *Indian Child Welfare Act Policy*; and
- (f) Resolution # BC-12 -10-03-A *Oneida Child Protective Boards Stipends*.

708.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

708.3. Definitions

708.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Abuse" means any of the following:
 - (1) Physical injury inflicted on a child by other than accidental means;
 - (2) Sexual assault;
 - (3) Sexual exploitation of a child;
 - (4) Prostitution or trafficking of a child;
 - (5) Causing a child to view or listen to sexual activity or sexually explicit materials;
 - (6) Exposing a child to the manufacture, sale, or use of controlled substances; and/or
 - (7) Emotional damage for which the child's parent, guardian, or legal custodian has neglected, refused, or been unable for reasons other than poverty to obtain the necessary treatment or take steps to address the issue.
- (b) "Advocate" means a person who is a non-attorney presented to the Court as the representative or advisor to a party.
- (c) "Alcohol and other drug abuse impairment" means a condition of a person which is exhibited by characteristics of habitual lack of self-control in the use of alcoholic beverages or controlled substances to the extent that the person's health is substantially affected or endangered or the person's social or economic functioning is substantially disrupted.
- (d) "Attorney" means a person trained and licensed to represent another person in Court, to prepare documents and to give advice or counsel on matters of law.
- (e) "Best interest of the child" means the interest of a child to:
 - (1) Have a full, meaningful, and loving relationship with both parents and family as much as possible;
 - (2) Be free from physical, sexual and emotional abuse;
 - (3) Be raised in conditions that foster and encourage the happiness, security, safety, welfare, physical and mental health, and emotional development of the child;

- 67 (4) Receive appropriate medical care;
68 (5) Receive appropriate education;
69 (6) Be raised in conditions which maximize the chances of the child becoming a
70 contributing member of society; and
71 (7) Be raised in an environment that is respectful of the child's race(s), culture(s),
72 and heritage(s).
- 73 (f) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding
74 holidays recognized by the Nation.
- 75 (g) "Child" means a person who is less than eighteen (18) years of age.
- 76 (h) "Clear and convincing evidence" means that a particular fact is substantially more
77 likely than not to be true.
- 78 (i) "Counsel" means an attorney or advocate presented to the Court as the representative
79 or advisor to a party.
- 80 (j) "Court" means the Oneida Nation Family Court, which is the branch of the Oneida
81 Nation Judiciary that has the designated responsibility to oversee family matters.
- 82 (k) "Court of competent jurisdiction" means a state or tribal court that has jurisdiction
83 and authority to do a certain act or hear a certain dispute.
- 84 (l) "Department" means the Oneida Nation Indian Child Welfare Department.
- 85 (m) "Disposition" means the Court's final ruling or decision on a case or legal issue.
- 86 (n) "Dispositional hearing" means a hearing for the Court to make its final
87 determination of a case or issue.
- 88 (o) "Emotional damage" means harm to a child's psychological or intellectual
89 functioning evidenced by one (1) or more of the following characteristics exhibited to a
90 severe degree:
- 91 (1) anxiety;
92 (2) depression;
93 (3) withdrawal;
94 (4) outward aggressive behavior; and/or
95 (5) a substantial and observable change in behavior, emotional response, or
96 cognition that is not within the normal range for the child's age and stage of
97 development.
- 98 (p) "Expert" means a person with special training, experience, or expertise in a field
99 beyond the knowledge of an ordinary person.
- 100 (q) "Extended family" means a person who has reached the age of eighteen (18) and who
101 is the child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece,
102 nephew, first, second, third or fourth cousin, or stepparent.
- 103 (r) "Fact-finding hearing" means a hearing for the Court to determine if the allegations in
104 a petition under this law are proved by clear and convincing evidence.
- 105 (s) "Fictive kin" means any person or persons who, to the biological parents of the child
106 at issue, have an emotional tie to that parent wherein they are like family.
- 107 (t) "Foster home" means any home which is licensed by Department and/or applicable
108 licensing agency and maintained by any individual(s) suitable for placement of children
109 when taken into custody or pending court matters.
- 110 (u) "Good cause" means adequate or substantial grounds or reason to take a certain
111 action, or to fail to take an action.

(v) "Group home" means any facility operated by a person required to be licensed by the Department and/or applicable licensing agency for the care and maintenance of five (5) to eight (8) children.

(w) "Guardian" means any person, agency or department appointed by the Court to care for and manage the child in a particular case before the Court. A guardian has the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment in the armed forces, to major surgery and medical treatment and to adoption, or make recommendations as to adoption.

(x) "Guardian ad litem" means a person appointed by the Court to appear at any peacemaking, mediation, or hearing and tasked with representing the best interest of the person appointed for.

(y) "Holiday" means any holiday recognized by the Nation as identified in the Nation's laws, rules and policies governing employment.

(z) "Indian Child Welfare Worker" means a person employed by the Nation in the Indian Child Welfare Department tasked with the responsibility to carry out the duties, objectives and provisions of this law as codified at 25 USC 1901.

(aa) "Legal custodian" means any person other than a parent or guardian to whom legal custody of a child has been granted by court order and has the rights and responsibilities for the following:

(1) To have physical custody of the child as determined by the Court, if physical custody is not with the person having legal custody;

(2) To protect, educate and discipline the child so long as it is in the child's best interest; and

(3) To provide the child with adequate food, shelter, education, ordinary medical care and other basic needs, according to court order. In an emergency situation, a custodian shall have the authority to consent to surgery as well as any other emergency medical care needs.

(bb) "Mediation" means a method of dispute resolution that involves a neutral third party who tries to help disputing parties reach an agreement.

(cc) "Nation" means the Oneida Nation.

(dd) "Neglect" means failure, refusal, or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.

(ee) "Parent" means the biological or adoptive parent of a child.

(ff) "Peacemaking" means a method of dispute resolution that is based on traditional methods of resolving disputes and addresses the needs of rebuilding relationships between people.

(gg) "Permanency Plan" means a plan designed to ensure that a child is reunified with his or her family whenever appropriate, or that the child quickly attains a placement or home providing long-term stability.

(hh) "Physical injury" includes, but is not limited to, any of the following:

(1) lacerations;

(2) fractured bones;

(3) burns;

(4) internal injuries;

(5) severe or frequent bruising;

(6) bodily injury which creates a substantial risk of death;

(7) bodily injury which causes serious permanent disfigurement;

(8) bodily injury which causes a permanent or protracted loss or impairment of the function of any bodily member or organ; or

(9) any other serious bodily injury.

(ii) "Plea hearing" means a hearing to determine whether any party wishes to contest a petition filed under this law.

(jj) "Probable cause" means there are sufficient facts and circumstances that would lead a reasonable person to believe that something is true.

(kk) "Reasonable effort" means an earnest and conscientious effort to take good faith steps to provide the services ordered by the Court which takes into consideration the characteristics of the parent or child, the level of cooperation of the parent and other relevant circumstances of the case.

(ll) "Relative" means any person connected with a child by blood, marriage or adoption.

(mm) "Reservation" means all the land within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

(nn) "Shelter care facility" means a non-secure place of temporary care and physical custody for children, licensed by the Department and/or applicable licensing agency.

(oo) "Social history" means the social, economic, cultural and familial aspects of a person and how those aspects affect the person's functioning and situation in life.

(pp) "Special treatment or care" means professional services which need to be provided to a child or family to protect the well-being of the child, prevent out-of-home placement, or meet the needs of the child.

(qq) "Stepparent" means the spouse or ex-spouse of a child's parent who is not a biological parent of the child.

(rr) "Stipulation" means a formal legal acknowledgement and agreement made between opposing parties prior to a pending hearing or trial.

(ss) "Substantial parental relationship" means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of a child.

(tt) "Termination of parental rights" means that, pursuant to a court order, all rights, powers, privileges, immunities, duties and obligations existing between parent and child are permanently severed.

(uu) "Treatment plan" means a plan or set of conditions ordered by the Court identifying concerns and behaviors of a parent, guardian or legal custodian that resulted in a child to be in need of protection or services, and the treatment services, goals and objectives to address and remedy the concerns and behaviors of the parent, guardian or legal custodian.

(vv) "Warrant" means an order issued by a court commanding a law enforcement officer to perform some act incident to the administration of justice.

708.4. Scope

708.4-1. This law shall apply to all child welfare cases and legal proceedings in which the Nation has jurisdiction. Nothing in this law is meant to restrict or limit another court of competent jurisdiction from hearing a matter involving an Indian child.

708.5. Jurisdiction

708.5-1. *Personal Jurisdiction.* The Court shall have personal jurisdiction over the following individuals:

(a) *Jurisdiction over an Oneida Child.* The Court shall have personal jurisdiction over any child who is present or resides within the boundaries of Brown and Outagamie County and is enrolled or eligible for enrollment in the Nation.

(b) *Jurisdiction over a Non-Oneida Child.* The Court shall have personal jurisdiction over any child not enrolled or eligible for enrollment in the Nation who is present or resides within the boundaries of the Reservation and is a sibling of a child that is enrolled or eligible for enrollment in the Nation if the child's parent(s), guardian or legal custodian consents to the jurisdiction of the Court. Consent to the jurisdiction of the Court can be given by any of the following:

(1) The parent(s), guardian or legal custodian knowingly and voluntarily provides the Court with written consent to the jurisdiction of the Court; or

(2) The Court establishes on the record that the parent(s), guardian or legal custodian knowingly and voluntarily provides the Court with verbal consent to the jurisdiction of the Court.

708.5-2. *Jurisdiction over Children Alleged to be in Need of Protection or Services.* The Court shall have jurisdiction over a child alleged to be in need of protection or services if personal jurisdiction has been established and the child:

(a) is without a parent or guardian;

(b) has been abandoned;

(c) has a parent that relinquished custody of the child pursuant to the Nation's laws or state law and has no other parent available to provide necessary care;

(d) has been the victim of abuse, including injury that is self-inflicted or inflicted by another;

(e) is at substantial risk of becoming the victim of abuse, including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;

(f) has a parent or guardian who signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child, and the child has no other parent available to provide necessary care;

(g) has a guardian who is unable or needs assistance to care for or provide necessary special treatment or care for the child, but is unwilling or unable to sign the petition requesting jurisdiction under this subsection;

(h) has been placed for care or adoption in violation of the Nation's laws or state law;

(i) is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;

(j) is at least twelve (12) years of age, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;

(k) has a parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;

(l) has a parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;

(m) is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to improve the symptoms;

(n) is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or

(o) is non-compliant with the Nation's or State's immunization laws.

708.5-3. *Jurisdiction over other Matters Relating to Children.* If jurisdiction has been established under section 708.5-1 and section 708.5-2 the Court may:

(a) terminate parental rights to a child;

(b) appoint, revise, and/or remove a guardian; and

(c) hold adoption proceedings.

708.5-4. *Transfer of Cases from other Courts.* If personal jurisdiction has been established the Court has jurisdiction over any action transferred to the Court from any court of competent jurisdiction.

(a) While a case is being transferred to the Court from another court, any time limits established by this law shall be tolled until the next hearing on the matter before the Court.

708.5-5. *Transfer of Cases to other Courts.* The Court may transfer a case under this law to a court of competent jurisdiction where the other court has a significant interest in the child and the transfer would be in the best interest of the child.

708.6. Nation's Child Welfare Attorney

708.6-1. A Child Welfare attorney shall represent the Nation in all proceedings under this law. The Child Welfare attorney shall be one of the following:

(a) An attorney from the Oneida Law Office;

(b) An attorney contracted by the Oneida Law Office; or

(c) An attorney contracted by the Department.

708.7. Indian Child Welfare Department Duties and Responsibilities

708.7-1. *Indian Child Welfare Worker.* The Indian Child Welfare Worker shall carry out the duties and responsibilities set forth in this law which include, but are not limited to the following:

(a) Receive, examine, and investigate complaints and allegations that a child is in need of protection or services for the purpose of determining the appropriate response under this law, which may include notifying law enforcement;

(b) Receive referral information, conduct intake inquiries, and determine whether to initiate child welfare proceedings;

- (c) Determine whether a child should be held pursuant to the emergency provisions of this law;
- (d) Make appropriate referrals of cases to other agencies when appropriate, and share information with other agencies if their assistance appears to be needed or desirable;
- (e) Maintain records;
- (f) Enter into informal dispositions with families;
- (g) Refer counseling or any other functions or services to the child and/or family as designated by the Court;
- (h) Identify and develop resources within the community that may be utilized by the Department and Court;
- (i) Make reasonable efforts to obtain necessary services for the child and family and investigate and develop resources for the child and family to utilize;
- (j) Accept legal custody of children when ordered by the Court;
- (k) Make reports and recommendations to the Court;
- (l) Make recommendations to the Nation's Child Welfare attorney;
- (m) Request transfer from state court to the Nation's court when appropriate;
- (n) Perform any other functions ordered by the Court within the limitations of the law;
- (o) Develop appropriate plans and conduct reviews;
- (p) Negotiate agreements for services, record sharing, referral, and funding for child family service records within the Department;
- (q) Provide measures and procedures for preserving the confidential nature of child and family service records within the Department;
- (r) Participate in continuing training, conferences and workshops pertinent to child welfare issues;
- (s) Explain the court proceedings to the child in language and terms appropriate to the child's age and maturity level when a guardian ad litem is not appointed for a child;
- (t) Maintain a knowledge and understanding of all relevant laws and regulations.

708.7-2. *Department.* In performing the duties set forth in this law, the Department shall:

- (a) Identify and refer parties to resources in the community calculated to resolve the problems presented in petitions filed in Court, such as the various psychiatric, psychological therapeutic, counseling and other social services available within and outside the Nation when necessary;
- (b) Identify and refer parties to resources in the community designed to enhance the child's potential as a member of the Nation;
- (c) Investigate, inspect, and license foster homes, and monitor and supervise foster homes and children in foster care;
- (d) Adhere to the placement preference order stated in section 708.10; and
- (e) Enter into memorandums of understanding and/or agreement with the Oneida Trust Enrollment Committee and/or Department, Oneida Police Department, Oneida Nation Child Support Agency and any other appropriate department in order to carry out the provisions of this law;
- (f) Share information with other social service and law enforcement agencies; and other entities of the Nation as it pertains to children under the jurisdiction of this law.

708.8. Guardian ad litem

708.8-1. *Appointment.* The appointment of a guardian ad litem shall be as follows:

(a) The Court may appoint a guardian ad litem for any child who is the subject of a child in need of protection or services proceeding;

(b) The Court shall appoint a guardian ad litem for any child who is the subject of a proceeding to terminate parental rights, whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding, and for a child who is the subject of a contested guardianship proceeding;

(c) The Court shall appoint a guardian ad litem for a minor parent petitioning for the voluntary termination of their parental rights; and

(d) A guardian ad litem may be appointed for any other circumstance the Court deems necessary.

708.8-2. *Qualifications.*

(a) A guardian ad litem shall be an adult who:

(1) is at least twenty one (21) years of age;

(2) is currently certified as a guardian ad litem and in good standing;

(3) has never been convicted of a felony unless the person received a pardon or forgiveness; and

(4) has never been convicted of any crime against a child.

(b) No person shall be appointed guardian ad litem in that proceeding who:

(1) has a personal interest in the outcome of the case, a party to the proceeding, or any other interest that has the potential to corrupt a person's motivation or decision making, because of an actual or potential divergence between the person's self-interests, and the best interests of the case;

(2) appears as counsel or an advocate in the proceeding on behalf of any party; or

(3) is related to a party of the proceeding, the Judge for the proceeding, or an appointing Judge by blood, marriage, adoption or related by a social tie that could be reasonably interpreted as a conflict of interest.

(c) A guardian ad litem may be recognized as certified by the Court if he or she:

(1) has completed guardian ad litem training provided by the Court, another Indian tribe, or a state; or

(2) is recognized as a certified guardian ad litem by another jurisdiction.

708.8-3. *Responsibilities.* The guardian ad litem has none of the rights or duties of a general guardian. The guardian ad litem shall:

(a) investigate and review all relevant information, records and documents, as well as interview the child, parent(s), social workers, teachers and all other relevant persons to gather facts when appropriate;

(b) consider the importance of the child's culture, heritage and traditions;

(c) consider, but shall not be bound by, the wishes of the child or the positions of others as to the best interests of the child;

(d) explain the role of the guardian ad litem and the court proceedings to the child in language and terms appropriate to the child's age and maturity level;

(e) provide a written or oral report to the Court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based;

(f) recommend evaluations, assessments, services and treatment of the child and the child's family when appropriate;

(g) inform the court of any concerns or possible issues regard the child or the child's family;

(h) represent the best interests of the child;

- (i) perform other duties as directed by the Court; and
- (j) comply with all laws, policies and rules of the Nation governing the conduct of a guardian ad litem.

708.8-4. *Compensation.* The guardian ad litem shall be compensated at a rate that the Court determines is reasonable. The Court shall compensate the guardian ad litem for his or her fees. The parties shall reimburse the Court for the guardian ad litem fees. The Court may apportion the amount of reimbursement each party shall pay based on the ability to pay or assess the cost equally between the parties. The Court may determine an appropriate time frame for the reimbursement to occur. The Court may waive the guardian ad litem expense if the cost of the guardian ad litem will impose an immediate and substantial hardship on the parties.

708.9. Advocate

708.9-1. The parent, guardian and legal custodian of a child has the right to obtain an advocate to represent and advise him or her throughout any proceeding under this law at his or her own expense.

708.9-2. *Qualifications.*

- (a) An advocate shall be an adult who:

- (1) is at least twenty one (21) years of age;
- (2) is admitted to practice before the Oneida Judiciary;
- (2) has never been convicted of a felony unless the person received a pardon or forgiveness; and
- (3) has never been convicted of any crime against a child.

708.9-3. An advocate shall comply with all laws, rules and policies of the Nation governing advocates.

708.10 Cultural Wellness Facilitator and Healer

708.10-1. The Department may utilize a Cultural Wellness Facilitator and Healer throughout all child welfare proceedings.

708.10-2. The Cultural Wellness Facilitator and Healer may provide:

- (a) wellness sessions utilizing culturally based and appropriate healing methods;
- (b) training on Oneida culture, language and traditions; and
- (c) and any other service that may be necessary.

708.11. Order of Placement Preferences

708.11-1. The following order of placement preferences shall be followed when it is necessary to place a child outside of the home under this law:

- (a) A member of the child's immediate or extended family;
- (b) A family clan member;
- (c) A member of the Nation;
- (d) Descendants of the Nation;
- (e) A member of another federally recognized tribe;
- (f) Fictive kin within the Nation community;
- (g) Fictive kin outside the Nation community; or
- (h) Any other person or persons not listed above.

708.11-2. The order of placement preferences listed in section 708.11-1. are prioritized from the most preference given to a child placed in a home in accordance with section 708.11-1(a) and the

least amount of preference given to a child placed in a home in accordance with section 708.11-1(h).

708.11-3. In order to deviate from the placement preferences listed in section 708.11-1, the Court shall consider the best interest of the child when determining whether there is good cause to go outside the placement preference.

(a) Good cause to go outside the placement preferences shall be determined based on any of the following:

(1) When appropriate, the request from the child's parent or the child, when the child is age twelve (12) or older;

(2) Any extraordinary physical, mental or emotional health needs of the child requiring highly specialized treatment services as established by an expert;

(3) The unavailability of a suitable placement after diligent efforts have been made to place the child in the placement preference listed in section 708.11-1; or

(4) Any other reason deemed by the Court to be in the best interest of the child.

(b) The party requesting to deviate from the placement preferences listed in 708.11-1 has the burden of establishing good cause.

708.12. Notice of Petition

708.12-1. Petitions alleging that a child is in need of protection or services may be given to the parties directly by the Nation's Child Welfare attorney or the Indian Child Welfare Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

708.12-2. Petitions for termination of parental rights, guardianship, and adoption shall be served on all other parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

708.12-3. All parties shall be notified of all subsequent hearings under this law by first-class mail to the recently verified last-known address of the party with the purpose of providing the parties an opportunity to be heard.

708.13. Hearings (General)

708.13-1. If the Court finds that it is in the best interest of the child, the Court may exclude the child from participating in a hearing conducted in accordance with this law.

708.13-2. The Oneida Judiciary Rules of Evidence are not binding at emergency custody hearings, dispositional hearings, or a hearing about changes in placement, revision of dispositional orders, extension of dispositional orders, or termination of guardianship orders. At those hearings, the Court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness. The Court shall give effect to the rules of privilege recognized by laws of the Nation. The Court shall apply the basic principles of relevancy, materiality, and probative value to proof of all questions of fact.

708.13-3. If an alleged father appears at a hearing under this law, the Court may refer the matter to the Oneida Nation Child Support Agency to adjudicate paternity. While paternity is being established, the Court shall enter an order finding good cause to suspend the time limits established under this law.

708.13-4. At any time the Court or the Department may refer the matter to the Nation's Child Support Agency.

708.14. Discovery and Records

708.14-1. Upon written request, the parties and their counsel shall have the right to inspect, copy or photograph social, psychiatric, psychological, medical, and school reports, and records concerning the child including reports of preliminary inquiries, predisposition studies and supervision records relating to the child which are in the possession of the Nation's Child Welfare attorney or the Department that pertain to any case under this law.

708.14-2. If a request for discovery is refused, the person may submit an application to the Court requesting an order granting discovery. Motions for discovery shall certify that a request for discovery has been made and refused.

708.14-3. If the discovery violates a privileged communication or a work product rule, the Court may deny, in whole or part, otherwise limit or set conditions on the discovery authorized.

708.14-4. The identity of the individual that initiated the investigation by contacting the Department, shall be redacted in all documents that are made available to the parties.

708.14-5. In addition to the discovery procedures permitted under this law, the discovery procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all proceedings under this law.

708.15. Taking a Child into Custody

708.15-1. *Grounds for Taking a Child into Custody.* A child may be taken into custody without a Court order by an Indian Child Welfare Worker or law enforcement officer if there are reasonable grounds to believe:

(a) A warrant for the child's apprehension has been issued by the Court or another court of competent jurisdiction to take the child into custody;

(b) The child is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary; and/or

(c) The child has violated the conditions of an order issued pursuant to this law.

708.15-2. The Court may enter an order directing that a child be taken into custody upon a showing satisfactory to the judge that the welfare of the child demands that the child be immediately removed from his or her present custody.

708.15-3. A person taking the child into custody, under this section, shall immediately attempt to notify the parent(s), guardian(s), and legal custodian(s) of the child by the most practical means. Attempts to satisfy notification shall continue until either the parent(s), guardian(s), and legal custodian(s) of the child is notified, or the child is delivered to an Indian Child Welfare Worker, whichever occurs first. If the child is delivered to the Indian Child Welfare Worker before the parent(s), guardian(s), and legal custodian(s) is notified, the Indian Child Welfare Worker, or another person at his or her direction, shall continue the attempt to notify until the parent(s), guardian(s), and legal custodian(s) of the child is notified.

708.15-4. Once the child is taken into custody and turned over to the care of the Department, the Department shall make every effort to release the child immediately to the child's parent(s), guardian(s), and legal custodian(s), so long as it is in the child's best interest and the parent(s), guardian(s), and legal custodian(s) is willing to receive the child.

708.15-5. *Probable Cause for Taking a Child into Custody.* A child may be held in custody if the Indian Child Welfare Worker determines the child is within the jurisdiction of the Court and probable cause exists to believe any of the following if the child is not held in custody:

(a) The child will cause injury to himself or herself or be subject to injury by others;

(b) The child will be subject to injury by others, based on a determination that if another child in the home is not held that child will be subject to injury by others;

(c) The parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care, and that services to ensure the child's safety and well-being are not available or would be inadequate;

(d) The child meets the criteria for probable cause for taking a child into custody specified in section 708.15-5(c), based on a determination that another child in the home meets any of the criteria; or

(e) The child will run away or be taken away so as to be unavailable for proceedings of the Court.

708.15-6. *Holding a Child in Custody.* A child held in custody may be held in any of the following places as long as the places are in the child's best interest and all people residing or regularly visiting the premises have cleared a background check:

(a) The home of a relative, except that a child may not be held in the home of a relative that has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child, or any crime against a child, and the conviction has not been pardoned, forgiven, reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination;

(b) A licensed foster home;

(c) A licensed group home;

(d) A non-secure facility operated by a licensed child welfare agency;

(e) A licensed private or public shelter care facility; or

(f) The home of a person not a relative, if the placement does not exceed thirty (30) days, though the placement may be extended for up to an additional thirty (30) days by the Indian Child Welfare Worker, and if the person has not had a child care license refused, revoked, or suspended within the last two (2) years.

708.15-7. When holding a child in custody for emergency placement the use of the preferences for placement stated in section 708.10-1 are preferred, but not mandatory. If the preferences for placement are not followed, the Department shall try to transition that child into a home that fits the order of preferences for placement as quickly as deemed appropriate by the Department.

708.15-8. If a child is held in custody, the Indian Child Welfare Worker shall notify the child's parent(s), guardian(s), and legal custodian(s) of the reasons for holding the child and of the child's whereabouts except when the Indian Child Welfare Worker believes that notice would present imminent danger to the child. If the parent, guardian, or legal custodian is not immediately available, the Indian Child Welfare Worker or another person designated by the worker shall provide notice as soon as possible.

708.15-9. The Indian Child Welfare Worker shall also notify the parent, guardian, and legal custodian of the following:

(a) the date, time and place of the emergency custody hearing;

(b) the nature and possible outcomes of the hearing;

(c) the right to present and cross-examine witnesses; and

(d) the right to retain counsel at his or her own expense.

708.15-10. When the child is age twelve (12) or older, the Indian Child Welfare Worker shall notify the child of the date, time, and place and the nature and possible outcomes of the emergency custody hearing.

708.16. Emergency Custody Hearing

708.16-1. If a child who has been taken into custody under section 708.15-5 is not released, a hearing to determine whether the child shall continue to be held in custody under the criteria of probable cause for taking a child into custody under section 708.15-5(a)-(e) shall be conducted by Court as soon as possible but no later than seventy-two (72) hours of the time the decision to hold the child was made, excluding Saturdays, Sundays, and holidays. By the time of the hearing, a petition for a child in need of protection or services under section 708.17 shall be filed unless the Department seeks and receives an extension pursuant to section 708.16-2. The child shall be released from custody if a hearing is not held within the specified timelines.

708.16-2. If no petition has been filed by the time of the hearing, a child may be held in custody with approval of the Court for an additional seventy-two (72) hours from the time of the hearing, excluding Saturdays, Sundays, and holidays, only if, as a result of the facts brought forth at the hearing, the Court determines that probable cause exists to believe any of the following:

- (a) That additional time is required to determine whether the filing of a petition initiating proceedings under this law is necessary;
- (b) That the child is an imminent danger to himself or herself or to others; or
- (c) The parent, guardian, and legal custodian of the child or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care.

708.16-3. The Court may grant a one-time extension under section 708.16-2 for a petition. In the event a petition is not filed within the extension period, the Court shall order the child's immediate release from custody.

708.16-4. Prior to the start of the hearing, the Court shall provide a copy of the petition to the parent, guardian, and legal custodian if present, and to the child if he or she is twelve (12) years of age or older.

708.16-5. Prior to the start of the hearing, the Court shall inform the parent, guardian, or legal custodian of the following:

- (a) allegations that have been made or may be made;
- (b) the nature and possible outcomes of the hearing and possible future hearings;
- (c) the right to present and cross-examine witnesses; and
- (d) the right to retain counsel at his or her own expense.

708.16-6. If present at the hearing, the Court may permit the parent to provide the names and other identifying information of three (3) relatives of the child or other individuals eighteen (18) years of age or older whose homes the parent wishes the Court to consider as placements for the child. If the parent does not provide this information at the hearing, the Department shall permit the parent to provide the information at a later date.

708.16-7. All orders to hold a child in custody shall be in writing and shall include all of the following:

- (a) A finding that continued placement of the child in his or her home would be contrary to the best interests of the child;
- (b) A finding that the Department and/or anyone else providing services to the child had reasonable grounds to remove the child from the home based on the child's best interest;

(c) A finding that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interest are the paramount concerns;

(d) The Department made reasonable efforts to make it possible for the child to return safely home; and

(e) If the child has one (1) or more siblings, who have also been removed from the home, a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that a joint placement would be contrary to the safety or well-being of the child or any of those siblings, in which case the Court shall order the Department make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the safety or well-being of the child or any of those siblings.

708.16-8. An order to hold a child in custody remains in effect until a dispositional order is granted, the petition is withdrawn or dismissed, or the order is modified or terminated by further order of the Court.

708.16-9. An order to hold a child in custody may be re-heard upon motion of any party if, in the Court's discretion, good cause is found, whether or not counsel was present.

708.17. Petition for a Child in Need of Protection or Services

708.17-1. The Nation's Child Welfare attorney or the Department shall initiate proceedings under this section by filing a petition with the Court, signed by a person who has knowledge of the facts alleged or is informed of them and believes them to be true.

708.17-2. The petition shall include the following:

(a) The name, birth date, address, and tribal affiliation of the child;

(b) The names, birth dates, addresses, and tribal affiliation of the child's parent, guardian, legal custodian or spouse, if any; or if no such person can be identified, the name and address of the nearest relative;

(c) Whether the child is in custody, and, if so, the place where the child is being held and the date and time he or she was taken into custody unless there is reasonable cause to believe that such disclosure would result in imminent danger to the child or legal custodian;

(d) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit;

(e) A plain and concise statement of facts upon which the allegations are based, including the dates, times, and location at which the alleged acts occurred. If the child is being held in custody outside his or her home, the statement shall include information showing that continued placement of the child in the home would be contrary to the welfare of the child and the efforts that were made to prevent the removal of the child, while assuring that the child's health, welfare, and safety are the paramount concerns; and

(f) Any other information as deemed necessary by the Court.

708.17-3. The petition shall state if any of the facts required for a petition are not known or cannot be ascertained by the petitioner.

708.17-4. A petition may be amended at any time at the discretion of the Court. An amended petition may be given to the parties directly by the Nation's Child Welfare attorney or the Indian Child Welfare Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

708.18. Consent Decree

708.18-1. *Consent Decree.* At any time after the filing of a petition pursuant to section 708.17 and before the entry of judgment, the Court may suspend the proceedings and place the child under supervision in the home or present placement of the child. The Court may establish terms and conditions applicable to the child and the child's parent, guardian or legal custodian. The order under this section shall be known as a consent decree and must be agreed to by the child who is twelve (12) years of age or older, the parent, guardian or legal custodian, and the person filing the petition. The consent decree shall be reduced to writing and given to the parties.

708.18-2. *Requirements of a Consent Decree.* If at the time the consent decree is entered into the child is placed outside the home and if the consent decree maintains the child in that placement, the consent decree shall include all of the following:

(a) A finding that placement of the child in his or her home would be contrary to the welfare of the child;

(b) A finding as to whether the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety and best interests are the paramount concerns;

(c) If a permanency plan has previously been prepared for the child, a finding as to whether the Department has made reasonable efforts to achieve the permanency goal of the child's permanency plan; and

(d) If the child has one or more siblings who have also been removed from the home, the consent decree shall include a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that the placement of the siblings together would be contrary to the safety, well-being and best interests of the child or any of those siblings, in which case the Court shall order the department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the safety, well-being or best interests of the child or any of those siblings.

708.18-3. *Time Limits of Consent Decree.* A consent decree shall remain in effect up to six (6) months unless the child, parent, guardian, or legal custodian is discharged sooner by the Court. The time limits under this law shall be tolled during the pendency of the consent decree.

708.18-4. *Extension of a Consent Decree.* Upon the motion of the Court or the request of the child, parent, guardian, legal custodian, child's guardian ad litem, or the Department, the Court may, after giving notice to the parties to the consent decree extend the decree for up to an additional six (6) months in the absence of objection to extension by the parties to the initial consent decree. If the child, parent, guardian, legal custodian, child's guardian ad litem objects to the extension, the Court shall schedule a hearing and make a determination on the issue of extension.

708.18-5. If, prior to discharge by the Court, or the expiration of the consent decree, the Court finds after conducting a hearing that the child, parent, guardian, or legal custodian has failed to fulfill the express terms and conditions of the consent decree, the hearing under which the child was placed on supervision may be continued to conclusion as if the consent decree had never been entered.

708.19. Plea Hearing for a Child in Need of Protection or Services

708.19-1. A plea hearing shall take place on a date which allows reasonable time for the parties to prepare but is within forty-five (45) days after the filing of a petition, unless the Court enters an order finding good cause to go outside of the time limits.

708.19-2. If a petition is not contested, the Court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is within forty-five (45) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits. If all the parties agree and the Department has submitted a court report pursuant to section 708.21, the Court may proceed immediately with the dispositional hearing.

708.19-3. If the petition is contested, the Court shall set a date for the fact-finding hearing which allows reasonable time for the parties to prepare but is within sixty (60) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits.

708.19-4. Before accepting an admission or plea of no contest of the alleged facts in a petition, the Court shall:

- (a) Address the parties present and determine that the plea of no contest or admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes;
- (b) Establish whether any promises or threats were made to elicit the plea of no contest or admission; and
- (c) Make inquiries that establish a factual basis for the plea of no contest or admission.

708.20. Fact finding Hearing for a Child in Need of Protection or Services

708.20-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that the child is in need of protection or services.

708.20-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.20-3. At the close of the fact-finding hearing, the Court shall set a date for the dispositional hearing which allows a reasonable time for the parties to prepare but is no more than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go outside the time limits. If all the parties agree and the Department has submitted court report pursuant to section 708.21, the Court may proceed immediately with the dispositional hearing.

708.21. Department's Disposition Report for a Child in Need of Protection or Services

708.21-1. Before the dispositional hearing, the Department shall submit a written report to the Court, with a copy to the parties at least seven (7) days prior to the hearing, which shall contain all of the following:

- (a) The social history of the child and family;
- (b) A strategic plan for the care of and assistance to the child and family calculated to resolve the concerns presented in the petition;
- (c) A detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child and family under the proposed plan; and
- (d) If an out-of-home placement is being recommended, specific reasons for recommending that placement.

708.21-2. If the Department is recommending out-of-home placement, the written report shall include all of the following:

(a) The location of the placement and where it fits within the placement preferences.

(b) A recommendation as to whether the Court should establish a child support obligation for the parents;

(c) Specific information showing that continued placement of the child in his or her home would be contrary to the best interests of the child and specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;

(d) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, specific information showing that Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the report shall include specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and

(e) If a recommendation is made that the child and his or her siblings not be placed together specific information showing that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the report shall include specific information showing that such visitation or interaction would be contrary to best interests of the child or any of those siblings;

708.21-3. The Department may request the Court to withhold identifying information from the child's parent, guardian or legal custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else.

708.22. Dispositional Hearing for a Child in Need of Protection or Services

708.22-1. At a dispositional hearing, any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations.

708.22-2. During a dispositional hearing, if the Department is recommending placement of the child outside of the child's home in accordance with the placement preferences in section 708.11-1, the Department shall present as evidence specific information showing all of the following:

(a) That continued placement of the child in his or her home would be contrary to the best interests of the child;

(b) That the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;

(c) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, that the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the Department shall present as evidence specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and

(d) If a recommendation is made that the child and his or her siblings not be placed together, that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the Department shall present as evidence specific information showing that such visitation or interaction would be contrary to the best interests of the child or any of those siblings.

708.22-3. The Court's dispositional order shall employ those means necessary to maintain and protect the best interests of the child which are the least restrictive of the rights of the parent and child and which assure the care, treatment or rehabilitation of the child and the family consistent with the protection of the public. When appropriate, and, in cases of child abuse or neglect when it is consistent with the best interest of the child in terms of physical safety and physical health, the family unit shall be preserved and there shall be a policy of transferring custody of a child from the parent only when there is no less drastic alternative. If there is no less drastic alternative for a child than transferring custody from the parent, the Court shall consider transferring custody pursuant to the preferences for placement set forth in section 708.11-1.

708.22-4. *Dispositional Orders.* The Court's dispositional order shall be in writing and shall contain:

(a) The treatment plan and specific services to be provided to the child and family, and if custody of the child is to be transferred to effect the treatment plan, the identity of the legal custodian;

(b) If the child is placed outside the home, where the child will be placed. If the Court finds that disclosing identifying information related to placement of the child would result in imminent danger to the child or anyone else, the Court may order the name and address of whom the child is placed with withheld from the parent or guardian;

(c) The date of the expiration of the court's order;

(1) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child in his or her home shall terminate one (1) year after the date on which the order is granted unless the Court specifies a shorter period of time or the Court terminates the order sooner.

(2) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child outside of the home shall terminate on the latest of the following dates, unless the Court specifies a shorter period or the Court terminates the order sooner:

(A) The date on which the child attains eighteen (18) years of age;

(B) The date that is one (1) year after the date on which the order is granted; and

(C) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age.

(d) If the child is placed outside the home, a finding that continued placement of the child in his or her home would be contrary to the welfare of the child and a finding as to whether the Department has made reasonable efforts to prevent the removal of the child

from the home, while assuring that the child's best interests are the paramount concerns. The Court shall make the findings specified in this subdivision on a case-by-case basis based on circumstances specific to the child;

(e) If the child is placed outside the home under the supervision of the Department, an order ordering the child into the placement and care responsibility of the Department and assigning the Department primary responsibility for providing services to the child and family;

(f) If the child is placed outside the home and if the child has one (1) or more siblings who have also been placed outside the home, a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that placement of the children together would be contrary to the best interests of the child or any of those siblings, in which case the Court shall order the Department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the best interests of the child or any of those siblings;

(g) A statement of the conditions with which the parties are required to comply; and

(h) If the Court finds that it would be in the best interest of the child, the Court may set reasonable rules of parental visitation.

(1) If the Court denies a parent visitation, the Court shall enter conditions that shall be met by the parent in order for the parent to be granted visitation.

708.22-5. *Treatment Plans and Conditions.* In a proceeding in which a child has been found to be in need of protection or services, the Court may order the child's parent, guardian and legal custodian to comply with any conditions and/or treatment plan determined by the Court to be necessary for the child's welfare.

(a) The treatment plan or conditions ordered by the Court shall contain the following information:

(1) The identification of the problems or conditions that resulted in the abuse or neglect of a child;

(2) The treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the treatment plan must include, but is not limited to, the conditions or requirements that must be established for the safe return of the child to the family;

(3) The specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the treatment plan, including the Department's specific responsibilities to make reasonable efforts to assist the parent, guardian or legal custodian in their efforts toward reunification with the child; and

(4) A notice that completion of a treatment plan does not guarantee the return of a child and that completion of a treatment plan without a change in behavior that caused removal in the first instance may result in the child remaining outside the home.

(b) A treatment plan may include recommendations and the dispositional order may require the child's parent, guardian and legal custodian to participate in:

(1) Outpatient mental health treatment;

(2) Substance abuse treatment;

- (3) Anger management;
- (4) Individual or family counseling;
- (5) Parent training and education;
- (6) Cultural wellness treatment and training; and/or
- (7) Any other treatment as deemed appropriate by the Court.

708.22-6. If the Court finds that the parent was convicted of committing a crime against the life and bodily security of a child or a crime against a child, contained within Chapters 940 and 948 of the Wisconsin Statutes or another similar law in another jurisdiction, the Court may find that the Department is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

708.22-7. The Court shall provide a copy of the dispositional order to the child's parent, guardian, and legal custodian, other parties to the action, and the child if the child is age twelve (12) or older.

708.22-8. Whenever the Court orders a child to be placed outside his or her home or denies a parent visitation because the child is in need of protection or services, the Court shall orally inform the parent who appears in Court of any grounds for termination of parental rights which may be applicable and of the conditions necessary for the child to be returned to the home or for the parent to be granted visitation. The Court shall also include this information in the written dispositional order provided to the parent.

708.23. Permanency Plans

708.23-1. The Department shall prepare a written permanency plan anytime a child is placed outside the home pursuant to dispositional order that finds the child is in need of protection or services. The permanency plan shall include all of the following:

- (a) The name, birth date, address, and tribal affiliation of the child;
- (b) The names, birth dates, addresses, and tribal affiliation of the child's parent(s), guardian(s), and legal custodian(s);
- (c) The date on which the child was removed from the home;
- (d) A statement as to the availability of a safe and appropriate placement with an extended family member;
- (e) The goal(s) of the permanency plan which may include one or more of the following: reunification, adoption, guardianship, placement with a fit and willing relative, or long-term foster care;
- (f) Date by which it is likely the goal(s) of the permanency plan will likely be achieved;
- (g) A description of the services offered and any services provided in an effort to prevent removal of the child from the home or to return the child to the home, while assuring that the best interests of the child are the paramount concerns;
- (h) If the child has one (1) or more siblings who have been removed from the home, a description of the efforts made to place the child in a placement that enables the sibling group to remain together. If a decision is made to not place the siblings together, a description of the efforts made to provide for frequent and ongoing visitation or other ongoing interaction between the child and siblings;
- (i) Information about the child's education; and
- (j) Any other appropriate information as deemed necessary by the Court or the Department.

708.23-2. The Department shall file the initial permanency plan with the Court within sixty (60) days after the date the child was first removed from the home unless the child is returned to the home within that time period.

708.23-3. The Court shall hold a hearing to review the permanency plan no later than six (6) months after the date on which the child was first removed from the home and every six months thereafter for as long as the child is placed outside the home and is found to be in need of protection or services.

(a) At least five (5) business days before the date of the hearing, the Department shall provide a copy of the updated permanency plan to the Court and the parties.

(b) All parties, including foster parent(s) shall have a right to be heard at the permanency plan hearing. Any party may submit written comments to the Court no less than three (3) business days prior to the hearing date.

708.23-4. After the hearing, the Court shall enter a written order addressing the following:

(a) The continuing necessity for and the safety and appropriateness of the placement;

(b) The compliance with the permanency plan by the Department and any other service providers, the child's parent(s), and the child;

(c) Efforts taken to involve appropriate service providers and Department staff in meeting the special needs of the child and the child's parent(s);

(d) The progress toward eliminating the causes for the child's placement outside the home and returning the child safely to the home or obtaining a permanent placement for the child;

(e) The date by which it is likely that the child will be returned to the home or placed for adoption, with a guardian, with a fit and willing relative, or in some other permanent living arrangement;

(f) Whether reasonable efforts were made by the Department to achieve the permanency plan goal(s);

(g) Whether reasonable efforts were made by the Department to place the child in a placement that enables the sibling group to remain together or have frequent visitation or other ongoing interaction; and

(h) The date of the next review hearing, if appropriate.

708.24. Change in Placement

708.24-1. The Department, the Nation's Child Welfare attorney, or a party to the dispositional order may request a change in the placement of the child who is the subject of the dispositional order by filing a motion with the Court. The Court may also propose a change in placement on its own motion.

708.24-2. The request for a change in placement shall contain the name and address of the new placement requested and shall state what new information is available that affects the advisability of the current placement.

708.24-3. If the proposed change in placement moves the child outside of his or her home, the request shall contain specific information showing that continued placement of the child in the home would be contrary to the best interests of the child and if the Department is making the request, specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns.

708.24-4. Written notice of the proposed change in placement shall be sent to all of the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

(a) The Department shall schedule a hearing prior to placing the child outside of the home, unless emergency conditions that necessitate an immediate change in the placement of a child apply.

(b) A hearing is not required when the child currently placed outside the home transfers to another out-of-home placement.

(1) A party may request a hearing when the child is transferred to a different out-of-home placement by submitting a written request to the Court within ten (10) days of being served with the notice of the proposed change.

708.24-5. If a hearing is held, any party may present evidence relevant to the issue of the change in placement. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of change in placement.

708.24-6. *Emergency Change in Placement.* If emergency conditions necessitate an immediate change in the placement of a child, the Department may remove the child to a new placement, whether or not authorized by the existing dispositional order. Notice of the emergency change in placement shall be sent to the parties as soon as possible but no later than seventy-two (72) hours after the emergency change in placement excluding Saturdays, Sundays, and holidays. If the emergency conditions necessitate an immediate change in placement of a child placed in the home to a placement outside the home, the Department shall schedule the matter for a hearing as soon as possible but no later than seventy-two (72) hours after the emergency change in placement is made, excluding Saturdays, Sundays, and holidays.

708.24-7. The parties may agree to a change in placement by signing a stipulation and filing it with the Court for approval.

708.24-8. No change in placement may extend the expiration date of the original dispositional order, except that if the change in placement is from a placement in the child's home to a placement outside the home the Court may extend the expiration date of the original dispositional order to the latest of the following dates, unless the Court specifies a shorter period:

(a) The date on which the child reaches eighteen (18) years of age;

(b) The date that is one (1) year after the date on which the change-in-placement order is granted; or

(c) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age.

708.24-9. If the change in placement is from a placement outside the home to a placement in the child's home and if the expiration date of the original dispositional order is more than one (1) year after the date on which the change-in-placement order is granted, the Court shall shorten the expiration date of the original dispositional order to the date that is one (1) year after the date on which the change-in-placement order is granted or to an earlier date as specified by the Court.

708.25. Trial Reunification

708.25-1. The Department or the Nation's Child Welfare attorney may request the Court to order a trial reunification. A trial reunification occurs when a child placed in an out-of-home placement resides in the home of a parent, guardian, or legal custodian from which the child was removed for a period of seven (7) consecutive days or longer, but not exceeding one hundred fifty (150) days, for the purpose of determining the appropriateness of changing the placement of the child to that home. A trial reunification is not a change in placement under section 708.24.

708.25-2. *Request for Trial Reunification.* The Department or the Nation's Child Welfare attorney shall include the following in the request for a trial reunification:

- (a) The name and address of the requested trial reunification home;
- (b) A statement describing why the trial reunification is in the best interests of the child; and
- (c) A statement describing how the trial reunification satisfies the objective of the child's permanency plan.

708.25-3. *Emergency Removal of a Child.* A request for a trial reunification may not be made on the sole grounds that an emergency condition necessitates an immediate removal of the child from the child's out-of-home placement. If an emergency condition necessitates such an immediate removal, the Department shall proceed with an emergency change in placement as described in section 708.24-6.

708.25-4. *Notice.* The Department or Nation's Child Welfare attorney shall submit the request to the Court and shall provide the parent, guardian, legal custodian and any other party written notice pursuant to the Oneida Judiciary Rules of Civil Procedure. The notice shall contain the information that is required to be included in the request under section 708.25-2.

708.25-5. *Trial Reunification Hearing.* Any party who is entitled to receive notice of a requested trial reunification may obtain a hearing on the matter by filing an objection with the Court within ten (10) days after the trial reunification request was filed with the Court.

(a) If no objection against the trial reunification is filed, the Court may issue an order for the trial reunification.

(b) If an objection is filed, a hearing shall be held within forty five (45) days after the request was filed with the Court. A trial reunification shall not occur until after the hearing. Not less than three (3) business days before the hearing the Department or the Court shall provide notice of the hearing to all parties with a request for the trial reunification attached to the notice.

(1) If a hearing is held and the trial reunification would remove a child from a foster home or other placement with a legal custodian, the Court shall give the foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or legal custodian to make a written or oral statement relating to the child and the requested trial reunification.

(2) The Court may appoint a guardian ad litem for the child during the trial reunification hearing.

708.25-6. *Order.* If the Court finds that the trial reunification is in the best interest of the child and that the trial reunification satisfies the objectives of the child's permanency plan, the Court shall order the trial reunification. The trial reunification shall terminate ninety (90) days after the date of the order, unless the Court specifies a shorter period in the order, extends or revokes the trial reunification. No trial reunification order may extend the expiration date of the original dispositional order or any extension of the dispositional order.

1067 708.25-7. *Extension of Trial Reunification.* The Department may request an extension of a trial
1068 reunification.

1069 (a) *Extension Request.* The request shall contain a statement describing how the trial
1070 reunification continues to be in the best interests of the child. No later than ten (10) days
1071 prior to the expiration of the trial reunification, the Department shall submit the request to
1072 the Court and shall cause notice of the request to be provided to all parties.

1073 (b) *Extension Hearing.* Any party may obtain a hearing on the requested extension by
1074 filing an objection with the Court within ten (10) days after the extension request was
1075 filed with the Court.

1076 (1) If no objection is filed, the Court may order an extension of the trial
1077 reunification.

1078 (2) If an objection is filed, the Court shall schedule a hearing on the matter. If the
1079 Court is unable to conduct a hearing on the matter before the trial reunification
1080 expires, the trial reunification shall remain in effect until the Court is able hold the
1081 hearing. Not less than three (3) business days before the hearing the Department
1082 or the Court shall provide notice of the hearing to all parties with a copy of the
1083 extension request attached.

1084 (c) *Extension Order.* If the Court finds that the trial reunification continues to be in the
1085 best interests of the child, the Court shall grant an order extending the trial reunification
1086 for a period specified by the Court. Any number of extensions may be granted, but the
1087 total period for a trial reunification may not exceed one hundred and fifty (150) days.

1088 708.25-8. *End of Trial Reunification Period.* When a trial reunification period ends, the
1089 Department shall do one (1) of the following:

1090 (a) Return the child to his or her out-of-home placement. The Department may do so
1091 without further order of the Court, but within five (5) days after the return of the child to
1092 his out-of-home placement the Department shall provide notice of the following:

1093 (1) the date of the return of the child to the out-of-home placement; and

1094 (2) the address of that placement to all parties, unless providing the address
1095 would present imminent danger to the child;

1096 (b) Request a change in placement under section 708.24 to place the child in a new out-
1097 of-home placement; or

1098 (c) Request a change in placement under section 708.24 to place the child in the trial
1099 reunification home.

1100 708.25-9. *Revocation of Trial Reunification.* The Department may determine that a trial
1101 reunification is no longer in the best interests of the child and revoke the trial reunification before
1102 the specified trial reunification period ends.

1103 (a) *Revocation Request.* If the Department determines that the trial reunification is no
1104 longer in the best interests of the child, the Department, without prior order by the Court,
1105 may remove the child from the trial reunification home and place the child in the child's
1106 previous out-of-home placement or place the child in a new out-of-home placement.

1107 (1) If the Department places the child in the child's previous out-of-home
1108 placement, within three (3) business days of removing the child from the trial
1109 reunification home, the Department shall submit a request for revocation of the
1110 trial reunification to the Court and shall provide notice of the request to all parties.
1111 The request shall contain the following information:

(A) the date on which the child was removed from the trial reunification home;

(B) the address of the child's current placement, unless providing the address would present imminent danger to the child; and

(C) the reasons for the proposed revocation.

(2) If the Department places the child in a new out-of-home placement, within three (3) business days of removing the child from the trial reunification home, the Department shall request a change in placement under section 708.22. The procedures specified in section 708.24 apply to a change in placement requested under this subdivision, except that the request shall include the date on which the child was removed from the trial reunification home in addition to the information required in 708.24-2. The trial reunification is revoked when the change in placement order is granted.

(b) *Revocation Hearing.* Any party may obtain a hearing on the matter by filing an objection with the Court within ten (10) days after the request was filed with the Court.

(1) If no objection is filed, the Court may issue a revocation order.

(2) If an objection is filed, the Court shall schedule a hearing on the matter. Not less than three (3) business days before the hearing the Court shall provide notice of the hearing together with a copy of the request for the revocation, to all parties.

(c) *Revocation Order.* If the Court finds that the trial reunification is no longer in the best interests of the child who has been placed in his or her previous out-of-home placement, the Court shall grant an order revoking the trial reunification.

708.25-10. *Prohibited Trial Reunifications.* The Court may not order a trial reunification in the home of an adult who has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child or any crime against a child, if the conviction has not been reversed, set aside, vacated or pardoned. If a parent in whose home a child is placed for a trial reunification is convicted of homicide or a crime against a child, and the conviction has not been reversed, set aside, vacated or pardoned, the Court shall revoke the trial reunification and the child shall be returned to his or her previous out-of-home placement, or placed in a new out-of-home placement.

(a) *Exception.* A prohibition against trial reunifications based on homicide of a parent or a crime against a child does not apply if the Court determines by clear and convincing evidence that the placement would be in the best interests of the child.

708.26. Revision of Dispositional Orders

708.26-1. A party, or the Court on its own motion, may request a revision in the dispositional order that does not involve a change in placement.

708.26-2. The request or Court proposal shall set forth in detail the nature of the proposed revision and what new information is available that affects the advisability of the Court's disposition. The request for revision shall be filed with the Court with notice provided by the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

708.26-3. The Court shall hold a hearing on the matter prior to any revision of the dispositional order if the request or Court proposal indicates that new information is available that affects the advisability of the Court's dispositional order, unless the parties file a signed stipulation and the Court approves.

708.26-4. If a hearing is held, any party may present evidence relevant to the issue of revision of the dispositional order. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of revision.

708.27. Extension of Dispositional Orders

708.27-1. A party, or the Court on its own motion, may request an extension of a dispositional order. The request shall be filed with the Court with notice to the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

708.27-2. No order may be extended without a hearing, unless the parties file a signed stipulation and the Court approves.

708.27-3. Any party may present evidence relevant to the issue of extension. If the child is placed outside of his or her home, the Department shall present as evidence specific information showing that the Department has made reasonable efforts to achieve the permanency goal of the child's permanency plan. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of extension.

708.27-4. The Court shall make findings of fact and conclusions of law based on the evidence. The findings of fact shall include a finding as to whether reasonable efforts were made by the Department to achieve the permanency goal of the child's permanency plan.

708.27-5. If a request to extend a dispositional order is made prior to the termination of the order, but the Court is unable to conduct a hearing on the request prior to the termination date, the order shall remain in effect until such time as an extension hearing is conducted.

708.28. Continuation of Dispositional Orders

708.28-1. If a petition for termination of parental rights or guardianship is filed or an appeal from a termination of parental rights or guardianship judgment is filed during the year in which a child in need of protection or services dispositional order is in effect, the dispositional order shall remain in effect until all proceedings related to the petition or appeal are concluded.

708.29. Guardianship for Certain Children in Need of Protection or Services

708.29-1. *Conditions for Guardianship.* The Court may appoint a guardian for a child if the Court finds all of the following:

(a) That the child has been found to be in need of protection or services under this law and has been placed outside of his or her home pursuant to one (1) or more Court orders, or that the child has been found to be in need of protection or services and placement of the child in the home of a guardian under this section has been recommended by the Department at the dispositional hearing;

(b) That the person nominated as the guardian of the child is a person with whom the child has been placed or in whose home placement of the child is recommended by the Department and that it is likely that the child will continue to be placed with that person for an extended period of time or until the child attains the age of eighteen (18) years;

(c) That, if appointed, it is likely that the person would be willing and able to serve as the child's guardian for an extended period of time or until the child attains the age of eighteen (18) years;

(d) That it is not in the best interests of the child that a petition to terminate parental rights be filed with respect to the child;

(e) That the child's parents are neglecting, refusing or unable to carry out the duties of a guardian; and

(f) That the Department has made reasonable efforts to make it possible for the child to return to his or her home, while assuring that the child's best interests are the paramount concerns, but that reunification of the child with the child's parent(s) is unlikely or contrary to the best interests of the child and that further reunification efforts are unlikely to be made or are contrary to the best interests of the child or that the Department has made reasonable efforts to prevent the removal of the child from his or her home, while assuring the child's best interests, but that continued placement of the child in the home would be contrary to the best interests of the child.

708.29-2. *Who May File a Petition for Guardianship.* Any of the following persons may file a petition for the appointment of a guardian for a child under this section:

(a) The child;

(b) The child's guardian ad litem;

(c) The child's parent;

(d) The person with whom the child is placed or in whose home placement of the child is recommended by the Department;

(e) The Department; or

(f) The Nation's Child Welfare attorney.

708.29-3. *Petition for Guardianship.* A proceeding for the appointment of a guardian for a child shall be initiated by a petition which shall include the following:

(a) The name, birth date, address, and tribal affiliation of the child;

(b) The names, birth dates, addresses, and tribal affiliation of the child's parents;

(c) A copy of the order adjudicating the child to be in need of protection or services and the order placing the child outside of the parental home; and

(d) A statement of the facts and circumstances which the petitioner alleges establish that the conditions for guardianship specified in section 708.27-1(a)-(f) are met.

708.29-4. *Presence of the Proposed Guardian.* The proposed guardian shall be present at all guardianship hearings. The Court may waive the appearance requirement for the proposed guardian if the Court determines there is good cause.

708.29-5. *Plea Hearing for Guardianship.* A plea hearing to determine whether any party wishes to contest a petition for guardianship shall take place no sooner than ten (10) days after the filing of the petition. At the hearing, the non-petitioning parties shall state whether they wish to contest the petition. Before accepting an admission or a plea of no contest to the allegations in the petition, the Court shall do all of the following:

(a) Address the parties present and determine that the admission or plea of no contest is made voluntarily and with understanding of the nature of the facts alleged in the petition, the nature of the potential outcomes and possible dispositions by the Court and the nature of the legal consequences of that disposition;

(b) Establish whether any promises or threats were made to elicit the admission or plea of no contest; and

(c) Make inquiries to establish to the satisfaction of the Court that there is a factual basis for the admission or plea of no contest.

708.29-6. If the petition is not contested and if the Court accepts the admission or plea of no contest, the Court may immediately proceed to a dispositional hearing unless an adjournment is requested.

708.29-7. If the petition is contested or if the Court does not accept the admission or plea of no contest, the Court shall set a date for a fact-finding hearing which allows reasonable time for the parties to prepare but is not more than sixty (60) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits.

(a) If the petition is contested, the Court shall order the Department to file with the Court a report containing as much information relating to the appointment of a guardian as is reasonably ascertainable, including an assessment of the conditions for guardianship specified in section 708.29-1(a)-(f). The Department shall file its report with the Court prior to the fact-finding hearing and shall provide the parties with a copy of the report at least three (3) business days prior to the hearing.

708.29-8. *Fact Finding Hearing for Guardianship.* The Court shall hold a fact-finding hearing on the petition at which any party may present evidence relevant to the issue of whether the conditions for guardianship have been met. If the Court, at the conclusion of the fact-finding hearing, finds by clear and convincing evidence that the conditions for guardianship specified in section 708.29-1(a)-(f) have been met, the Court shall immediately proceed to a dispositional hearing unless an adjournment is requested.

708.29-9. *Dispositional Hearing for Guardianship.* The Court shall hold a dispositional hearing at which any party may present evidence, including expert testimony, relevant to the disposition. In determining the appropriate disposition for guardianship, the Court shall use the best interests of the child as the prevailing factor to be considered by the Court. In making a decision about the appropriate disposition, the Court shall consider any report submitted by the Department and shall consider, but not be limited to, all of the following:

(a) Whether the person would be a suitable guardian of the child;

(b) The willingness and ability of the person to serve as the child's guardian for an extended period of time or until the child reaches the age of eighteen (18) years; and

(c) The wishes of the child.

708.29-10. *Disposition Order for Guardianship.* After receiving any evidence relating to the disposition, the Court shall enter one of the following dispositions and issue a written decision consistent the Oneida Judiciary Rules of Civil Procedure:

(a) A disposition dismissing the petition if the Court determines that appointment of the person as the child's guardian is not in the best interests of the child; or

(b) A disposition ordering that the proposed guardian be appointed as the child's guardian if the Court determines that such an appointment is in the best interests of the child.

708.29-11. If the Court appoints a guardian for the child, the Court may dismiss the dispositional order finding that the child is in need of protection or services.

708.30. Revisions of Guardianship Order

708.30-1. Any person authorized to file a guardianship petition or the Court, on its own motion may request a revision in a guardianship order.

708.30-2. The motion or Court proposal shall set forth in detail the nature of the proposed revision, shall allege facts sufficient to show that there has been a substantial change in

circumstances since the last order affecting the guardianship was entered and that the proposed revision would be in the best interests of the child and shall allege any other information that affects the advisability of the Court's disposition. The motion for the revision shall be filed with the Court with notice provided by the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

(a) The Court may order the Department to file with the Court a report containing as much information relating to the revision of the guardianship as is reasonably ascertainable. The Department shall file its report with the Court prior to the hearing on the revision of guardianship and shall provide the parties with a copy of the report at least three (3) business days prior to the hearing.

708.30-3. The Court shall hold a hearing on the matter prior to any revision of the guardianship order if the motion or Court proposal indicates that new information is available which affects the advisability of the Court's guardianship order, unless the parties file a signed stipulation and the Court approves.

708.31. Termination of Guardianship

708.31-1. A guardianship under this law shall continue until any of the following are met, whichever occurs earlier:

(a) The date on which the child attains eighteen (18) years of age;

(b) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age; or

(c) The date on which the Court terminates the guardianship order.

708.31-2. A parent of the child may request that a guardianship order be terminated. The request shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered, that the parent is willing and able to carry out the duties of a guardian and that the proposed termination of guardianship would be in the best interests of the child. The Court shall hold a hearing on the matter unless the parties file a signed stipulation and the Court approves.

(a) The Court may order the Department to file with the Court a report containing as much information relating to the termination of the guardianship as is reasonably ascertainable, including a re-assessment of the conditions for guardianship specified in section 708.29-1(a)-(f). The Department shall file its report with the Court prior to the hearing on the termination of guardianship and shall provide the parties with a copy of the report at least three (3) business days prior to the hearing.

708.31-3. Any person authorized to file a petition under for guardianship may request that a appointed guardian be removed for cause or the Court may, on its own motion, propose such a removal. The request or Court proposal shall allege facts sufficient to show that the guardian is or has been neglecting, is or has been refusing or is or has been unable to discharge the guardian's trust and may allege facts relating to any other information that affects the advisability of the Court's disposition. The Court shall hold a hearing on the matter.

708.31-4. A guardian appointed under this law may resign at any time if the resignation is accepted by the Court.

708.32. Termination of Parental Rights

708.32-1. It is the philosophy of the Nation that a united and complete family unit is of the utmost value to the community and the individual family members, and that the parent-child relationship is of such vital importance that it should be terminated only as a last resort when all efforts have failed to avoid termination and it is in the best interests of the child concerned to proceed with termination of parental rights.

708.32-2. The Court may terminate a parent's rights on a voluntary or involuntary basis.

708.32-3. An order terminating parental rights permanently severs all legal rights and duties between the parent whose parental rights are terminated and the child.

(a) An order terminating parental rights does not affect a child's relationship with the child's extended biological family unless the Court expressly finds that it is in the child's best interest to terminate the child's relationship with his or her extended biological family.

708.32-4. The termination of parental rights shall not adversely affect the child's rights and privileges as a member of the Nation, nor as a member of any tribe to which the child is entitled to membership, nor shall it affect the child's enrollment status with the Nation, nor shall it interfere with the child's cultural level and traditional and spiritual growth as a member of the Nation.

708.33. Voluntary Termination of Parental Rights

708.33-1. The Court may terminate the parental rights of a parent after the parent has given his or her consent. When such voluntary consent is given and the Department has submitted a court report pursuant to section 708.38, the Court may proceed immediately to a dispositional hearing.

708.33-2. The Court may accept a voluntary consent to termination of parental rights only if the parent appears personally at the hearing and gives his or her consent to the termination of his or her parental rights. The Court may accept the consent only after the judge has explained the effect of termination of parental rights and has questioned the parent, and/or has permitted counsel who represents any of the parties to question the parent, and is satisfied that the consent is informed and voluntary. If the Court finds that it would be difficult or impossible for the parent to appear in person at the hearing, the Court may allow the parent to appear by telephone or live audiovisual means.

708.33-3. If in any proceeding to terminate parental rights voluntarily any party has reason to doubt the capacity of a parent to give informed and voluntary consent to the termination, he or she shall so inform the Court. The Court shall then inquire into the capacity of that parent in any appropriate way and shall make a finding as to whether or not the parent is capable of giving informed and voluntary consent to the termination. If in the Court's discretion a person is found incapable of knowingly and voluntarily consenting to the termination of their parental rights, the Court shall dismiss the voluntary proceedings without prejudice. That dismissal shall not preclude an involuntary termination of the parent's rights.

708.33-4. A parent who has executed a consent under this section may withdraw the consent for any reason at any time prior to the entry of a final order terminating parental rights.

708.33-5. Any consent given under this section prior to or within ten (10) days after the birth of the child is not valid.

708.33-6. The parties may agree to attend peacemaking to establish an agreement regarding post-voluntary termination of parental rights contact with a birth parent, birth sibling, or other birth relative of the child.

(a) Any party to a post-voluntary termination contact agreement may petition the Court that approved the agreement to compel any person who is bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to show that a person who is bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition. The petition may also allege facts showing that the noncompliance with the agreement is not in the best interests of the child.

(b) After receiving a petition for action regarding a post-voluntary termination contact agreement the Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing to all parties to the agreement and may reappoint a guardian ad litem for the child.

(c) If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

(d) The Court may not revoke a termination of parental rights order or an order of adoption because an adoptive parent or other custodian of the child or a birth parent, birth sibling, or other birth relative of the child fails to comply with a post-voluntary termination contact agreement; however, the parties may return to peacemaking to revise the agreement, or the Court may amend an order if it finds an amendment to the order is in the best interests of the child.

708.34. Grounds for Involuntary Termination of Parental Rights

708.34-1. Grounds for termination of parental rights shall be any of the following:

(a) *Abandonment.* Abandonment occurs when a parent either deserts a child without any regard for the child's physical health, safety or welfare and with the intention of wholly abandoning the child, or in some instances, fails to provide necessary care for their child.

(1) Abandonment shall be established by proving any of the following:

(A) That the child has been left without provision for the child's care or support, the petitioner has investigated the circumstances surrounding the matter and for sixty (60) consecutive days the petitioner has been unable to find either parent;

(B) That the child has been left by the parent without provision for the child's care or support in a place or manner that exposes the child to substantial risk of great bodily harm or death;

(C) That a court of competent jurisdiction has found any of the following:

(i) That a child has been abandoned under Wis. Stat. 48.13 (2) or under a law of any other state or a federal law that is comparable to the state law;

(ii) That the child was abandoned when the child was under one (1) year of age or has found that the parent abandoned the child when the child was under one (1) year of age in violation of Wis. Stat. 948.20 or in violation of the law of any other state or federal

- law, if that violation would be a violation of abandonment of a child under Wis. Stat. 948.20 if committed in this state;
- (D) That the child has been placed, or continued in a placement, outside the parent's home by a Court order containing the required notice and the parent has failed to visit or communicate with the child for a period of three (3) months or longer; or
- (E) The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of six (6) consecutive months or longer.
- (2) Incidental contact between parent and child shall not preclude the Court from finding that the parent has failed to visit or communicate with the child. The time periods under sections 708.34-1(a)(1)(D) and 708.34-1(a)(1)(E) shall not include any periods during which the parent has been prohibited by Court order from visiting or communicating with the child.
- (3) Abandonment is not established under sections 708.34-1(a)(1)(D) and 708.34-1(a)(1)(E) if the parent proves all of the following by clear and convincing evidence:
- (A) That the parent had good cause for having failed to visit with the child throughout the three (3) or six (6) month time period alleged in the petition.
- (B) That the parent had good cause for having failed to communicate with the child throughout the three (3) or six (6) month time period alleged in the petition.
- (C) If the parent proves good cause under section 708.34-1(a)(3)(B), including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that one (1) of the following occurred:
- (i) The parent communicated about the child with the person or persons who had physical custody of the child during the three (3) or six (6) month time period alleged in the petition, whichever is applicable, or, with the Department during the three (3) month time period alleged in the petition.
- (ii) The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the Department throughout the three (3) or six (6) month time period alleged in the petition.
- (b) *Relinquishment.* Relinquishment occurs when a parent gives up or abandons their child and all rights to their child. Relinquishment shall be established by proving that a court of competent jurisdiction has found that the parent has relinquished custody of the child when the child was seventy-two (72) hours old or younger.
- (c) *Continuing Need of Protection or Services.* Continuing need of protection or services shall be established by proving any of the following:
- (1) That the child has been found to be in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one (1) or more dispositional orders containing the notice required by section 708.22-7;

(2) That the Department has made a reasonable effort to provide the services ordered by the Court;

(3) That the child has been outside the home for a cumulative total period of six (6) months or longer pursuant to such orders; and that the parent has failed to meet the conditions established for the safe return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the nine (9) month period following the termination of parental rights fact-finding hearing.

(d) *Continuing Parental Disability.* Continuing parental disability shall be established by proving that:

(1) The parent is presently, and for a cumulative total period of at least two (2) years within the five (5) years immediately prior to the filing of the petition has been, an inpatient at one (1) or more hospitals as defined in either the Nation's laws or state law;

(2) The condition of the parent is likely to continue indefinitely; and

(3) The child is not being provided with adequate care by a relative who has legal custody of the child, or by a parent or a guardian.

(e) *Continuing Denial of Periods of Physical Placement or Visitation.* Continuing denial of periods of physical placement or visitation shall be established by proving all of the following:

(1) The parent has been denied periods of physical placement by Court order in an action affecting the family or has been denied visitation under a dispositional order containing the notice required by section 708.20-7, Wis. Stat. 48.356 (2), or Wis. Stat. 938.356 (2); and

(2) A Court order has denied the parent periods of physical placement or visitation for at least one (1) year.

(f) *Child Abuse.* Child abuse shall be established by proving that the parent has committed child abuse against the child who is the subject of the petition and proving either of the following:

(1) That the parent has caused death or injury to a child resulting in a felony conviction; or

(2) That a child has previously been removed from the parent's home pursuant to a dispositional order after an adjudication that the child is in need of protection or services.

(g) *Failure to Assume Parental Responsibility.* Failure to assume parental responsibility shall be established by proving that the parent or the person(s) who may be the parent of the child have not had a substantial parental relationship with the child.

(1) In evaluating whether the person has had a substantial parental relationship with the child, the Court may consider such factors, including, but not limited to, the following:

(A) Whether the person has expressed concern for or interest in the support, care or well-being of the child;

(B) Whether the person has neglected or refused to provide care or support for the child; and

(C) Whether, with respect to a person who is or may be the father of the child, the person has expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

(h) *Incestuous Parenthood.* Incestuous parenthood shall be established by proving that the person whose parental rights are sought to be terminated is also related, either by blood or adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

(i) *Homicide or Solicitation to Commit Homicide of a Parent.* Homicide or solicitation to commit homicide of a parent, which shall be established by proving that a parent of the child has been a victim of first-degree intentional homicide, first-degree reckless homicide or 2nd-degree intentional homicide or a crime under federal law or the law of any other state that is comparable to any of those crimes, or has been the intended victim of a solicitation to commit first-degree intentional homicide or a crime under federal law or the law of any other state that is comparable to that crime, and that the person whose parental rights are sought to be terminated has been convicted of that intentional or reckless homicide, solicitation or crime as evidenced by a final judgment of conviction.

(j) *Parenthood as a Result of Sexual Assault.*

(1) Parenthood as a result of sexual assault shall be established by proving that the child was conceived as a result of one of the following:

(A) First degree sexual assault [under Wis. Stats. 940.225(1)];

(B) Second degree sexual assault [under Wis. Stat. 940.225 (2)];

(C) Third degree sexual assault [under Wis. Stat. 940.225(3)];

(D) First degree sexual assault of a child [under Wis. Stat. 948.02(1)];

(E) Second degree sexual assault of a child [under Wis. Stat. 948.02 (2)];

(F) Engaging in repeated acts of sexual assault of the same child [under Wis. Stat. 948.025]; or

(G) Sexual assault of a child placed in substitute care [under Wis. Stat. 948.085].

(2) Conception as a result of sexual assault may be proved by a final judgment of conviction or other evidence produced at a termination of parental rights fact-finding hearing indicating that the person who may be the parent of the child committed, during a possible time of conception, a sexual assault as specified in this section against the other parent of the child.

(3) If the conviction or other evidence indicates that the child was conceived as a result of a sexual assault in violation of Wis. Stat. 948.02 (1) or (2) or 948.085, the parent of the child may be heard on his or her desire for the termination of the other parent's parental rights.

(k) *Commission of a Felony Against a Child.*

(1) Commission of a serious felony against the child, shall be established by proving that the child was the victim of a serious felony and parent was convicted of that serious felony.

(2) Commission of a violation of trafficking of a child under Wis. Stat. 948.051 involving any child or a violation of the law of any other state or federal law, if that violation would be a violation of Wis. Stat. 948.051 involving any child if committed in this state.

(3) In this subsection, "serious felony" means any of the following:

(A) The commission of, the aiding or abetting of, or the solicitation, conspiracy or attempt to commit, a violation of any of the following:

- (i) First degree intentional homicide [under Wis. Stat. 940.01];
- (ii) First degree reckless homicide [under Wis. Stat. 940.02];
- (iii) Felony murder [under Wis. Stat. 940.03];
- (iv) Second-degree intentional homicide [under Wis. Stat. 940.05]; or
- (v) A violation of the law of any other state or federal law, if that violation would be a violation of the above mentioned felonies if committed in Wisconsin.

(B) The commission of a violation of any of the following:

- (i) Battery, substantial battery, aggravated battery [under Wis. Stat. 940.19 (3), 1708 stats., or Wis. Stats. 940.19 (2), (4) or (5)];
- (ii) Sexual assault [under Wis. Stat. 940.225 (1) or (2)];
- (iii) Sexual assault of a child [under Wis. Stat. 948.02 (1) or (2)];
- (iv) Engaging in repeated acts of sexual assault of the same child [under Wis. Stat. 948.025];
- (v) Physical abuse of a child [under Wis. Stats. 948.03 (2) (a), (3) (a), or (5) (a) 1., 2., or 3.];
- (vi) Sexual exploration of a child [under Wis. Stat. 948.05];
- (vii) Trafficking of a child [under Wis. Stat. 948.051];
- (viii) Incest with a child [under Wis. Stat. 948.06];
- (ix) Soliciting a child for prostitution [under Wis. Stat. 948.08];
- (x), Human trafficking [under Wis. Stat. 940.302 (2) if Wis. Stat. 940.302 (2) (a) 1. b. applies]; or
- (xi) A violation of the law of any other state or federal law, if that violation would be a violation listed under the above listed felonies if committed in Wisconsin.

(C) The commission of a violation of neglecting a child under Wis. Stat. 948.21 or a violation of the law of any other state or federal law, if that violation would be a violation of Wis. Stat. 948.21 if committed in this state, that resulted in the death of the victim.

(1) *Prior Involuntary Termination of Parental Rights of Another Child.* Prior involuntary termination of parental rights to another child shall be established by proving all of the following:

- (1) That the child who is the subject of the petition is in need of protection or services under section 708.5-2(b), (d), or (k); or that the child who is the subject of the petition was born after the filing of a petition under this subsection whose subject is a sibling of the child; and
- (2) That, within three (3) years prior to the date the Court determined the child to be in need of protection or services as specified in section 708.34-1 (l) (1) or, in the case of a child born after the filing of a petition as specified in section 708.34-1 (l) (1), within three (3) years prior to the date of birth of the child, a Court has ordered the termination of parental rights with respect to another child of the person whose parental rights are sought to be terminated on one or more of the grounds specified in this section.

708.35. Petition for Termination of Parental Rights

708.35-1. *Who May File a Petition for Termination of Parental Rights.* A petition for termination of parental rights shall be filed by the Nation's Child Welfare attorney, the Department, or the child's parent in the case of a step-parent adoption.

708.35-2. A petition for the termination of parental rights may be filed when the child has been placed outside of his or her home for fifteen (15) of the most recent twenty-two (22) months unless any of the following applies:

- (a) The child is being cared for by a fit and willing relative of the child;
- (b) The child's permanency plan indicates and provides documentation that termination of parental rights to the child is not in the best interests of the child;
- (c) The Department, if required by a dispositional order, failed to make reasonable efforts to make it possible for the child to return safely to his or her home, did not provide or refer services to the family of the child for the safe return of the child to his or her home that were consistent with the time period in the child's permanency plan; or
- (d) Grounds for an involuntary termination of parental rights do not exist.

708.35-3. A petition for the termination of parental rights shall include the following information:

- (a) The name, birth date, address, and tribal affiliation of the child;
- (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- (c) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit; and
- (d) One (1) of the following:
 - (1) A statement that consent will be given to voluntary termination of parental rights as provided in section 708.33; or
 - (2) A statement of the grounds for involuntary termination of parental rights under section 708.34 and a statement of the facts and circumstances which the petitioner alleges establish these grounds.

708.35-4. *Temporary Order and Injunction Prohibiting Contact.* If the petition includes a statement of the grounds for involuntary termination of parental rights, the petitioner may, at the time the petition is filed, also petition the Court for a temporary order and an injunction prohibiting the person whose parental rights are sought to be terminated from visiting or contacting the child who is the subject of the petition. Any petition under this section shall allege facts sufficient to show that prohibiting visitation or contact would be in the best interests of the child.

- (a) The Court may grant an injunction prohibiting the respondent from visiting or contacting the child if the Court determines that the prohibition would be in the best interests of the child. An injunction under this subsection is effective according to its terms but may not remain in effect beyond the date the Court dismisses the petition for termination of parental rights or issues an order terminating parental rights.

708.35-5. The petitioner shall ensure the summons and petition are served upon the following persons pursuant to the Oneida Judiciary Rules of Civil Procedure:

- (a) The parent(s) of the child, including an alleged father if paternity has not been established;
- (b) The child's foster parent, guardian or legal custodian, if applicable. If the address has been marked confidential by the Court, the Court shall send a copy of the summons and petition to the home in which the child is placed via first-class U.S. mail; and

(c) The Nation's Child Welfare attorney and the Department, if the petition is filed by anyone other than the Nation's Child Welfare attorney or the Department.

708.36. Initial Hearing on the Termination of Parental Rights Petition

708.36-1. The initial hearing on the petition to terminate parental rights shall be held within forty-five (45) days after the petition is filed. At the hearing the Court shall determine whether any party wishes to contest the petition and inform the parties of their rights.

708.36-2. If the petition is contested, the Court shall set a date for a fact-finding hearing to be held within sixty (60) days after the hearing on the petition, unless the Court enters an order finding good cause to go outside the time limits.

708.36-3. If the petition is not contested, the Court shall hear testimony in support of the allegations in the petition and may proceed immediately with a dispositional hearing if the parties agree. Before accepting an admission of the alleged facts in a petition, the Court shall:

(a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes and possible dispositions by the Court;

(b) Establish whether any promises or threats were made to elicit an admission; and

(c) Make such inquiries to establish a factual basis for the admission.

708.37. Fact Finding Hearing for a Termination of Parental Rights

708.37-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that grounds exist for the termination of parental rights.

708.37-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.37-3. If grounds for the termination of parental rights are found by the Court, the Court shall find the parent(s) unfit. A finding of unfitness shall not prevent a dismissal of a termination of parental rights petition. Unless the parties agree to proceed immediately with the dispositional hearing and the Court accepts, the Court shall set a date for a dispositional hearing no later than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go outside the time limits.

708.38. Department's Termination of Parental Rights Report

708.38-1. In any case that the Department is a party, the Department shall submit a written report to the Court prior to any dispositional hearing, with a copy to the parties no later than seven (7) days prior to the hearing, which shall contain all of the following:

(a) The social history of the child and family, including any relevant medical conditions;

(b) A statement of the facts supporting the need for termination of parental rights;

(c) If the child has been previously adjudicated to be in need of protection or services, a statement of the steps the Department has taken to remedy the conditions responsible for Court intervention and the parent's response to and cooperation with these services. If the child has been removed from the home, the report shall also include a statement of the reasons why the child cannot be returned safely to the family and the steps the Department has taken to effect this return;

(d) A statement applying the standards and factors identified in sections 708.39-2 and 708.39-3 regarding the case before the Court; and

(e) If the report recommends that the parental rights of both of the child's parents or the child's only living or known parent are to be terminated, the report shall contain a statement of the likelihood that the child will be adopted. This statement shall include a presentation of the factors that might prevent adoption, those that may facilitate adoption, and the Department shall be responsible for accomplishing the adoption.

(1) If the Department determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting. The plan shall include a recommendation for the appointment of guardian for the child.

708.38-2. The Court may order a report as specified under this section to be prepared by the Department in those cases where the Department is not a party.

708.39. Standards and Factors

708.39-1. In making a decision about the appropriate disposition for termination of parental rights, the Court shall consider the standards and factors enumerated in this section and any report submitted by the Department.

708.39-2. The best interests of the child shall be the prevailing standard considered by the Court in determining the disposition of all termination of parental rights proceedings.

708.39-3. In considering the best interests of the child the Court shall also consider, but not be limited to, the following factors:

(a) The likelihood of the child's adoption after termination;

(b) Whether the child will be raised in an environment that is respectful of the child's race(s), culture(s), and heritage(s);

(c) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home;

(d) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships;

(e) The wishes of the child;

(f) The duration of the separation of the parent from the child; and

(g) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

708.40. Dispositional Hearings for Termination of Parental Rights

708.40-1. Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the Court. After receiving any evidence related to the disposition, the Court shall enter a disposition and issue a written decision consistent with the Oneida Judiciary Rules of Civil Procedure.

(a) The Court shall give the foster parent or other legal custodian a right to be heard at the dispositional hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the dispositional hearing, or to submit a written statement prior to disposition, relevant to the issue of disposition.

708.40-2. The Court shall enter one (1) of the following dispositions:

(a) The Court may dismiss the petition if it finds the evidence does not warrant the termination of parental rights or if the Court finds that a parent is attempting to

voluntarily terminate their parental rights for the sole purpose of avoiding a child support obligation; or

(b) The Court may enter an order terminating the parental rights of one or both parents.

708.40-3. If the rights of both parents, or of the only living parent, are terminated and if a guardian has not been appointed, the Court shall do one (1) of the following while adhering to the placement preferences pursuant to section 708.11-1 when possible:

(a) Transfer guardianship and custody of the child pending adoptive placement to:

(1) A tribal or county department authorized to accept guardianship;

(2) A child welfare agency licensed to accept guardianship;

(3) The State of Wisconsin upon written confirmation from the State that they are willing to accept guardianship;

(4) A relative with whom the child resides, if the relative has filed a petition to adopt the child or if the relative is a kinship care relative or is receiving payments for providing care and maintenance for the child; or

(5) An individual who has been appointed guardian of the child by a court of a competent jurisdiction; or

(b) Appoint a guardian and transfer guardianship and custody of the child to the guardian.

708.40-4. The written Court order shall include the following:

(a) If the Court dismisses the petition, the order shall contain the reasons for dismissal; or

(b) If the disposition is for the termination of parental rights, the order shall contain all of the following:

(1) The identity of any agency, department, or individual that has received guardianship of the child;

(2) If an agency or department receives guardianship and custody of the child, an order ordering the child into the placement and care responsibility of the agency or department and assigning the agency or department primary responsibility for providing services to the child; and

(3) A finding that the termination of parental rights is in the best interests of the child.

708.40-5. If an order is entered to terminate a parent's rights, the Court shall orally inform the parent(s) who appear in Court or place in the written order the ground(s) for termination of parental rights specified in section 708.34.

708.40-6. If the Court terminates parental rights, the Department, or the Court if the Department is not a party to the action, shall forward the following information to the State of Wisconsin:

(a) The name, date of birth, and tribal affiliation of the child whose birth parent's rights have been terminated;

(b) The names and current addresses of the child's birth parents, guardian and legal custodian; and

(c) Any medical or genetic information received by the Department.

708.40-7. If only one parent consents for a voluntary termination of parental rights or if the grounds for involuntary termination of parental rights are found to exist as to only one parent, the rights of only that parent may be terminated without affecting the rights of the other parent if the Court finds such termination to be in the best interest of the child.

708.41. Adoption

708.41-1. Adoptions under this law shall take the form of customary adoptions unless the Court determines there is good cause for the adoption to be closed.

708.41-2. *Customary Adoptions.* The purpose of customary adoption is not to permanently deprive the child of connections to, or knowledge of, the child's biological family, but to provide the child a permanent home. The following shall apply to all customary adoptions and shall be contained in all adoptive orders and decrees:

(a) The relationship between an adoptive parent and adoptive child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her biological family and his or her Oneida heritage, if applicable. The child may obtain adoption information from files maintained by the Court or Department;

(c) Adoption shall not prevent an adoptive child from inheriting from a biological parent in the same manner as any other biological child. The biological parents shall not be entitled to inherit from an adoptive child in the same manner as parents would otherwise be entitled to inherit. An adoptive child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as if biological parents and child;

(d) Although parental rights have been terminated, the biological parent may retain certain residual parental rights when appropriate as determined by agreement between the adoptive parent and biological parent made through peacemaking, or by order of the Court. Such residual parental rights may include:

(1) The right to communication;

(2) The right to visitation;

(3) The right or obligation to contribute to support or education;

(4) The right to be consulted regarding the child's religious affiliation, major medical treatment, marriage, or other matters of major importance in the child's life; and/or

(5) Such other residual rights the Court may deem appropriate, considering the circumstances.

(e) Adoption does not extinguish the relationships between the child and the child's extended biological family. The child's extended biological family retains the right to reasonable communication and visitation with the child, subject to reasonable controls of the adoptive parents.

708.41-3. *Closed Adoptions.* Closed adoptions occur in situations where a child needs a permanent home and it is necessary to sever all ties between the child and his or her biological family. The following shall apply to all closed adoptions:

(a) The relationship between an adoptive parent and adoptive child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The relationship between the adopted child and all persons whose relationship to the adopted child is derived through the biological parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist;

(c) The child's biological family shall not be entitled to or have access to any information regarding said child;

(d) The child shall be entitled to information and knowledge regarding his or her culture and heritage; and

(e) The child shall be entitled to information regarding his or her biological family upon reaching the age of majority. The child may obtain adoption information from files maintained by the Court or Department.

708.42. Adoption Criteria and Eligibility

708.42-1. *Criteria for Adoption.* Any child who is subject to this law may be adopted if any of the following criteria are met:

(a) Both of the child's parents are deceased;

(b) The parental rights of both of the child's parents with respect to the child have been terminated;

(c) The parental rights of one of the child's parents with respect to the child have been terminated and the child's other parent is deceased; or

(d) The person filing the petition for adoption is the spouse of the child's parent and either of the following applies:

(1) The child's other parent is deceased; or

(2) The parental rights of the child's other parent with respect to the child have been terminated.

708.42-2. *Eligibility.* The following persons are eligible to adopt a child who falls under the jurisdiction of this law pending the successful clearing of a background check:

(a) A married adult couple;

(b) Either spouse if the other spouse is a parent of the child; or

(c) An unmarried adult.

708.42-3. If the person proposing to adopt the child cannot successfully clear a background check, and any convictions the person may possess have not been pardoned, forgiven, reversed, set aside or vacated, the Court may still deem the person eligible to adopt if the Court determines by clear and convincing evidence that the adoption would be in the best interests of the child.

708.43. Adoption Procedure

708.43-1. *Petition for Adoption.* A person proposing to adopt shall initiate a proceeding for the adoption of a child by filing a petition with the Court. The petition shall include the following information:

(a) The name, birth date, address, and tribal affiliation of the petitioner;

(b) The name, birth date, address, and tribal affiliation of the child;

(c) The names, birth dates, addresses, and tribal affiliation of the child's biological parents;

(d) The name by which the child shall be known if the petition is granted;

(e) The relationship of the petitioner to the child; and

(f) A copy of the order terminating parental rights of the child's biological parent(s).

708.43-2. Upon the filing of a petition for adoption, the Court shall schedule a hearing within sixty (60) days. Notice of the hearing shall be served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

708.43-3. When a petition for adoption is filed, the Court shall order an investigation to determine whether the child is a proper subject for adoption and whether the petitioner's home is suitable for the child. The Court shall order one (1) of the following to conduct the investigation:

(a) If the Department, or another agency or department, has guardianship of the child, the agency or department that has guardianship; or

(b) If no agency or department has guardianship of the child and a relative, including a stepparent, has filed the petition for adoption, the Department.

708.43-4. The Department or other agency or department making the investigation shall file its report with the Court prior to the hearing on the petition and shall provide the parties with a copy of the report at least three (3) business days prior to the hearing.

708.43-5. If the report of the investigation is unfavorable or if it discloses a situation which, in the opinion of the Court, raises a serious question as to the suitability of the proposed adoption, the Court may appoint a guardian ad litem for the child whose adoption is proposed.

708.43-6. During the hearing the parties may agree to attend peacemaking to establish an agreement regarding residual rights of a birth parent, birth sibling, or other birth relative of the child.

708.43-7. If after the hearing and a study of the report required by section 708.43-3 the Court is satisfied that the adoption is in the best interests of the child, the Court shall make an order granting the adoption. The order may change the name of the child to that requested by petitioners.

708.43-8. After the order of adoption is entered the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent thereafter exists between the adopted child and the adoptive parents. The relationship between the adopted child and biological parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist, excluding any residual rights granted to the biological parents and extended family through customary adoption. If the biological parent is the spouse of the adoptive parent, the relationship shall be completely altered and those rights, duties, and other legal consequences shall cease to exist only with respect to the biological parent who is not the spouse of the adoptive parent.

708.43-9. After entry of the order granting the adoption, the Department shall promptly mail a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish any additional data needed for the issuance of a new birth certificate.

708.44. Non-Compliance with a Residual Rights Agreement

708.44-1. Any party to a residual rights agreement may petition the Court that approved the agreement to compel any person who is bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to show that a person who is bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition. The petition may also allege facts showing that the noncompliance with the agreement is not in the best interests of the child.

708.44-2. After receiving a petition for action regarding a residual rights contact agreement the Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing to all parties to the agreement and may reappoint a guardian ad litem for the child.

708.44-3. If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

1930 708.44-4. The Court may not revoke a termination of parental rights order or an order of
1931 customary adoption because an adoptive parent or other custodian of the child or a birth parent,
1932 birth sibling, or other birth relative of the child fails to comply with a residual rights agreement;
1933 however, the parties may return to peacemaking to revise the agreement, or the Court may
1934 amend an order if it finds an amendment to the order is in the best interests of the child.
1935

1936 **708.45. Peacemaking and Mediation**

1937 708.45-1. The Court may refer the parties to peacemaking or mediation if the parties agree to
1938 attend peacemaking or mediation. The Court shall not refer the parties to peacemaking or
1939 mediation if attending the session will cause undue hardship or would endanger the health or
1940 safety of a party.

1941 708.45-2. When the parties attend peacemaking or mediation based on a referral from the Court,
1942 the Court shall enter an order finding good cause to suspend the time limits established under this
1943 law.
1944

1945 **708.46. Appeals**

1946 708.46-1. Appeals of all orders issued under this law shall be heard by the Nation's Court of
1947 Appeals in accordance with the Rules of Appellate Procedure.
1948

1949 **708.47. Liability**

1950 708.47-1. No liability shall attach to the Department, Indian Child Welfare Worker, the Nation's
1951 Child Welfare Attorney or any person acting under their authority for statements, acts or
1952 omissions made in good faith while in the course of activities taken under this law.
1953

1954 *End.*

1955 Adopted – BC-_____

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

DATE: July 12, 2017

FROM: Rae Skenandore, Financial Management Analyst

TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

RE: **Financial Impact of the Children's Code**

I. Estimated Fiscal Impact Summary

Law: Children's Code		Draft 5
Implementing Agency	Indian Child Welfare Cultural Heritage Judiciary Oneida Law Office	
Estimated time to comply	Approximately 18 months from approval	
Estimated Impact	Current Fiscal Year	10 Year Estimate*
Start up	\$63,838	
Personnel	\$889,304	\$11,517,745
Child Placement Cost	\$0	\$14,616,000
Other Expenses	\$0	\$ 552,321
Savings due to Board Dissolution	\$-138,708	\$-1,525,788
Total Estimated Fiscal Impact	\$814,433	\$26,160,278
Revenue and cost considerations	Sustainability	
Uncertainties and Unknowns	If there will be any reimbursement from the counties for the placement of foster children through 161 Act agreements.	

II. Background

A. Legislative History

This is new legislation that has been in development since 2012.

*Please see the spreadsheet & assumptions for more details on the projections.

B. Summary of Content

1. It is the goal of this Code to allow the Nation to exercise jurisdiction over its children who are in the need of protection or services and ensure that child welfare cases involving Oneida children are handled on the Reservation where more family members are located and more Tribal foster homes are available. Furthermore, it is the hope that the Code will bring Oneida children and their families closer to the Nation's resources and keep these families near the Reservation which may result in a higher percentage of reunifications and lower the number of unstable families. Due to the extent of the legislation, the following is simply an outline of the content. Please see the Legislative Analysis for the details of the content.

- a) Oneida Jurisdiction
- b) Department's Duties & Responsibilities
- c) Guardians ad Litem
- d) Advocates
- e) Cultural Wellness Facilitator and Healer
- f) Placement Preference prioritized order
 - (1) A member of the child's immediate or extended family
 - (2) A family clan member
 - (3) A member of the Nation
 - (4) Descendants of the Nation
 - (5) A member of another federally recognized tribe
 - (6) Fictive kin within the Nation community
 - (7) Fictive kin outside the Nation community
 - (8) Any other person not listed above
- g) Notice of Petitions
- h) Hearings (General)
- i) Discovery & Records.
- j) Taking a Child into Custody Process.
- k) Emergency Custody Hearing.
- l) Children in Need of Protection (CHIPS) Proceedings
- m) Permanency Plans
- n) Change in Placement
- o) Trial Reunification.
- p) CHIPS Guardianship
- q) Termination of Parental Rights.
- r) Adoption
- s) Non-Compliance with Residual Rights Agreement
- t) Peacemaking and Mediation

- u) Appeals
- v) Liability

C. Methodology and Assumptions

1. A “Fiscal Impact Statement” means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.
2. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.
3. The analysis was completed based on the information provided as of the date of this memo.

II. Agency

There are 12 new positions needed in four different areas. The areas needing additional staff are Cultural Heritage, Indian Child Welfare (ICW), the Oneida Law office and the Judiciary. Associated startup costs for the positions include equipment, training, supplies, etc. Once approved, the Law will not be implemented for approximately 18 months. This was determined to be the period of time needed to hire and train the new staff prior to taking any cases. As noted in the attached spreadsheet, the total administrative expenses for the first 18 months is approximately \$814,433. Finance has been informed that all positions, except for the attorney, are included in the Fiscal Year 2018 budget.

According to ICW, unless there are special circumstances, Oneida will only exercise jurisdiction over new cases. New cases are expected to rise by approximately 15 per year and will peak at approximately 78 cases in year 7 (seven).

The following is from an administrative memo from the State of Wisconsin memo series DCFS 2008 – 11 Department of Health and Family Services June 24, 2008 Division of Children and Family Services Re: Guidelines for Implementation of Act 161 Agreements (Out-of-Home Placements of Indian Children by Tribal Courts)

“1983 Wisconsin Act 161 became effective March 23, 1984. The Act creates a mechanism for County Departments of Social or Human Services to make payments for costs of out-of-home placements of Indian children when the placement is ordered by a Tribal Court and the county and the Tribe have entered into a written agreement regarding the circumstances under which such payments will be made. Finally, the Act acknowledges the authority of Tribes as sovereign nations to license foster homes located

on reservation lands by sanctioning payments for these placements under such agreements.

To implement Act 161, it is necessary for Tribal governments and counties to negotiate written agreements regarding payment of out-of-home placement costs. Department of Health and Family Services staff will, if requested, facilitate the negotiation process. Agreements may be general or case specific, although it is anticipated that most will be general in nature. The content and format of agreements will be largely a matter of joint preference by the parties. By necessity, however, all agreements must include:

- A. The names of the parties to the agreement.*
- B. Language that complies with federal statutory and regulatory requirements as provided to the parties by the Department of Health and Family Services.*
- C. The period covered by the agreement.*
- D. The procedures to be used for placements.*
- E. The circumstances under which payments shall be made.*

All agreements must also include provisions related to Permanency Planning. The agreements must provide assurances that Federal and State requirements will be met”.

The Nation will be working with both Brown and Outagamie Counties to negotiate the 161 Agreements. However, in the absence of a signed agreement at the time of this analysis, the projections are based on the maximum allowable payment per child placed in foster care. The projections do not account for children in need of a specialized treatment facility, as it is indeterminate due to the number of variables involved.

Utilizing the maximum allowable for placement and the projected caseload, the estimated cost in year two is approximately \$360,000. The caseload is expected to peak in year seven at 78 cases and a cost of approximately \$1,872,000. The caseload is expected to remain near that level going forward. Adding the administrative costs to the cost for placement, the total cost of the legislation over the next 10 years is approximately \$26,686,066.

Legislation will be implemented approximately 18 months after approval.

Personnel		2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Cultural Heritage												
Cultural Facilitator - Wellness	\$	65,872	\$ 67,519	\$ 69,207	\$ 70,937	\$ 72,711	\$ 74,528	\$ 76,392	\$ 78,301	\$ 80,259	\$ 82,265	\$ 84,322
Cultural Facilitator - Wellness	\$	65,872	\$ 67,519	\$ 69,207	\$ 70,937	\$ 72,711	\$ 74,528	\$ 76,392	\$ 78,301	\$ 80,259	\$ 82,265	\$ 84,322
BIA-ICW												
Intake Supervisor	\$	106,970	\$ 109,644	\$ 112,385	\$ 115,195	\$ 118,074	\$ 121,026	\$ 124,052	\$ 127,153	\$ 130,332	\$ 133,590	\$ 136,930
Child Placement Coordinator	\$	80,899	\$ 82,922	\$ 84,995	\$ 87,120	\$ 89,298	\$ 91,530	\$ 93,818	\$ 96,164	\$ 98,568	\$ 101,032	\$ 103,558
On-Going Social Worker	\$	93,044	\$ 95,370	\$ 97,754	\$ 100,198	\$ 102,703	\$ 105,271	\$ 107,902	\$ 110,600	\$ 113,365	\$ 116,199	\$ 119,104
On-Going Social Worker	\$	93,044	\$ 95,370	\$ 97,754	\$ 100,198	\$ 102,703	\$ 105,271	\$ 107,902	\$ 110,600	\$ 113,365	\$ 116,199	\$ 119,104
Intake/Investigator	\$	93,044	\$ 95,370	\$ 97,754	\$ 100,198	\$ 102,703	\$ 105,271	\$ 107,902	\$ 110,600	\$ 113,365	\$ 116,199	\$ 119,104
Parenting Coordinator	\$	62,932	\$ 64,506	\$ 66,118	\$ 67,771	\$ 69,466	\$ 71,202	\$ 72,982	\$ 74,807	\$ 76,677	\$ 78,594	\$ 80,559
Security Officer (Shared Expense)	\$	29,147	\$ 29,876	\$ 30,623	\$ 31,388	\$ 32,173	\$ 32,977	\$ 33,802	\$ 34,647	\$ 35,513	\$ 36,401	\$ 37,311
Peremium Pay-On Call	\$	8,096	\$ 8,299	\$ 8,506	\$ 8,719	\$ 8,937	\$ 9,160	\$ 9,389	\$ 9,624	\$ 9,865	\$ 10,111	\$ 10,364
Oneida Law Office												
Tribal Attorney	\$	121,446	\$ 124,482	\$ 127,594	\$ 130,784	\$ 134,054	\$ 137,405	\$ 140,840	\$ 144,361	\$ 147,970	\$ 151,669	\$ 155,461
Oneida Judiciary												
Family Court Judge	\$	162,705	\$ 166,773	\$ 170,942	\$ 175,216	\$ 179,596	\$ 184,086	\$ 188,688	\$ 193,405	\$ 198,241	\$ 203,197	\$ 208,276
Family Court Clerk of Court	\$	36,239	\$ 74,291	\$ 76,148	\$ 78,052	\$ 80,003	\$ 82,003	\$ 84,053	\$ 86,155	\$ 88,309	\$ 90,516	\$ 92,779
Subtotal Personnel Costs	\$	1,019,312	\$ 1,081,940	\$ 1,108,988	\$ 1,136,713	\$ 1,165,131	\$ 1,194,259	\$ 1,224,116	\$ 1,254,718	\$ 1,286,086	\$ 1,318,239	\$ 1,351,195
*Title IV E reimbursable personnel expenses	21.79%	\$ (130,008)	\$ (133,258)	\$ (136,590)	\$ (140,004)	\$ (143,505)	\$ (147,092)	\$ (150,769)	\$ (154,539)	\$ (158,402)	\$ (162,362)	\$ (166,421)
Total Personnel Costs	\$	889,304	\$ 948,682	\$ 972,399	\$ 996,709	\$ 1,021,626	\$ 1,047,167	\$ 1,073,346	\$ 1,100,180	\$ 1,127,684	\$ 1,155,876	\$ 1,184,773
Annual expenses of additional six (Per staff												
Supplies	\$ 150	\$ 900	\$ 923	\$ 946	\$ 969	\$ 993	\$ 1,018	\$ 1,044	\$ 1,070	\$ 1,097	\$ 1,124	\$ 1,152
Office Furniture-One Time Expense	\$ 2,500	\$ 15,000										
Computer/Printer-One Time Expens	\$ 1,050	\$ 6,300										
Phones	\$ 600	\$ 3,600	\$ 3,690	\$ 3,782	\$ 3,877	\$ 3,974	\$ 4,073	\$ 4,175	\$ 4,279	\$ 4,386	\$ 4,496	\$ 4,608
Depreciation	\$ 5,200	\$ 5,200	\$ 5,330	\$ 5,463	\$ 5,600	\$ 5,740	\$ 5,883	\$ 6,030	\$ 6,181	\$ 6,336	\$ 6,494	\$ 6,656
Heat & Lights	\$ 375	\$ 2,250	\$ 2,306	\$ 2,364	\$ 2,423	\$ 2,484	\$ 2,546	\$ 2,609	\$ 2,675	\$ 2,741	\$ 2,810	\$ 2,880
Water & Sewer	\$ 20	\$ 120	\$ 123	\$ 126	\$ 129	\$ 132	\$ 136	\$ 139	\$ 143	\$ 146	\$ 150	\$ 154
Training/Travel/Education	\$ 1,000	\$ 6,000	\$ 6,150	\$ 6,304	\$ 6,461	\$ 6,623	\$ 6,788	\$ 6,958	\$ 7,132	\$ 7,310	\$ 7,493	\$ 7,681
Mileage	\$ 15,000	\$ 15,000	\$ 15,375	\$ 15,759	\$ 16,153	\$ 16,557	\$ 16,971	\$ 17,395	\$ 17,830	\$ 18,276	\$ 18,733	\$ 19,201
*Title IV E reimbursable expenses	21.79%	\$ (4,249)	\$ (4,355)	\$ (4,464)	\$ (4,576)	\$ (4,690)	\$ (4,807)	\$ (4,928)	\$ (5,051)	\$ (5,177)	\$ (5,306)	\$ (5,439)
Judiciary expenses												
WI Bar Dues	\$ 585	\$ 585	\$ 600	\$ 615	\$ 630	\$ 646	\$ 662	\$ 678	\$ 695	\$ 713	\$ 731	\$ 749
JustWare License	\$ 2,250	\$ 2,250	\$ 2,306	\$ 2,364	\$ 2,423	\$ 2,484	\$ 2,546	\$ 2,609	\$ 2,675	\$ 2,741	\$ 2,810	\$ 2,880
Training	\$ 5,000	\$ 5,000	\$ 5,125	\$ 5,253	\$ 5,384	\$ 5,519	\$ 5,657	\$ 5,798	\$ 5,943	\$ 6,092	\$ 6,244	\$ 6,400
Supplies & Materials	\$ 882	\$ 882	\$ 904	\$ 927	\$ 950	\$ 974	\$ 998	\$ 1,023	\$ 1,048	\$ 1,075	\$ 1,101	\$ 1,129
Guardian Ad Litem (increase)	\$ 5,000	\$ 5,000	\$ 5,125	\$ 5,253	\$ 5,384	\$ 5,519	\$ 5,657	\$ 5,798	\$ 5,943	\$ 6,092	\$ 6,244	\$ 6,400

Subtotal of expenses	\$	63,838	\$	43,601	\$	44,691	\$	45,809	\$	46,954	\$	48,128	\$	49,331	\$	50,564	\$	51,828	\$	53,124	\$	54,452
Savings due to board dissolution	\$	(138,708)	\$	(138,708)	\$	(138,708)	\$	(138,708)	\$	(138,708)	\$	(138,708)	\$	(138,708)	\$	(138,708)	\$	(138,708)	\$	(138,708)	\$	(138,708)
Total Administrative Costs	\$	814,433	\$	853,575	\$	878,382	\$	903,809	\$	929,872	\$	956,587	\$	983,969	\$	1,012,036	\$	1,040,805	\$	1,070,292	\$	1,100,517

Child Placement Cost

New Caseload		\$ 360,000	\$ 720,000	\$ 1,080,000	\$ 1,440,000	\$ 1,800,000	\$ 1,872,000	\$ 1,848,000	\$ 1,848,000	\$ 1,824,000	\$ 1,824,000
Total	\$ 814,433	\$ 1,213,575	\$ 1,598,382	\$ 1,983,809	\$ 2,369,872	\$ 2,756,587	\$ 2,855,969	\$ 2,860,036	\$ 2,888,805	\$ 2,894,292	\$ 2,924,517

Assumptions

Assumes an approved budget at the start of the fiscal year

All wage & salaries are set at the midpoint of the FY2017 Wage Chart provided by HRD

Tribal rate of 39.3% is used for fringe

Mileage rate .535

Title IV E reimbursable personnel includes the attorney but not indirect costs

Premium is \$100/week for on call status.

Non-personnel reimbursable expenses under Title IV E include mileage, supplies, rent, telephone.

Due to a special one time grant for the Judiciary, Year 1 of the Clerk of court position will be reflected as .5 FTE and increase to 1 FTE in year two.

Child placement costs are estimated at the maximum allowed per child per month by the State

New cases are 20% of the annual projections

2.5% Inflation annually

Child Protection Board 2017 budget \$ 138,708

III. Financial Impact

The cost is approximately \$814,433 in year one and \$26,686,066 over the next 10 years with the dissolution of the Indian Child Welfare board. The cost is \$953,141 in year one and \$27,686,066 over the next 10 years without the dissolution of the Indian Child Welfare board.

IV. Recommendation

Finance does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.



Legislative Operating Committee July 19, 2017

Audit Law Amendments

Submission Date: 9/17/14	Public Meeting: 12/15/16, 1/15/17, & 6/5/17
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a Expires: n/a

Summary: *This item was deferred to the LOC by the OBC on May 8, 2013 and carried over into the current term by the LOC. The Audit Committee was requesting establishment of a standard requirement for correction of high risk findings and that the BC clarify roles and responsibilities related to audit issue interpretations and resolutions, including: identifying the primary authority to determine whether audit issues are pursued or closed, identifying who can enforce the need for management action and establishing a process to achieve results so past audits can be resolved and closed. The Audit Committee presented additional proposed amendments to the OBC on July 23, 2014.*

- 9/17/14 OBC:** Motion by Jennifer Webster to add the Audit Law Amendments to the Active Files List, with Jennifer Webster as sponsor; seconded by Tehassi Hill. Motion carried unanimously.
- 10/21/15 LOC:** Motion by Fawn Billie to defer the Audit Law Amendments for a legislative analysis and fiscal impact statement; seconded by David P. Jordan. Motion carried unanimously.
- 7/25/16:** *Work Meeting held.* Meeting held for an update on the status of this item. Attendees include Jen Falck, Tani Thurner, Jo Anne House.
- 4/20/16:** *Work Meeting held.* Present: Jennifer Webster, Tehassi Hill, David P. Jordan, Krystal John, Jennifer Falck, Loucinda Conway, and Mary Graves. Meeting held to work out draft details to ensure the process contained in the law matches the Audit Committee's process.
- 5/3/17 LOC:** Motion by Jennifer Webster to approve the public meeting packet and forward the Audit law amendments to a public meeting to be held on June 5, 2017 and to forward to the Finance Department for a fiscal analysis due back to the Legislative Reference Office on June 2, 2017; seconded by Tehassi Hill. Motion carried unanimously.
- 6/5/17:** Public meeting held.
- 6/21/17 LOC:** Motion by David P. Jordan to direct the Legislative Reference Office to schedule a work meeting with Internal Audit, Law Office, HRD, and Finance; seconded by Fawn Billie. Motion carried unanimously.

Next Steps:

- Accept the public meeting comment memo.
- Hold requested work meeting and direct any changes to the draft law.
- Approve adoption packet (with directed changes) and forward to the Oneida Business Committee for consideration.



TO: Legislative Operating Committee (LOC)
FROM: Krystal John, Staff Attorney, Oneida Law Office
DATE: June 21, 2017
RE: Audit Law Amendments: Public Meeting Comment Review

On June 5, a public meeting was held regarding the Audit Law Amendments. There were no oral or written comments received during the public meeting on June 5, 2017, or during the public meeting comment period ending on June 12, 2017; therefore no additional revisions were made to the draft.



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING**

Audit Law Amendments

Business Committee Conference Room-2nd Floor Norbert Hill Center
June 5, 2017, 12:15 p.m.

Present: Brandon Yellowbird-Stevens, Jennifer Webster, David Jordan, Edward Delgado, Gene Schubert, Jamel Ness, Dakota Oskey, Danelle Wilson, Clorissa Santiago, Candace Skenandore, Jennifer Falck, Maureen Perkins, Krystal John, Leyne Orosco

Name of LOC Member Chairing Meeting: Brandon Yellowbird-Stevens

In attendance from the LOC is: Jennifer Webster and David Jordan

Audit Law Amendments. Okay, we'll call this public meeting to order at 12:20 p.m.

This proposal is to amend the existing Audit Law which would:

- Update the title of the law to Internal Audit;
- Clarify the roles and responsibilities related to the internal audit process;
- Identify the primary authority responsible to when and for what reason an internal audit is initiated;
- Identify who can require and enforce management response and action as a result of an audit findings;
- Capture additional functions and purposes of an audit aside from protecting the Nation's assets;
- Provide greater detail regarding the audit process; and
- Clarify the difference between an internal audit and an external audit and explain the process for reviewing each internal and external audit report.

Okay, not seeing anyone on the list for providing comments today, I'll do a last call if anyone wishes to provide an oral comment today. Seeing none I'll move on to the next.

Add name of LOC member closing meeting: Brandon Yellowbird-Stevens

-End of Meeting-



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson *BS*
DATE: July 26, 2017
RE: Audit Law Amendments

Please find the following attached backup documentation for your consideration of the Audit Law Amendments:

1. Resolution: Audit Law Amendments
2. Statement of Effect: Audit Law Amendments
3. Audit Law Amendments: Legislative Analysis
4. Audit Law Amendments: Clean Draft
5. Audit Law Amendments: Redline to Current Draft
6. Audit Law Amendments: Fiscal Impact Statement

Overview

This resolution adopts amendments to the Audit Law to:

- Update the title of the law to Internal Audit;
- Clarify the roles and responsibilities related to the internal audit process;
- Identify the primary authority responsible to when and for what reason an internal audit is initiated;
- Identify who can require and enforce management response and action as a result of audit findings;
- Include provisions that allow management to request a consultation with the Audit Committee to discuss any concerns the entity may have prior to finalization of the audit report;
- Capture additional functions and purposes of an audit aside from protecting the Nation's assets;
- Provide greater detail regarding the audit process; and
- Clarify the difference between an internal and external audit and explain the process for reviewing each internal and external audit reports.

In accordance with the Legislative Procedures Act, a public meeting was held regarding this law on June 5, 2017 with a comment period closing on June 12, 2017. There were no comments provided. This Law will become effective ten business days after the date of adoption of the resolution as identified in section 109.9-3 of the Legislative Procedures Act. The anticipated effective date will be Wednesday, August 9, 2017.

Requested Action

Approve the Resolution: Audit Law Amendments

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____ Audit Law Amendments

WHEREAS, the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and

WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

WHEREAS, the Oneida Business Committee originally adopted the Audit Law through resolution BC-07-15-98-C; and

WHEREAS, the Amendments to the Law:

- Update the title of the law to Internal Audit;
- Clarify the roles and responsibilities related to the internal audit process;
- Identify the primary authority responsible to when and for what reason an internal audit is initiated;
- Identify who can require and enforce management response and action as a result of audit findings;
- Include provisions that allow management to request a consultation with the Audit Committee to discuss any concerns the entity may have prior to finalization of the audit report;
- Capture additional functions and purposes of an audit aside from protecting the Nation's assets;
- Provide greater detail regarding the audit process; and
- Clarify the difference between an internal and external audit and explain the process for reviewing each internal and external audit reports; and

WHEREAS, a public meeting on the proposed Amendments was held on June 5, 2017 in accordance with the Legislative Procedures Act; and

NOW THEREFORE BE IT RESOLVED, that the Audit Law Amendments are hereby adopted.



Statement of Effect

Audit Law Amendments

Summary

This Resolution adopts Amendments to the Audit Law (the “Law”) which:

- Update the title of the law to Internal Audit;
- Clarify the roles and responsibilities related to the internal audit process;
- Identify the primary authority responsible to when and for what reason an internal audit is initiated;
- Identify who can require and enforce management response and action as a result of audit findings;
- Include provisions that allow management to request a consultation with the Audit Committee to discuss any concerns the entity may have prior to finalization of the audit report;
- Capture additional functions and purposes of an audit aside from protecting the Nation’s assets;
- Provide greater detail regarding the audit process; and
- Clarify the difference between an internal and external audit and explain the process for reviewing each internal and external audit reports.

Submitted by: Krystal L. John, Staff Attorney, Oneida Law Office

Analysis by the Legislative Reference Office

This Law was originally adopted by Resolution BC-07-15-98-C. The actual revisions contained in these Amendments are listed above.

A public meeting was held for these Amendments on June 5, 2017 for which the public comment period expired on June 12, 2017 in accordance with the Legislative Procedures Act. There were not any oral or written comments submitted.

The Nation does not currently have any other laws or resolutions that govern internal audit related issues. There is no applicable state or federal law that would preclude the Nation from exercising its authority to conduct internal audits of Tribal entities.

Conclusion

Adoption of this Resolution would not conflict with any of the Nation’s laws.



Internal Audit Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: OBC	SPONSOR: Jennifer Webster	DRAFTER: Krystal L. John	ANALYST: Maureen Perkins
Intent of the Amendments	Establishment of a standard requirement for correction of high risk findings, request OBC to clarify roles and responsibilities related to audit issue interpretations and resolutions including: identifying the primary authority to determine whether audit issues are pursued or closed, identifying who can enforce the need for management action and establishing a process to achieve results so past audits can be resolved and closed. Changes were requested in OBC executive session on July 23, 2014 and are included in the current draft. The law was significantly redrafted to capture the additional functions and purposes of an audit aside from protecting the Nation's assets and to provide greater detail regarding the audit process.		
Purpose	Create a process by which internal audits are conducted upon the Nation's entities and to delegate responsibilities for the purpose of conducting such audits.		
Affected Entities	Oneida Business Committee, Audit Committee, Internal Audit Department		
Affected Legislation	Code of Ethics, Conflict of Interest, Comprehensive Policy Governing Boards, Committees and Commissions, Personal Policies and Procedures, Removal law, Audit Committee Bylaws, Institute of Internal Auditors Code of Ethics and Statement of Responsibilities of Internal Auditing		
Enforcement/Due Process	<p>The Audit Committee is hereby granted authority to utilize all existing enforcement mechanisms, including those provided in this law, to carry out its responsibilities <i>[see 108.4-2]</i>.</p> <p>Any entity and/or management found violating this law is subject to corrective action in accordance with the Nation's policies, laws and rules, including as specifically provided in section 108.7-2 of this law <i>[see 108.7-1]</i>.</p> <p>Where an entity fails to comply with the internal audit process pursuant to section 108.6 or where the Internal Audit Department has belief or knowledge that an entity has violated this law, the Internal Audit Department shall send a report to the Audit Committee including recommended actions. <i>[see 108.7-2]</i>.</p>		
Public Meeting	A public meeting was held 6/5/17.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The law was significantly redrafted to capture the additional functions and purposes of an audit aside from protecting the Nation's assets. Greater detail is provided regarding the internal audit process including who may initiate an audit, what the possible focuses of an audit may be and the proper course of action regarding responses to audit findings. Additionally, changes clarify the difference between the internal and external audit responsibilities and provide the two different points of access for internal and external audits to Tribal members.
- B. Some detail of the law was removed that was duplicative of the bylaws of the Audit Committee *[see 108.4-1 and 108.5-1 of current Audit Law and Audit Committee Bylaws]*.

- C. The expected benefits of the proposed amendments are a law that is more detailed regarding the internal audit process.

SECTION 3. CONSULTATION

- A. The Internal Audit Department and the Audit Committee were consulted regarding the proposed amendments.
- B. The Cornell University Audit Office website was referenced for the recommended amendments.

SECTION 4. PROCESS

- A. This Law has followed the process set forth in the Legislative Procedures Act (LPA) except that the public meeting packet, including the public meeting notice, legislation and legislative analysis were noticed to all managers directors electronically via the LOC meeting packet rather than as a separate notice. The public meeting packet was approved within the LOC minutes that were also electronically noticed to all managers and directors. The LPA requires the public meeting notice, legislation, legislative analysis and fiscal impact statement, if fiscal impact statement is available, to be electronically provided to all managers or directors *[See Legislative Procedures Act, 1 O.C. 109.8-2 (b)]*. The public meeting was properly noticed in the Kalihwisaks and was made public on the Oneida Register as required by the LPA *[See Legislative Procedures Act, 1 O.C. 8-2 (a & b)]*.
- B. This item was carried over from the previous term and added to the current Active Files List 9/17/14. A public meeting was held 6/5/17.

SECTION 5. CONTENTS OF THE PROPOSED AMENDMENTS

- A. The title of the law is updated to Internal Audit.
- B. Additional functions and purposes of an audit are captured by the proposed amendments.
- C. Additional detail regarding the audit process:
- Additional Audit Committee responsibilities *[see 108.4]*:
 - Shall not direct the audit of an individual Tribal member or employee *[see 108.4-1(a)]*
 - Shall include in all reports containing findings recommendations for improvement *[see 108.4-1(b)]*
 - Who may initiate an audit from the Audit Committee *[see 108.6-1]*:
 - Confidential schedule of sporadic entity audits approved by the Audit Committee
 - An entity
 - Required by policy, law rule and/or directive
 - Directed by the OBC
 - Requested by a Tribal member and approved by the Audit Committee.
 - The Audit Committee shall approve or deny the audit request based upon the validation of concerns *[see 108.6-1(e)(1) and (2)]*
 - Focus areas of an audit *[see 108.6-2]*:
 - Reliability and integrity of information;
 - Noncompliance with policies, laws, rules and/or directives;
 - Safeguarding of assets;
 - Use of resources;

Analysis to Draft for OBC Consideration
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- Financial performance;
 - Fraudulent or dishonest activities;
 - Follow-up related to a previous audit report;
 - General assessment of an entity; and/or
 - New or final status of an entity.
- Information gathering *[see 108.6-3]*:
 - The Internal Audit Department shall issue a written request for information to entity being audited including the following *[see 108.6-3(a)(1) – (4)]*:
 - Request for relevant information needed to complete the audit
 - Notice of time requirements
 - Notice that failure to provide requested information may lead to corrective action
 - Notice that the entity may request consultation from the Internal Audit Department regarding the information gathering process
 - The entity shall have fourteen (14) days to respond to the request for information unless an extension is requested within seven (7) days of the written request and granted by the Internal Audit Department within three (3) days from the request *[see 108.6-3(b)(1)]*
- Continual access to information *[see 108.6-4]*:
 - All entities shall provide continual access to information throughout the audit process.
- Access to facilities and premises *[see 108.6-5]*:
 - All entities subject to an audit shall allow the Internal Audit Department access to enter all facilities and premises of the Nation to conduct an audit.
- Management response to audit findings shall include *[see 108.6-6]*:
 - Any concerns the entity may have related to an audit finding. The entity may request consultation with the Audit Committee to discuss their concerns with the audit finding
 - The Audit Committee shall respond to the request by one of the following *[see 108.6-6(b)]*:
 - excusing the entity from providing a remedy in the management response
 - directing the Internal Audit Department to conduct additional information gathering
 - noticing the entity that the Audit Committee agrees with the draft audit report findings and directs full compliance
 - Management's plan to address, remedy or resolve issues discovered as part of an audit finding
 - The title of the person(s) responsible for implementing management's plan
 - The timeline for completion of management's plan
- Audit Report Finalization *[see 108.6-7]*:

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- The Audit Committee shall approve finalized audit reports and forward to the OBC for approval. The OBC shall include in the approval notice if the audit report is released to for Tribal member viewing in whole or in part.

D. Compliance and Enforcement [see 108.7]:

- Any entity and / or management found violating this law is subject to corrective action
- The Internal Audit Department shall send a report including recommended actions to the Audit Committee if there is knowledge or belief that an entity has violated this law
 - The Audit Committee may request OBC executive session and direct management staff to attend.
 - The OBC may direct an entity to comply with this law and information gathering efforts and/or take corrective action necessary to enforce compliance.
 - The OBC, in consultation with the Oneida Law Office, may report illegal activity to the proper law enforcement authorities.
 - The OBC may direct discipline of management staff or other responsible employees for the failure to comply with the Nation's laws
 - Where a board, committee or commission is noncompliant, taking steps to terminate or remove a board member pursuant to the Nation's applicable laws.
 - Restricting an internal entity's budget funding.
- Special Investigations [see 108.7-3]:
 - The Internal Audit Department may launch a special investigation upon approval from the Audit Committee.
- External Communications [108.7-4]:
 - The Internal Audit Department shall receive approval from the Audit Committee prior to initiating communication with any outside entity; including law enforcement.

E. Access to Internal and External Audits [see 108.8]:

- Restricted on-site review access of completed internal audit reports approved by the OBC available to Oneida Nation members with Tribal member identification card and signature.
- Reports may not be provided in any GTC agenda packet.
- Requests for internal audit reports are made directly to the Internal Audit Department.
- Requests for external audit reports shall be submitted to the responsible custodian at any of the following locations: Oneida Community Library, Office of the Nation's Treasurer, Finance Department, or Oneida Business Committee Records Management Office(s).
- Internal and external audit reports are available for viewing only and shall not be copied or printed.

F. Rulemaking Authority [see 108.7-3]:

- The Audit Committee and the Internal Audit Department shall have joint rulemaking authority to develop rules related to special investigations.

G. The proposed amended legislation is drafted with more detail to adhere to current best practices related to internal audits.

SECTION 6. INTENT

- 137 A. The purpose of the law is clearly stated to examine and assess the Nation's entities by means of
 138 internal audits in order to enhance policies, procedures, and systems which are in place to ensure the
 139 reliability and integrity of information; compliance with policies, laws, regulations and directives; the
 140 safeguarding of assets; and the efficient use of resources.
- 141 B. It is clear that the legislation applies to entities of the Nation, the Internal Audit Department, the Audit
 142 Committee and the OBC. Entities are defined as: any activity, function, operation, board, committee,
 143 commission, department, division or other grouping within the Nation which reports under the
 144 Nation's Federal Identification Number (FIN) [see 108.3-1(c)].

146 SECTION 7. EFFECT ON EXISTING LEGISLATION

- 147 A. The Code of Ethics law includes provisions related to program personnel approaching organization
 148 and operational duties with a positive attitude and constructively support open communication. As
 149 well as upholding and implementing policies adopted by officials (including this law) [see *Code of*
 150 *Ethics*, 103.4-7].
- 151 B. The Conflict of Interest law includes provisions related to disclosure of all conflicts of interests for
 152 employees [see *Conflict of Interest*, 217.4-2(a)(2)]. This would apply to the Internal Audit
 153 Department in their involvement with the audit process [see 108.5-2(a)].
- 154 C. The Personnel Policies and Procedures detail the process to be followed regarding corrective actions
 155 detailed in this law.
- 156 D. The Comprehensive Policy Governing Boards, Committees and Commissions details the process used
 157 to terminate a board, committee or commission member who is not adhering to the Nation's laws,
 158 rules or policies (including this law).
- 159 E. The Removal Law details the process used to remove an elected member of a board, committee or
 160 commission who is not adhering to the Nation's laws, rules or policies (including this law).
- 161 F. The Audit Committee Bylaws contain the detail regarding the scope of authority of the Audit
 162 Committee.
- 163 G. The Audit Committee bylaws will need to be updated to reflect changes in this law; including
 164 reference to the Audit Law.

166 SECTION 8. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR 167 OBLIGATIONS

- 168 A. The proposed amendments to the Audit Law will not affect any existing rights or privileges.
- 169 B. Due process is included in the law in that an entity that does not agree with an audit report or finding
 170 can request consultation with the Internal Audit Department or the Audit Committee [see 108.6-
 171 3(a)(4) and 108.6-6(a)(1)].
- 172 C. No terms of office will be affected by the proposed amendments.
- 173 D. It will not affect any current agreements or legal agreements.
- 174 E. The amendments provide further detail that aligns with the current practices of the Internal Audit
 175 Department and the Audit Committee in relation to the internal audit process.

177 SECTION 9. ENFORCEMENT

- 178 A. General Compliance: Any entity and/or management found violating this law are subject to corrective
 179 action in accordance with the Nation's employment laws, rules and policies [see 108.7-1].

- 180 **B. Noncompliance with the Audit Process:** The Internal Audit Department shall send a report including
181 recommended actions to the Audit Committee if there is knowledge or belief that an entity has
182 violated this law *[see 108.7-2]*.
- 183 • The Audit Committee may request OBC executive session and direct management staff
184 to attend *[see 108.7-2(a)]*.
 - 185 • The OBC may direct an entity to comply with this law and information gathering efforts
186 and/or take corrective action necessary to enforce compliance *[see 108.7-2(b)]*.
 - 187 • The OBC, in consultation with the Oneida Law Office, may report illegal activity to the
188 proper law enforcement authorities *[see 108.7-2(b)(1)]*.
 - 189 • The OBC may direct discipline of management staff or other responsible employees for
190 the failure to comply with the Nation's laws *[see 108.7-2(b)(2)]*.
 - 191 • Where a board, committee or commission is noncompliant, taking steps to terminate or
192 remove a board member pursuant to the Nation's applicable laws *[see 108.7-2(b)(3)]*.
 - 193 • Restricting an internal entity's budget funding *[see 108.7-2(b)(4)]*.
- 194 **C.** The Internal Audit Department will utilize existing staff to implement this law.
195

196 **SECTION 10. ACCOUNTABILITY**

- 197 **A.** The Internal Audit Department, in coordination with the Audit Committee and OBC, will be
198 responsible for implementation and operation of this law.
- 199 **B.** Internal audit reports are finalized and approved by the OBC for Tribal member viewing in whole or
200 in part *[see 108.6-7]*.
201

202 **SECTION 11. OTHER CONSIDERATIONS**

- 203 **A.** The Audit Committee bylaws were updated on January 27, 2016 and reflect some of the current
204 amendments to this law. Additional amendments will require the Audit Committee bylaws to be
205 amended.
206

Title 1. Government and Finances - Chapter 108
INTERNAL AUDIT
wahatiwistáhsehte? Aolihwá·ke
they count money – issues

108.1.	Purpose And Policy	108.5.	Internal Audit Department
108.2.	Adoption, Amendment, Repeal	108.6.	Audit Process
108.3.	Definitions	108.7.	Compliance And Enforcement
108.4.	Audit Committee	108.8.	Access To Internal And External Audits

108.1. Purpose and Policy

108.1-1. *Purpose.* It is the purpose of this law to create a process by which internal audits are conducted upon the Nation's entities and to delegate responsibilities for the purpose of conducting such audits.

108.1-2. *Policy.* It is the policy of the Nation to continually examine and assess the Nation's entities by means of internal audit in order to enhance policies, procedures, and systems which are in place to ensure: the reliability and integrity of information; compliance with policies, laws, regulations and directives; the safeguarding of assets; and the efficient use of resources.

108.2. Adoption, Amendment, Repeal

108.2-1. This law was adopted by the Oneida Business Committee by resolution BC-7-15-98-C and amended by ____.

108.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Counsel pursuant to the procedures set out in the Legislative Procedures Act.

108.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

108.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

108.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

108.3. Definitions

108.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Audit" means an internal, independent, objective assurance and consulting activity designed to add value and improve an organization's operations by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes and includes a review of the reliability and integrity of information; compliance with policies, laws, regulations and directives; the safeguarding of assets; and the use of resources.

(b) "Day" means business day of the Nation and excludes holidays observed by the Nation.

(c) "Entity" means any activity, function, operation, board, committee, commission, department, division or other grouping within the Nation which reports under the Nation's Federal Identification Number (FIN).

(d) "Finding" means an indication that a problem does exist based on an audit and may include, but is not limited to, the criteria or basis for determining that the problem exists, a condition or situation that was observed, the effect or impact of the condition, and the root

cause of the problem to the extent that it is able to be determined.

(e) "Nation" means the Oneida Nation.

(f) "Reasonably related" means the condition of being directly or indirectly associated with a given issue or situation whether the relation be integral or incidental in nature.

(g) "Relevant information" means, but is not limited to, financial information and records, facilities, offices, people, equipment, inventories, tapes, activities, network servers, and files regardless of storage medium.

(h) "Tribal member" means an enrolled member of the Nation.

108.4. Audit Committee

108.4-1. *Audit Committee.* The Audit Committee, a standing committee of the Oneida Business Committee, shall oversee the internal audit process including but not limited to any and all investigation into complaints received alleging or suspecting improprieties and/or violations of the Nation's policies, laws, rules and directives.

(a) The Audit Committee may not, under any circumstance, direct the audit of an individual Tribal member and/or employee.

(b) The Audit Committee shall include in all audit reports containing findings a set of follow-up recommendations highlighting opportunities for improvement.

108.4-2. *Enforcement.* The Audit Committee is hereby granted authority to utilize all existing enforcement mechanisms, including those provided in this law, to carry out its responsibilities.

108.4-3. *Mandatory Attendance at Audit Committee Meeting(s).* The Audit Committee may require management representation, through the appropriate chain of authority, to appear at Audit Committee meetings as necessary.

108.5. Internal Audit Department

108.5-1. *Internal Audit Department.* The Internal Audit Department operates under the oversight of the Audit Committee and shall conduct audits at the direction of the Audit Committee, provided that once a confidential schedule of sporadic entity audits is approved by the Audit Committee, further approval from the Audit Committee is not required.

108.5-2. *General.* The Internal Audit Department shall work with entities to obtain information reasonably related to the purpose of the audit directed by the Audit Committee. The scope of their research and investigation shall be unrestricted, provided that employees of the internal audit department shall:

(a) Refrain from participating, in any way, in any audit of an activity over which he or she has related authorities and/or responsibilities;

(b) Adhere to the Institute of Internal Auditors Code of Ethics and Statement of Responsibilities of Internal Auditing; and

(c) Strictly maintain the utmost confidentiality in all aspects of the audit process, including but not limited to confidentiality of information obtained during an audit and audit results and recommendations.

108.5-3. *Audit.* Any revision to the audit objectives named by the Audit Committee pursuant to section 108.6-2 deemed necessary after commencement of the audit shall be approved by the Internal Audit Department's management prior to initiating any change in the audit objective and noticed to the Audit Committee.

108.5-4. *Records.* The Internal Audit Department shall maintain all information collected or derived from an audit. Upon closure of an audit, all documentation shall be retained in a secure

location in accordance with the laws of the Nation.

108.6. Audit Process

108.6-1. *Initiating an Audit.* The Audit Committee may direct the Internal Audit Department to initiate, provided that the direction shall be based on one (1) or more of the following:

- (a) The confidential schedule of sporadic entity audits approved by the Audit Committee;
- (b) An entity's request for an audit of its practices;
- (c) An audit is required by policy, law, rule and/or directive;
- (d) An audit is directed by the Oneida Business Committee; and/or
- (e) An audit is requested by a Tribal member.

(1) Where an audit is requested by a Tribal member, the Audit Committee shall consider the basis of the request. If the Audit Committee finds no valid concerns as provided in section 108.6-2, it shall deny the audit request.

(2) Regardless of whether the audit request is granted, the Audit Committee shall provide written notice to the Tribal member indicating whether the audit request has been granted or denied, in whole or in part.

108.6-2. *Focus of the Audit.* When directing the Internal Audit Department to begin any audit, the Audit Committee shall direct the audit focus on concerns related to one (1) or more of the following:

- (a) Reliability and integrity of information;
- (b) Noncompliance with policies, laws, rules and/or directives;
- (c) Safeguarding of assets;
- (d) Use of resources;
- (e) Financial performance;
- (f) Fraudulent or dishonest activities;
- (g) Follow-up related to a previous audit report;
- (h) General assessment of an entity; and/or
- (i) New or final status of an entity.

108.6-3. *Information Gathering.* The Internal Audit Department shall begin information gathering by issuing the entity being audited a written request for information.

- (a) The Internal Audit Department shall include the following in its request for information:
 - (1) A request for relevant information needed to complete the audit;
 - (2) Notice of the time requirements found in section 108.6-3(b), including the deadline for requesting an extension;
 - (3) Notice that failure to provide requested information and cooperate with the Internal Audit Department may lead to corrective action from the Oneida Business Committee in accordance with 108.7-2; and
 - (4) Notice that the entity may request a consultation with the Internal Audit Department as part of the information gathering process.

(b) Unless granted an extension, an entity receiving a written request shall respond and submit the information identified in the request within fourteen (14) days after receiving the written request or as otherwise requested by the Internal Audit Department.

(1) Entities may submit a written request for an extension allowing more time to respond to a written request for information provided that a requesting entity shall submit the request to the Internal Audit Department within seven (7) days of the date of the written request for information and shall identify in detail the reason(s) an extension is needed.

(2) Within three (3) days of receipt of a request for an extension, the Internal Audit Department shall respond either denying or granting, in whole or in part, the extension. If the request is granted, the response shall identify the new deadline for submitting the requested information.

108.6-4. *Continual Access to Information.* After the entity's initial response to the Internal Audit Department's request for information, the entity remains responsible for providing the Internal Audit Department with continual access to information and shall timely respond to all requests for additional information.

108.6-5. *Access to Facilities and Premises.* Entities subject to an audit shall allow Internal Audit Department staff to enter all facilities and premises of the Nation as the Internal Audit Department deems necessary to conduct the audit.

108.6-6. *Management Response.* Once a draft audit report has been issued to an entity, the entity shall provide a management response within fourteen (14) days of receiving the draft.

(a) *Management Response Content.* Management shall include the following in its response:

(1) Any concerns the entity may have related to an audit finding, provided that, if any concerns are identified by entity, the entity may also request a consultation with the Audit Committee to further discuss the contents of the draft audit report prior to finalization of the audit report;

(2) Management's plan to address, remedy or resolve issues discovered as part of an audit finding;

(3) The title of the person(s) responsible for implementing management's plan; and

(4) A specific timeline for completion of management's plan.

(b) *Audit Committee Consultation.* When an entity is granted an Audit Committee consultation, the Audit Committee shall take any combination of the following actions:

(1) Excuse the entity from providing a remedy in its management response to any draft audit report findings which the Audit Committee deems unfounded or for which remedy is not feasible based on the totality of the circumstances;

(2) Direct the Internal Audit Department to conduct additional information gathering and/or consultation with the entity and to report back to the Audit Committee upon completion; and/or

(3) Notice the entity that the Audit Committee concurs with the draft audit report findings and direct full compliance with the requirements of section 108.6-6(a)(2).

108.6-7. *Audit Report Finalization.* Once the Audit Committee has reviewed the management response and approved the draft audit report, the audit report is finalized and forwarded to the Oneida Business Committee for approval. The final audit report shall include all findings as well as any required entity follow-up and/or further scheduled auditing. The Oneida Business Committee shall include in its approval notice as to whether the audit report is released for Tribal member viewing in whole or in part.

108.7. Compliance and Enforcement

108.7-1. *General.* Any entity and/or management found violating this law is subject to corrective action in accordance with the Nation's policies, laws and rules, including as specifically provided in section 108.7-2 of this law.

108.7-2. *Noncompliance with the Audit Process.* Where an entity fails to comply with the internal audit process pursuant to section 108.6 or where the Internal Audit Department has belief or

knowledge that an entity has violated this law, the Internal Audit Department shall send a report to the Audit Committee including recommended actions.

(a) In the event of noncompliance with a written request and/or this law, the Audit Committee may request the matter be placed on an Oneida Business Committee meeting agenda as part of executive session and may direct the management and any other appropriate parties involved to appear at that meeting.

(b) If the Oneida Business Committee determines that an entity has failed to respond to a valid written request and/or is otherwise not in compliance with this law, the Oneida Business Committee shall direct the entity to submit any relevant information and/or take such corrective action as is necessary to enforce compliance and/or to prevent future noncompliance, including but not limited to:

(1) In consultation with the Oneida Law Office, reporting illegal activity to the proper law enforcement authorities;

(2) Directing discipline of the management staff or other responsible employee(s) for the failure to comply with the Nation's policies, laws and rules in accordance with the Nation's employment practices;

(3) Where a board, committee or commission is noncompliant, taking steps to terminate or remove a board, committee or commission member(s) pursuant to the Nation's applicable laws; and/or

(4) Restricting an internal entity's budget funding.

108.7-3. *Special Investigations.* Should the Internal Audit Department suspect an entity has conducted illegal activity, it may launch a special investigation upon the Audit Committee's approval of the special investigation. Entities are responsible for knowing their rights and responsibilities in the event a special investigation is conducted and shall comply with the special investigation rules, which the Audit Committee and the Internal Audit Department shall develop pursuant to joint rulemaking authority.

108.7-4. *External Communications.* Prior to communicating any information related to an audit to an external entity, including but not limited to law enforcement agencies, the Internal Audit Department shall receive approval from the Audit Committee.

108.8. Access to Internal and External Audits

108.8-1. *Access Requests Limited to Tribal Members.* Only Tribal members may request access to internal and/or external audits reports, provided that audit reports may not under any circumstances be provided in a General Tribal Council agenda packet.

(a) Prior to granting access, the custodian of the audit report shall require:

(1) Verification of Tribal member status by means of a Tribal member identification card; and

(2) The Tribal member sign and print their full name on the applicable audit report access log.

(b) Custodians of audit reports shall limit access to on-site review and shall deny permission to print and/or make copies of audit reports.

108.8-2. *Internal Audit Reports.* Requests for internal audit reports shall be submitted to the Internal Audit Department. To protect the integrity of the audit process, the Internal Audit Department shall keep all information related to an incomplete audit, including audit progress, strictly confidential until the audit report has been approved by the Oneida Business Committee and released for Tribal member viewing. The Audit Committee may provide progress updates related to

incomplete audits to the Oneida Business Committee upon request, provided that any such update shall be conducted in executive session.

108.8-3. *External Audit Reports.* Requests for external audit reports, which include but are not limited to, the annual financial audit of the Nation and any audit of a vendor, consultant or other party organized outside of the Nation's Federal Identification Number (FIN), shall be submitted to the responsible custodian located at any of the following locations:

- (a) The Oneida Community Library;
- (b) The Office of the Nation's Treasurer;
- (c) The Finance Department; and/or
- (d) The Oneida Business Committee Records Management Office(s).

End.

Adopted - BC-7-15-98-C

Emergency Amendment – BC-5-12-99-C (expired)

Emergency Amendment – BC-6-9-99-C (expired)

Amended - BC

Title 1. Government and Finances - Chapter 108

AUDIT LAW

INTERNAL AUDIT

wahatiwistáhsehte? Aolihwá'ke

they count money – issues

108.1. Purpose And Policy
108.2. Adoption, Amendment, Repeal
108.3. Definitions
108.4. Audit Committee

108.5. Internal Audit Department
108.6. Audit Process
108.7. Compliance And Enforcement
108.8. Access To Internal And External Audits

108.1. Purpose and Policy

108.2. Adoption, Amendment, Repeal
108.3. Definitions
108.4. General

108.5. Authority of the Audit Committee
108.6. Authority of the Internal Audit Department
108.7. Reports
108.8. Responsibilities of Administration

108.1. Purpose and Policy

108.1-1. *Purpose.* It is the purpose of this law to create a ~~framework of~~ process by which internal audits are conducted upon the Nation's entities and delegated authorities to protect the assets of the Oneida Nation. It is further the purpose of this law to define the respective delegate responsibilities of parties involved to fully implement this law for the purpose of conducting such audits.

108.1-2. *Policy.* It is the policy of ~~this law~~ the Nation to ~~create a system with the necessary tools~~ continually examine and ~~delegated authorities~~ assess the Nation's entities by means of internal audit in order to evaluate all activities, functions enhance policies, procedures, and operations of the Tribe. It is also systems which are in place to ensure: the policy of this law to include reliability and integrity of information; compliance with policies, laws, regulations and directives; the Tribe's component units, vendors, investments, and partners, within safeguarding of assets; and the scope efficient use of the law resources.

108.2. Adoption, Amendment, Repeal

108.2-1. This law ~~is~~ was adopted by the Oneida Business Committee by resolution #BC-7-15-98-C, and amended by .

108.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Counsel pursuant to the procedures set out in the ~~Oneida Administrative~~ Legislative Procedures Act.

108.2-3. ~~by~~ Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

108.2-4. In the event of a conflict between a provision of this law and a provision of another law, the Oneida Business Committee or the General Tribal Council provisions of this law shall control.

108.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

108.2-3. ~~All other Oneida policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this law are hereby repealed unless specifically reenacted after adoption of this law.~~

108.3. Definitions

108.3-1. This section shall govern the definitions of words ~~or~~ and phrases ~~as~~ used herein within

this law. All words not defined herein shall be used in their ordinary and everyday sense.

~~(a) Internal Audit Department. The department established within the Oneida Tribe of Indians of Wisconsin responsible for conducting independent appraisals of entities which examine and evaluate the activities as a service to the organization. It shall at all times observe the confidential nature of the information and audit results.~~

~~(b) Audit Committee. That entity responsible for protecting assets of the Oneida Nation, by analyzing audit and financial reports, receiving complaints or allegations, and pursuing follow up on audit recommendations.~~

~~(c) Audit or Investigation. The process of gathering, reviewing, testing and evaluating the facts of financial, operational, compliance or management issues. This includes necessary industry specific research.~~

(d) (a) "Audit" means an internal, independent, objective assurance and consulting activity designed to add value and improve an organization's operations by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes and includes a review of the reliability and integrity of information; compliance with policies, laws, regulations and directives; the safeguarding of assets; and the use of resources.

(b) "Day" means business day of the Nation and excludes holidays observed by the Nation.

(c) "Entity" means any activity, function, operation, board, committee, commission, department, division or other grouping within the Nation which reports under the Nation's Federal Identification Number (FIN).

(d) "Finding" means an indication that a problem does exist based on an audit and may include, but is not limited to, the criteria or basis for determining that the problem exists, a condition or situation that was observed, the effect or impact of the condition, and the root cause of the problem to the extent that it is able to be determined.

(e) "Nation" means the Oneida Nation.

(f) "Reasonably related." means the condition of being directly or indirectly associated with a given issue or situation. ~~It may~~ whether the relation be integral or incidental in nature.

~~(e) Entity. Includes any or all activities, functions and operations of the Tribe, component units, vendors, consultants, partner in joint ventures, or businesses in which the Tribe has an investment.~~

~~(f) Component Units. Tribally chartered corporations and autonomous entities including, but not limited to, limited liability corporations, State chartered corporations, Housing Authority, Economic Development Authority, boards, committees and commissions.~~

(g) "Relevant Information" means, but is not limited to, financial information and records ~~regardless of custody~~, facilities, offices, people, equipment, inventories, tapes, activities, network servers, and files regardless of storage medium.

(h) "Tribal member" means an enrolled member of the Nation.

~~108.4.(h) Administration. Includes all supervisory personnel of all tribal entities~~

~~(i) Ethics. Includes the Code of Ethics of the Oneida Tribe, Standards for Professional Practice of Internal Auditing as developed by the Institute of Internal Auditing Standards Board and any other law or professional standards as may be applicable.~~

108.4. General

108.4-1. Audit Committee

~~108.4-1. There is hereby created the Audit Committee. The Audit Committee, a standing committee of the Oneida Business Committee which, shall have five members, two of which shall be designated a Chairperson and Vice Chairperson. The Committee will be composed of four Oneida Business Committee members selected concurrently with the election to the Oneida Business Committee, and a Tribal member, appointed at mid-term, who is not an employee of the Tribe, with appropriate knowledge, skills and experience. Members shall adhere to all Tribal laws, codes, policies and procedures with the strictest confidentiality.~~

~~108.4 2. Internal Audit Department. There is hereby created an Internal Audit Department which shall be responsible to the Audit Committee. The Internal Audit Department shall be managed by an Internal Audit Manager and shall begin audits based on one or more of the following:~~

- ~~a. The established oversee the internal audit plan.~~
- ~~b. Financial performance.~~
- ~~c. Approved audit requests.~~
- ~~d. Fraudulent or dishonest activities.~~
- ~~e. Previous audit results.~~
- ~~f. New or final status of an operating unit, activity, or function.~~

~~108.4 3. Entity. Entities that submit response and/or action plans to audits, investigations or recommendations are responsible for following through with the representations or providing adequate status change information to the Audit Committee.~~

~~108.4 4. Audit. The Internal Audit Department shall begin and complete any audits or investigations in a confidential manner. There shall be a specifically identified objective approved by the Internal Audit Manager prior to commencement and any revision deemed necessary after commencement will also have the Internal Audit Manager approval prior to affecting that change in the audit plan.~~

108.5. Authority of the Audit Committee

~~108.5 1. General. The Audit Committee has been delegated the authority by the Oneida Business Committee to ensure the integrity of the Tribe's financial reporting and audit systems.~~

~~108.5 2. Oversight. The Audit Committee shall have the responsibility of oversight over the Tribal audit processes and the process of including but not limited to any and all investigation into any alleged or suspected complaints received alleging or suspecting improprieties and/or violations of fiscal and ethics the Nation's policies, codes, regulations, laws, rules and directives.~~

~~(a) The Audit Committee may not, under any circumstance, direct the audit of an individual Tribal member and/or employee.~~

~~(b) The Audit Committee shall include in all audit reports containing findings a set of follow-up recommendations highlighting opportunities for improvement.~~

~~108.5-3. 4-2. Enforcement. The Audit Committee will have the ability is hereby granted authority to utilize all existing enforcement authorities mechanisms, including those provided in this law, to carry out their responsibilities.~~

~~108.5-4. 3. Mandatory Attendance of Meetings at Audit Committee Meeting(s). The Audit Committee shall may require appropriate administration management representation, through the appropriate chain of authority, to appear at Audit Committee meetings as necessary.~~

108.6. Authority of the 5. Internal Audit Department

~~108.6-1. General. Internal Audit Department. The Internal Audit Department operates under~~

the oversight of the Audit Committee and shall ~~have delegated authority~~ conduct audits at the direction of the Audit Committee, provided that once a confidential schedule of sporadic entity audits is approved by the Audit Committee, further approval from the Audit Committee ~~and shall have the greatest ability~~ is not required.

108.5-2. General. The Internal Audit Department shall work with entities to obtain information reasonably related to ~~an audit~~ the purpose of the audit directed by the Audit Committee. The scope of their research and investigation shall be unrestricted, provided that employees of the internal audit department shall:

(a) Refrain from participating, in any way, in any audit of an activity over which he or she has related authorities and/or responsibilities;

~~(b) Adhere~~ 108.6-2. Confidentiality. ~~The Internal Audit Department shall adhere~~ to the Institute of Internal Auditors Code of Ethics and Statement of Responsibilities of Internal Auditing. ~~The scope of their work shall be unrestricted and members of the Internal Audit Department will have no authority or responsibilities for the activities they audit. All members of the Internal Audit Department will; and strictly adhere to confidentiality in all aspects of their work and will not misuse or abuse their authorities.~~

~~108.6-3. Records Management.~~ (c) Strictly maintain the utmost confidentiality in all aspects of the audit process, including but not limited to confidentiality of information obtained during an audit and audit results and recommendations.

108.5-3. Audit. Any revision to the audit objectives named by the Audit Committee pursuant to section 108.6-2 deemed necessary after commencement of the audit shall be approved by the Internal Audit Department's management prior to initiating any change in the audit objective and noticed to the Audit Committee.

108.5-4. Records. The Internal Audit Department shall maintain all information collected or derived from an audit. Upon closure of an audit, all documentation shall be retained ~~for seven years~~ in a secure location in accordance with the ~~Records Management Law~~. ~~The files may be accessed by laws of the Internal Audit Department for reference, planning or status update. Any other requests for access must be first approved by the Internal Audit Manager and the Audit Committee~~ Nation.

108.7-Reports **6. Audit Process**

108.7-1. Initiating an Audit. The Audit Committee ~~shall report, as deemed appropriate, may direct the Internal Audit Department to initiate, provided that the direction shall be based on one (1) or more of the following:~~

(a) The confidential schedule of sporadic entity audits approved by the Audit Committee;

(b) An entity's request for an audit of its practices;

(c) An audit is required by policy, law, rule and/or directive;

(d) An audit is directed by the Oneida Business Committee; and/or

(e) An audit is requested by a Tribal member.

(1) Where an audit is requested by a Tribal member, the Audit Committee shall consider the basis of the request. If the Audit Committee finds no valid concerns as provided in section 108.7-2. ~~The Internal Audit Department shall make reports,~~ it shall deny the audit request.

(2) Regardless of whether the audit request is granted, the Audit Committee shall provide written notice to the Tribal member indicating whether the audit request has been granted or denied, in whole or in part.

108.6-2. Audit Committee. Focus of the Audit. When directing the Internal Audit Department

to begin any audit, the Audit Committee shall direct the audit focus on concerns related to one (1) or more of the following:

- (a) Reliability and integrity of information;
- (b) Noncompliance with policies, laws, rules and/or directives;
- (c) Safeguarding of assets;
- (d) Use of resources;
- (e) Financial performance;
- (f) Fraudulent or dishonest activities;
- (g) Follow-up related to a previous audit report;
- (h) General assessment of an entity; and/or
- (i) New or final status of an entity.

108.6-3. Information Gathering. The Internal Audit Department shall begin information gathering by issuing the entity being audited a written request for information.

(a) The Internal Audit Department shall include the following in its request for information:

- (1) A request for relevant information needed to complete the audit;
- (2) Notice of the time requirements found in section 108.6-3(b), including the deadline for requesting an extension;
- (3) Notice that failure to provide requested information and cooperate with the Internal Audit Department may lead to corrective action from the Oneida Business Committee, ~~and Administration on a need to know basis.~~ in accordance with 108.7-2; and
- ~~108.7-3. Annual~~ (4) Notice that the entity may request a consultation with the Internal Audit ~~—The annual audit—~~ Department as part of the ~~Oneida Tribe~~ information gathering process.

(b) Unless granted an extension, an entity receiving a written request shall ~~be posted~~ respond and submit the ~~locations~~ information identified in ~~this~~ the request within fourteen (14) days after receiving the written request or as otherwise requested by the Internal Audit Department.

(1) Entities may submit a written request for an extension allowing more time to respond to a written request for information provided that a requesting entity shall submit the request to the Internal Audit Department within seven (7) days of the date of the written request for information and shall identify in detail the reason(s) an extension is needed.

(2) Within three (3) days of receipt of a request for an extension, the Internal Audit Department shall respond either denying or granting, in whole or in part, the extension. If the request is granted, the response shall identify the new deadline for submitting the requested information.

108.6-4. Continual Access to Information. After the entity's initial response to the Internal Audit Department's request for information, the entity remains responsible for providing the Internal Audit Department with continual access to information and shall timely respond to all requests for additional information.

108.6-5. Access to Facilities and Premises. Entities subject to an audit shall allow Internal Audit Department staff to enter all facilities and premises of the Nation as the Internal Audit Department deems necessary to conduct the audit.

108.6-6. Management Response. Once a draft audit report has been issued to an entity, the entity shall provide a management response within fourteen (14) days of receiving the draft.

(a) Management Response Content. Management shall include the following in its response:

(1) Any concerns the entity may have related to an audit finding, provided that, if any concerns are identified by entity, the entity may also request a consultation with the Audit Committee to further discuss the contents of the draft audit report prior to finalization of the audit report;

(2) Management's plan to address, remedy or resolve issues discovered as part of an audit finding;

(3) The title of the person(s) responsible for implementing management's plan; and

(4) A specific timeline for completion of management's plan.

(b) Audit Committee Consultation. When an entity is granted an Audit Committee consultation, the Audit Committee shall take any combination of the following actions:

(1) Excuse the entity from providing a remedy in its management response to any draft audit report findings which the Audit Committee deems unfounded or for which remedy is not feasible based on the totality of the circumstances;

(2) Direct the Internal Audit Department to conduct additional information gathering and/or consultation with the entity and to report back to the Audit Committee upon completion; and/or

(3) Notice the entity that the Audit Committee concurs with the draft audit report findings and direct full compliance with the requirements of ~~section-~~ 108.6-6(a)(2).

108.6-7. Audit Report Finalization. Once the Audit Committee has reviewed the management response and approved the draft audit report, the audit report is finalized and forwarded to the Oneida Business Committee for approval. ~~The annual audit shall be final~~ audit report shall include all findings as well as any required entity follow-up and/or further scheduled auditing. The Oneida Business Committee shall include in its approval notice as to whether the audit report is released for Tribal member viewing in whole or in part.

108.7. Compliance and Enforcement

108.7-1. General. Any entity and/or management found violating this law is subject to corrective action in accordance with the Nation's policies, laws and rules, including as specifically provided in section 108.7-2 of this law.

108.7-2. Noncompliance with the Audit Process. Where an entity fails to comply with the internal audit process pursuant to section 108.6 or where the Internal Audit Department has belief or knowledge that an entity has violated this law, the Internal Audit Department shall send a report to the Audit Committee including recommended actions.

(a) In the event of noncompliance with a written request and/or this law, the Audit Committee may request the matter be placed on an Oneida Business Committee meeting agenda as part of executive session and may direct the management and any other appropriate parties involved to appear at that meeting.

(b) If the Oneida Business Committee determines that an entity has failed to respond to a valid written request and/or is otherwise not in compliance with this law, the Oneida Business Committee shall direct the entity to submit any relevant information and/or take such corrective action as is necessary to enforce compliance and/or to prevent future noncompliance, including but not limited to:

(1) In consultation with the Oneida Law Office, reporting illegal activity to the

proper law enforcement authorities;

(2) Directing discipline of the management staff or other responsible employee(s) for the failure to comply with the Nation's policies, laws and rules in accordance with the Nation's employment practices;

(3) Where a board, committee or commission is noncompliant, taking steps to terminate or remove a board, committee or commission member(s) pursuant to the Nation's applicable laws; and/or

(4) Restricting an internal entity's budget funding.

108.7-3. *Special Investigations.* Should the Internal Audit Department suspect an entity has conducted illegal activity, it may launch a special investigation upon the Audit Committee's approval of the special investigation. Entities are responsible for knowing their rights and responsibilities in the event a special investigation is conducted and shall comply with the special investigation rules, which the Audit Committee and the Internal Audit Department shall develop pursuant to joint rulemaking authority.

108.7-4. *External Communications.* Prior to communicating any information related to an audit to an external entity, including but not limited to law enforcement agencies, the Internal Audit Department shall receive approval from the Audit Committee.

108.8. review by Access to Internal and External Audits

~~108.8-1. *Access Requests Limited to Tribal Members.* Only Tribal members may request access to internal and/or external audits reports, provided that audit reports may not under any circumstances be provided in a General Tribal Council members-only, and shall require that the individual sign in to review the document agenda packet.~~

a. (a) Prior to granting access, the custodian of the audit report shall require:

(1) Verification of Tribal member status by means of a Tribal member identification card; and

(2) The Tribal member sign and print their full name on the applicable audit report access log.

(b) Custodians of audit reports shall limit access to on-site review and shall deny permission to print and/or make copies of audit reports.

108.8-2. *Internal Audit Reports.* Requests for internal audit reports shall be submitted to the Internal Audit Department. To protect the integrity of the audit process, the Internal Audit Department shall keep all information related to an incomplete audit, including audit progress, strictly confidential until the audit report has been approved by the Oneida Business Committee and released for Tribal member viewing. The Audit Committee may provide progress updates related to incomplete audits to the Oneida Business Committee upon request, provided that any such update shall be conducted in executive session.

108.8-3. *External Audit Reports.* Requests for external audit reports, which include but are not limited to, the annual financial audit of the Nation and any audit of a vendor, consultant or other party organized outside of the Nation's Federal Identification Number (FIN), shall be submitted to the responsible custodian located at any of the following locations:

(a) The Oneida Community Library;

(b) ~~Tribal Treasure's~~ The Office of the Nation's Treasurer;

(c-) The Finance Department ~~Offices~~; and/or

(d-) The Oneida Business Committee Records ~~Technician's Offices~~ Management Office(s).

~~108.8. Responsibilities of Administration~~

~~108-1. General. Administration is required to adhere to the Audit Law and all related procedures. Failure to comply shall be considered as uncooperative and subject to enforcement under sec. 5-3.~~

~~End.~~

Adopted - BC-7-15-98-C

~~Emergency Amendment – BC-5-12-99-C (expired)~~

~~Emergency Amendment – BC-6-9-99-C (expired)~~

~~Amended - BC~~



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
 Oneida-nsn.gov



TO: Oneida Business Committee
 FROM: Brandon Stevens, LOC Chairperson *BS*
 DATE: July 26, 2017
 RE: Landlord-Tenant Law Emergency Amendments Extension

Please find the following attached backup documentation for your consideration of the Landlord-Tenant Law Emergency Amendments Extension:

1. Resolution: Landlord-Tenant Law Emergency Amendments Extension
2. Statement of Effect: Landlord-Tenant Law Emergency Amendments Extension
3. Landlord Tenant Law (Redline)

Overview

Extension of the emergency amendments to the Landlord-Tenant law (the “Law”) are requested in order to allow the Oneida Housing Authority’s Rent-to-Own program to continue to exist within the confines of the Law. The current emergency amendments expire on August 9, 2017, which does not provide adequate to discuss the additional concerns forwarded to a work meeting at the July 12, 2017 Oneida Business Committee meeting and adopt the permanent amendments.

The Oneida Business Committee can temporarily enact legislation when necessary for the immediate preservation of the public health, safety or general welfare of the Reservation population and when the amendment of legislation is required sooner than would be possible under the Legislative Procedures Act. A fiscal impact statement and public meeting are not required for emergency legislation.

The emergency amendments to the Landlord-Tenant law are necessary for the preservation of the public health, safety, or general welfare of the reservation population because the amendments prevent the prohibition of the Oneida Housing Authority from entering into rent-to-own program agreements when the Law became effective on February 9, 2017. Additionally, observance of the adoption requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest.

The emergency amendments to the Law will become effective immediately upon effect of the Law on February 9, 2017, and with this extension will remain effective until the earlier of the adoption of the permanent amendments or February 9, 2018.

Requested Action

Approve the Resolution: Landlord-Tenant Law Emergency Amendments.

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____ Landlord-Tenant Law Emergency Amendments

- WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Landlord-Tenant law (the "Law") was adopted by the Oneida Business Committee by resolution 10-12-16-C; and
- WHEREAS,** the Law provides mechanisms for protecting the rights of the landlords and tenants of the Nation's rental programs; and
- WHEREAS,** the current Law applies to rental agreements defined as, "a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less;" and
- WHEREAS,** the Oneida Housing Authority's rent-to-own program does not fall into the Law's definition of rental agreements because the rental agreement for the rent-to-own program generally has a fifteen (15) year term with conveyance of the home at the satisfaction of the rental agreement; and
- WHEREAS,** the rental agreements in the Law were limited to one (1) year terms to fortify the policy requiring annual renewals of rental agreements and to avoid month-to-month tenancies; and
- WHEREAS,** the emergency amendment to the Law maintains the Law's policies while including the Oneida Housing Authority's rent-to-own program by revising the definition of "rental agreement" to state, "a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less, provided that the term may be longer than one (1) year in circumstances where the contract is on a rent to own basis;" and
- WHEREAS,** the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis, to be in effect for a period of six (6) months, renewable for an additional six (6) months; and
- WHEREAS,** the emergency amendment was previously adopted by resolution BC-01-25-17-C and was justified as an emergency necessary for the preservation of the public health, safety, or general welfare of the reservation population to ensure that the Oneida Housing Authority is not prohibited from entering into rent-to-own agreements when the Landlord-Tenant law became effective on February 9, 2017; and

WHEREAS, these emergency amendments will expire on August 9, 2017 which does not allow enough to discuss the additional concerns forwarded to a work meeting at the July 12, 2017 Oneida Business Committee meeting and to adopt the amendments on a permanent basis; and

NOW THEREFORE BE IT RESOLVED, that the emergency amendment to the Landlord-Tenant Law is hereby extended for an additional six (6) month term in accordance with the Legislative Procedures Act, section 109.9-5(b), and shall expire upon the earlier of the adoption of the permanent amendments or February 9, 2018.



Statement of Effect
Landlord-Tenant Law Emergency Amendments

Summary

This Resolution extends an emergency amendment to the Landlord-Tenant Law (the “Law”) which would include the Oneida Housing Authority’s (OHA’s) rent-to-own program in the definition of rental agreement.

Submitted by: Krystal L. John, Staff Attorney, Oneida Law Office

Analysis by the Legislative Reference Office

This resolution extends an emergency amendment to the Landlord-Tenant Law for an additional six (6) month term. The Landlord-Tenant Law was adopted on October 12, 2016, set to become effective one hundred and twenty (120) calendar days later on February 9, 2017. Without the emergency amendment, the Law applies to rental agreements that are defined as, “a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less.” The rental agreements in the Law were limited to one (1) year terms to fortify the policy requiring annual renewals of rental agreements and to avoid month-to-month tenancies.

After the adoption of the Law it was discovered that Oneida Housing Authority’s (OHA’s) rent-to-own program does not fall into the definition of rental agreements provided in the Law because the rental agreement for the rent-to-own program generally has a fifteen (15) year term with conveyance of the home at the satisfaction of the rental agreement. Therefore, once the Law becomes effective on February 9, 2017, OHA will no longer be permitted to enter into rent-to-own agreements.

The emergency amendment to the Law maintains the policies the Law sets forth while including OHA’s rent-to-own program by revising the definition of “rental agreement” to state, “a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less, provided that the term may be longer than one (1) year in circumstances where the contract is on a rent to own basis.” This emergency amendment to the Law allows OHA to continue to enter into rent-to-own program agreements when the Law becomes effective on February 9, 2017.

Section 16.9-5 of the Legislative Procedures Act (LPA) allows the Oneida Business Committee to take emergency action where it is “necessary for the immediate preservation of the public health, safety or general welfare of the reservation population” and when “enactment or amendment of legislation is required sooner than would be possible under the Legislative Procedures Act.” The Landlord-Tenant Law Emergency Amendments prevent the prohibition of the OHA from entering into rent-to-own program agreements when the Law becomes effective on February 9, 2017, which would be necessary for the preservation of the public health, safety,

or general welfare of the reservation population. Additionally, observance of the adoption requirements under the LPA for adoption of this amendment would be contrary to public interest. Through the Resolution, the Oneida Business Committee has issued a continued finding of an emergency and has stated the necessity for extending emergency amendments to this Law. The LPA authorizes extensions of emergency amendments in section 109.9-5(b) for up to an additional six (6) month period.

The emergency amendments to the Landlord-Tenant Law took effect immediately upon effect of the law on February 9, 2017 and through this resolution are extended to remain in effect until the earlier of either the permanent amendments being adopted or February 9, 2018.

Conclusion

Adoption of this Resolution would not conflict with any of the Nation's laws.

Title 7. Property - Chapter 710
LANDLORD-TENANT
Tsi> Yuhw<tsyaw@ku Aolihw@ke
where it bound to the earth - issues

6	710.1.	Purpose and Policy	11	710.6.	Rights and Duties of Landlords and Tenants
7	710.2.	Adoption, Amendment, Repeal	12	710.7.	Domestic Abuse Protections
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710.1. Purpose and Policy

710.1-1. *Purpose.* The purpose of this law is to provide mechanisms for protecting the rights of the landlords and tenants of the Nation's rental programs.

710.1-2. *Policy.* It is the Nation's policy to provide a fair process to all landlords and tenants of the Nation's rental programs that preserves the peace, harmony, safety, health, general welfare and the Nation's resources.

710.2. Adoption, Amendment, Repeal

710.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-12-16-C.

710.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

710.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

710.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

710.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

710.3. Definitions

710.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Comprehensive Housing Division" means the entity responsible for housing matters specifically related to rental agreements as defined by Oneida Business Committee Resolution.¹

(b) "Landlord" means the Nation in its capacity to rent real property subject to a rental agreement.

(c) "Nation" means the Oneida Nation.

¹ See BC Resolution 10-12-16-D providing that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program.

(d) “Premises” means the property covered by a rental agreement, including not only the real property and fixtures, but also any personal property furnished by the landlord pursuant to a rental agreement.

(e) “Rental Agreement” means a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less, provided that the term may be longer than one (1) year in circumstances where the contract is on a rent to own basis.

(f) “Reservation” means all property within the exterior boundaries of the reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(g) “Rule” means a set of requirements, including citation fees and penalty schedules, enacted jointly by the Land Commission and the Comprehensive Housing Division in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law, provided that where such requirements relate solely to premises administered pursuant to federal funding, the Comprehensive Housing Division has sole authority.

(h) “Tenant” means the person granted the right to use or occupy a premises pursuant to a rental agreement.

(i) “Security Deposit” means a payment made to the landlord by the tenant to ensure that rent will be paid and other responsibilities of the rental agreement performed.

710.4. Rental Programs

710.4-1. *Available Rental Programs.* Consistent with available funds, the Comprehensive Housing Division shall provide residential rental programs for providing housing to the following types of tenants and the Oneida Land Commission and the Comprehensive Housing Division shall jointly establish rules naming said programs and providing the specific requirements and regulations that apply to each program:

(a) Elder tribal members;

(b) Low-income Oneida tribal members and families; and

(c) Tribal members in general.

710.4-2. *Rental Eligibility Requirements.* In order to be eligible for a rental agreement, applicants shall meet the following conditions:

(a) Be eighteen (18) years of age at the time of the application;

(b) Have no felony or drug convictions within the past two (2) years from the date of application, provided that a pardon or forgiveness received pursuant to the Pardon and Forgiveness law may provide an exception to this condition;

(c) Meet the local governments’ laws’ requirements regarding residency restrictions for convicted sex offenders;

(d) Meet the income requirements for entering the rental agreement as determined by the rental program’s governing rules;

(e) Not hold a residential lease with the Nation; and

(f) Meet any other eligibility requirements set by the rental program’s rules, which may not be less strict than this law, but may be stricter than this law.

710.4-3. *Tenant Selection.* The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the selection of applicants for the issuance of rental agreements.

710.5. Rental Agreement Documents

710.5-1. *Severability of Rental Agreement Provisions.* The provisions of a rental agreement are severable. If any provision of a rental agreement is void or unenforceable by reason of any law, rule, regulation, or judicial order, the invalidity or unenforceability of that provision does not affect other provisions of the rental agreement that can be given effect without the invalid or unenforceable provision.

710.5-2. *Requirements of Rental Agreements and Terminations.* A rental agreement or termination of a rental agreement is not enforceable unless it meets the requirements of this law and is in writing.

(a) All rental agreements shall:

(1) Set forth the amount of rent or other consideration provided in exchange for the ability to use/occupy the premises;

(2) Set forth the required amount of security deposit and require payment of the security deposit prior to the tenant(s) taking use/occupancy of the premises;

(3) Set the time of commencement and expiration of the rental agreement;

(4) Provide a reasonably definite description of the premises;

(5) State that nothing in the agreement may be considered a waiver of the Nation's sovereign immunity, provided that tenants may seek enforcement of a rental agreement or dispute an action taken pursuant to a rental agreement with the Oneida Judiciary; and

(6) Be signed by both the landlord and the tenant(s) prior to the tenant(s) taking use/occupancy of the premises;

(A) The rental agreement is not required to be signed by all adults using/occupying the premises, provided that the rights and responsibilities contained in the rental agreement do not extend to persons that are not named as tenants in the rental agreement.

(B) Unless legally separated, if a tenant(s) is married, the landlord shall require that each spouse sign the rental agreement.

(b) Any provision of a rental agreement that does any of the following is void and unenforceable.

(1) Allows a landlord to do or threaten to do any of the following because a tenant has contacted an entity for law enforcement services, health services or safety services:

(A) Increase rent;

(B) Decrease services;

(C) Bring an action for eviction pursuant to the Eviction and Termination law; and/or

(D) Refuse to renew a rental agreement.

(2) Except as otherwise provided in this law in regards to domestic abuse, authorizes the eviction or exclusion of a tenant from the premises other than through the process described in the Eviction and Termination law.

(3) Requires the tenant to pay attorney's fees or costs incurred by the landlord in any legal action or dispute arising under the rental agreement except as supported by a court order.

(4) States that the landlord is not liable for property damage or personal injury caused by negligent acts or omissions of the landlord. This subsection does not affect ordinary maintenance obligations of a tenant under 710.6-3(b) or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

(5) Imposes liability on the tenant for any of the following:

(A) Personal injury arising from causes clearly beyond the tenant's control.

(B) Property damage caused by natural disasters or by persons other than the tenant or the tenant's guests or invitees. This subsection does not affect ordinary maintenance obligations of a tenant under 710.6-3(b) or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

(6) Waives any obligation on the part of the landlord to deliver the premises in a fit and habitable condition or to maintain the premises during the tenant's tenancy.

(7) Allows for periodic tenancy, which for the purposes of this section means when a tenant uses/occupies a premises without an effective and valid rental agreement by paying rent on a periodic basis including, but not limited to, day-to-day, week-to-week and month-to-month.

710.5-3. *Assignment of Rental Agreements Not Permitted.* Assignments of rental agreements are not permitted under any circumstances.

710.6. Rights and Duties of Landlords and Tenants

710.6-1. This section governs the rights and duties of the landlord and tenant in the absence of any inconsistent provision found in a valid rental agreement.

710.6-2. *Disposition of Personal Property Left by the Tenant.* If the tenant moves from or is evicted from the premises and leaves personal property, the landlord may presume that the tenant has abandoned the personal property and may dispose of said property in any manner that the landlord, in his or her sole discretion, determines is appropriate, provided that:

(a) The landlord shall hold personal property for a minimum of five (5) business days and the tenant may retrieve said personal property by contacting the landlord.

(b) The landlord shall keep a written log of the date and the work time that the Nation's staff expends storing and/or removing personal property and/or removing/disposing of debris left at the property after the expiration of the timeframe provided in the order to vacate.

(c) The Land Commission and the Comprehensive Housing Division shall jointly create rules further governing the disposition of personal property.

710.6-3. *Repairs; Untenability.* This section applies to all leases if there is no contrary provision in writing signed by both parties.

(a) *Duties of the Landlord.*

(1) Except for repairs made necessary by the negligence of, or improper use of the premises by the tenant, the landlord has a duty to do all of the following:

(A) Keep in a reasonable state of repair portions of the premises over which the landlord maintains control.

(B) Keep in a reasonable state of repair all equipment under the landlord's control necessary to supply services that the landlord has expressly or

184 impliedly agreed to furnish to the tenant, such as heat, water, elevator, or
185 air conditioning.

186 (C) Make all necessary structural repairs.

187 (D) Except as provided in section 710.6-3(b)(2), repair or replace any
188 plumbing, electrical wiring, machinery, or equipment furnished with the
189 premises and no longer in reasonable working condition.

190 (E) Comply with any laws or rules of the Nation that are applicable to the
191 premises.

192 (2) If the premises are part of a building where other parts are occupied by one (1)
193 or more other tenants, negligence or improper use by one (1) tenant does not
194 relieve the landlord from the landlord's duty to make repairs as provided in 710.6-
195 3(a)(1), provided that the landlord may require the responsible tenant to pay for
196 such repairs.

197 (3) A landlord shall disclose to a prospective tenant, before entering into a rental
198 agreement with or accepting any earnest money or security deposit from the
199 prospective tenant, any violation of either the Building Code of the Oneida Nation
200 or the Zoning and Shoreland Protection Ordinance if all of the following apply:

201 (A) The landlord has actual knowledge of the violation;

202 (B) The violation affects the dwelling unit that is the subject of the
203 prospective rental agreement or a common area of the premises;

204 (C) The violation presents a significant threat to the prospective tenant's
205 health or safety; and

206 (D) The violation has not yet been corrected but the landlord shall correct
207 the violation prior to the tenant taking occupancy of the premises.

208 (4) If the premises are damaged by fire, water or other casualty, not the result of
209 the negligence or intentional act of the landlord, this subsection is inapplicable
210 and either section 710.6-3(b) or (c) governs.

211 (5) The landlord is responsible for all required pest control to keep the premises
212 in a safe and healthy condition, provided that where an infestation has occurred
213 due to the acts or inaction of the tenant the pest control costs may be assessed
214 against the tenant.

215 (b) *Duties of the Tenant.*

216 (1) If the premises are damaged, including by an infestation of insects or other
217 pests, due to the acts or inaction of the tenant, the landlord may elect to allow the
218 tenant to remediate or repair the damage and restore the appearance of the
219 premises by redecorating. However, the landlord may elect to undertake the
220 remediation, repair, or redecoration, and in such case the tenant shall reimburse
221 the landlord for the reasonable cost thereof; the cost to the landlord is presumed
222 reasonable unless proven otherwise by the tenant.

223 (2) The tenant shall keep plumbing, electrical wiring, machinery and equipment
224 furnished with the premises in reasonable working order.

225 (3) Tenants shall comply with all laws and rules of the Nation.

226 (c) *Untenability.* If the premises become untenable because of damage by fire, water or
227 other casualty or because of any condition hazardous to health, or if there is a substantial
228 violation of section 710.6-3(a) materially affecting the health or safety of the tenant, the
229 tenant may move from the premises unless the landlord promptly repairs, rebuilds or

eliminates the health hazard or the substantial violation of 710.6-3(a) materially affecting the health or safety of the tenant.

(1) The tenant may also move and terminate the rental agreement if the inconvenience to the tenant by reason of the nature and period of repair, rebuilding or elimination would impose undue hardship on the tenant.

(2) If the tenant remains in possession, the landlord shall decrease rent for each month to the extent the tenant is deprived of the full normal use of the premises.

The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing how and when rent is decreased pursuant to this section.

This subsection does not authorize rent to be withheld in full, if the tenant remains in possession.

(3) If the tenant justifiably moves out under this subsection, the tenant is not liable for rent after the premises become untenable and the landlord shall repay any rent paid in advance apportioned to the period after the premises become untenable. This subsection is inapplicable if the damage or condition is caused by negligence or improper use by the tenant.

(d) *Check-in sheet.* Landlords shall provide all new tenants with a check-in sheet when the tenant commences his or her occupancy of the premises that the tenant may use to make comments, if any, about the condition of the premises. The landlord shall provide the tenant with seven (7) days from the date the tenant commences his or her occupancy to complete the check-in sheet and return it to the landlord. The landlord is not required to provide the check-in sheet to a tenant upon renewal of a rental agreement.

(e) *Notice to Enter Required.* The landlord shall provide twenty-four (24) hour written notice prior to entering the tenant's premises where notice is required to either be personally served to the tenant or posted on the premises. A landlord is exempt from this notice requirement in the case of an emergency welfare check. The basis of a welfare check may include, but is not limited to the following:

(1) The landlord believes the tenant's or a child's wellbeing may be in jeopardy based on reports of child abuse or neglect, medical concerns, suspicious activity or other reported information;

(2) The landlord suspects the tenant has abandoned the premises; and/or

(3) The landlord receives notice that the premise's utilities have been disconnected.

(f) *Acts of tenant not to affect rights of landlord.* No act of a tenant in acknowledging as landlord a person other than the tenant's original landlord can prejudice the right of the original landlord to possession of the premises.

(g) *Annual Inspection Required.* In the event the tenant renews the rental agreement for additional terms, the landlord shall, at a minimum, inspect the premises once annually.

710.7. Domestic Abuse Protections

710.7-1. If a tenant notices the landlord of domestic abuse with of any of the following documentation, regardless of marital status, the landlord shall change the locks to the premises and, if the tenant is unmarried, allow the tenant to modify the rental agreement to remove the domestic abuser:

(a) An injunction order under Wis. Stat. 813.12(4) protecting the tenant from a co-tenant;

- (b) An injunction order under Wis. Stat. 813.122 protecting a child of the tenant from a co-tenant;
- (c) An injunction order under Wis. Stat. 813.125(4) protecting the tenant or child of the tenant from a co-tenant, based on the co-tenant's engaging in an act that would constitute sexual assault under Wis. Stat. 940.225, 948.02 or 948.025, or stalking under Wis. Stat. 940.32, or attempting or threatening to do the same;
- (d) A condition of release under Wis. Ch. 969 ordering the co-tenant not to contact the tenant;
- (e) A criminal complaint alleging that the co-tenant sexually assaulted the tenant or a child of the tenant under Wis. Stat. 940.225, 948.02 or 948.025;
- (f) A criminal complaint alleging that the co-tenant stalked the tenant or a child of the tenant under Wis. Stat. 940.32; or
- (g) A criminal complaint that was filed against the co-tenant as a result of the co-tenant being arrested for committing a domestic abuse offense against the tenant under Wis. Stat. 968.075.

710.7-2. If a tenant is no longer eligible to maintain the rental agreement upon removing a co-tenant domestic abuser from the rental agreement, the landlord shall permit the tenant to remain on the premises for the longer of either the duration of the rental agreement or ninety (90) days from the date the rental agreement is modified. If the latter applies, in addition to removing the co-tenant that is the domestic abuser, the landlord shall also revise the rental agreement to extend its duration.

710.7-3. The Eviction and Termination law provides tenants that are victims of domestic abuse with a defense to eviction should the abusers actions be the cause for eviction.

710.8. Sex Offender Registry

710.8-1. Should a tenant request information about whether any other tenants are required to register as a sex offender, the landlord shall provide the tenant with written notice that he or she may obtain information about the sex offender registry and persons registered within the registry by contacting the department of corrections. The landlord shall include in such notice the appropriate telephone number and internet site of the department of corrections.

710.9. Termination of Tenancy at Death of Tenant

710.9-1. If a tenant dies, his or her tenancy is terminated on the earlier of the following:

- (a) Sixty (60) days after the landlord receives notice, is advised, or otherwise becomes aware of the tenant's death;
- (b) The expiration of the term of the rental agreement.

710.9-2. The deceased tenant or his or her estate is not liable for any rent after the termination of his or her tenancy. A landlord may not contact or communicate with a member of the deceased tenant's family for the purpose of obtaining from the family member rent for which the family member has no liability.

710.9-3. Nothing in this section relieves another adult tenant of the deceased tenant's premises from any obligation under a rental agreement or any other liability to the landlord.

710.9-4. If the deceased tenant is a Tribal member whose death renders a co-tenant no longer eligible for a rental agreement, the non-Tribal member tenant may remain in the premises for the longer of either the duration of the rental agreement or ninety (90) days from the date of the

Tribal member tenant's death. If the latter applies, the landlord shall revise the rental agreement to extend its duration.

710.10. Landlord or Tenant Actions

710.10-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a rental agreement.

710.10-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this law and/or a rental agreement.

710.10-3. The landlord is the Comprehensive Housing Division in regards to taking actions authorized under this law and complaints filed with the Oneida Judiciary shall name the Comprehensive Housing Division and the specific program.

End.

Adopted – BC-10-12-16-C



FY17 3rd Quarter Report

April 1, 2017 - June 30, 2017

Legislative Operating Committee (LOC)

Executive Summary

The third quarter was successful for the Legislative Operating Committee. The Oneida Business Committee was able to adopt;

- April 12, 2017 -Endowments Law Amendments
-Drug & Alcohol Free Workplace Law
- April 23, 2017 -Election Law Amendments- adopted by General Tribal Council
- April 26, 2017 -Conflict of Interest Emergency Amendments
- May 24, 2017 -Legal Resource Center Emergency Law
- June 28, 2017 -Domestic Animal Amendments
-Vehicle Driver Certification and Fleet Management Law
-Conflict of Interest Amendments
-Workplace Violence Law

Since the 2014-2017 term began, the LOC has completed 67 legislative items. See Table 1 for a summary of the FY17 third quarter agenda items. The LOC's fourth quarter goals are to 1) forward 22 items to the Business Committee for consideration, 2) close out this term, and 3) begin orientation for the incoming LOC members. For a complete list of the LOC's work this term see Table 3.

Table 1. Summary of Third Quarter LOC Meeting Agenda Items

New Legislation	
Children's Code	Vehicle Driver Certification and Fleet Management Law
Employment Law	Oneida Business Committee Meetings Law
Professional Conduct for Attorneys and Advocates	Workplace Violence Law
Legal Resource Center Emergency Law	General Tribal Council Meetings Law
Sanctions & Penalties Law	Higher Education Scholarship Law
Tribal Environmental Response Law	
Amendments	
Endowment Fund Amendments	Comprehensive Policy Governing Boards, Committees, and Commissions Amendments
Drug & Alcohol Free Workplace Amendments	Water Resources Ordinance Amendments
Community Support Fund Amendments	Well Abandonment Law Amendments

Conflict of Interest Emergency Amendments	On-Site Waste Disposal Ordinance Amendments
Domestic Animal Amendments	Public Use of Tribal Land Law Amendments
Independent Contractor Policy Amendments	Election Law Emergency Amendments
Cemetery Law Amendments	Administrative Rulemaking Law Amendments
Landlord-Tenant Permanent Amendments	All-Terrain Vehicle Law Amendments
Conflict of Interest Permanent Amendments	Hunting, Fishing, Trapping Law Amendments
Administrative Rulemaking	
Landlord-Tenant Rule #2: Income Based Rental Program	Per Capita Rule #1: Distribution Rule Certification
Landlord-Tenant Rule #3: Elder Rental Program	Hunting, Fishing, Trapping Rule Handbook
Eviction & Termination Rule #1: Disposal of Abandoned Personal Property	Community Support Fund Effective Date Second Extension
Oneida Nation Seal & Flag Rules Extension	Oneida Housing Authority Home Ownership Rule
Real Property Rules Extension	
General Tribal Council Petitions	
Petition: Child Care Department Consumer Complaint Policy	Petition: Delgado Trust Land Distribution

Table 2. Meetings Held in Third Quarter

LOC Meetings	Public Meetings	
April 5, 2017 April 19, 2017 May 3, 2017 May 17, 2017 June 7, 2017 June 21, 2017	May 4, 2017	-Children's Code
	May 18, 2017	-Workplace Violence -Oneida Business Committee Meetings -Conflict of Interest Amendments
	June 5, 2017	-Vehicle Driver Certification and Fleet Management -Conflict of Interest Amendments -Domestic Animals Amendments -Audit Law Amendments -Landlord-Tenant Amendments
	June 15, 2017	-Amendments to laws transferring Environmental Resources Board's hearing authority to the Oneida Judiciary
	June 29, 2017	-Administrative Rulemaking Amendments -Child Care Department Consumer Complaint Law -GTC Meetings Law -Comprehensive Policy Governing Boards, Committees, and Commissions
	UPCOMING PUBLIC MEETINGS	
	July 20, 2017	-Professional Conduct for Attorneys & Advocates -Legal Resource Center

Featured Legislation: Children's Code

The Children's Code (Code) is a proposed new law that allows the Nation to exercise jurisdiction over its children who are in need of protection or services. The Code ensures that certain child welfare cases involving Oneida children are heard in the Oneida Family Court (OFC) and utilize the Nation's resources, which may reduce out-of-home placements and increase reunification. Addressing these cases in the OFC will help keep children on the Reservation where more family members and Oneida foster homes are located and the traditions and culture of the Nation can be better preserved.

A summary of the work and collaboration that went into this effort includes;

- Approximately 32 work meetings have been held
- More meetings will occur in the fourth quarter
- 14 experts were consulted including;
 - Managing Director, ICWP at Casey Family Programs
 - Former Deputy Director, National Indian Child Welfare Association
 - Tribal Affairs Specialist, Division of Safety and Permanence, Wisconsin Department of Children and Families
 - Tribal Liaison, Wisconsin Department of Children and Families
 - Former Director of ICW & Child Support, current Vice President of Business Development, Systems & Methods, Inc.
 - Connecting Point AV & Security, Camera Corner
 - Children's Court Improvement Program Director, Director of State Courts Office
 - Policy Analyst, Children's Court Improvement Program
 - Court Administrator, Oneida Judiciary
 - Lead Administrative Social Worker, Ho Chunk Nation Child and Family Services
 - Indian Child Welfare Manager, Stockbridge-Munsee
 - Assistant Corporation Counsel, CHIPS, Brown County
 - Tribal Prosecutor, Menominee Indian Tribe of Wisconsin
 - Family Services Manager (ICW), Lac du Flambeau Band of Lake Superior Chippewa Indians
- 18 children's codes from other tribes and states were reviewed, as well as other related documents.
- A public meeting was held on May 4, 2017 and the LOC received and responded to approximately 88 comments. The LOC did make changes to the Code based on those comments.

Legislative Reference Office (LRO) Third Quarter Activities

The LRO develops LOC meeting packets and public meeting packets. In addition, the LRO schedules and facilitates legislative work meetings where the LOC discusses policy and makes decisions. The LRO also maintains a legislative record of the LOC's work, including the Oneida Register. Other activities in the third quarter included;

- 2017-2020 Business Committee transition planning
- 2017-2019 budget planning
- Assisting Oneida Law Office to collect legislative documents for pending litigation
- Assisting entities with preparing rules

Legislative Reference Office (LRO) Fourth Quarter Plans

- Close out the 2014-2017 Active Files List
- Send 22 items to the OBC to consider adoption
- Prepare the incoming LOC for new term

Table 3. 2014-2017 LOC Active Files List: Status as of July 10, 2017

NEW LAWS	Completed	Outstanding	Anticipate Completing This Term
	Administrative Rulemaking	Compliance and Enforcement Law	BC Meetings Law
	Budget Management and Control	Corporate Laws	Children's Code
	Eviction and Termination	Criminal Code	Child Care Dept. Consumer Complaint Policy
	Furlough Policy	Drug & Alcohol Free Law for Elected & Appointed Officials	
	Landlord-Tenant Law	Employment Law	
	Legal Resource Center Emergency Law	GTC Meetings Law	
	Mortgage and Foreclosure Law	Guardianship Law	
	Oneida Seal and Flag Law	Higher Ed Scholarship	
	Workplace Violence	Industrial Hemp Law	
		Legal Resource Center law	
		Leasing Law (need Secretarial Approval)	
		Nonprofit Incorporation law	
		Professional Conduct for Attorneys and Advocates	
		Public Peace Law	
		Research Protection Act	
		Sanctions and Penalties	
		Secured Transactions Law	
		Severance Law	
		Tribal Traffic Code	
		Whistleblower Law	
AMENDMENTS	Completed	Outstanding	Anticipate Completing This Term
	Administrative Procedures Act	Code of Ethics Amendments	Administrative Rulemaking
	Back Pay	Community Support Fund	
	Conflict of Interest (2016 & 2017)	Independent Contractor Policy	ATV Law
	Domestic Animals	Law Enforcement Ordinance – Conservation Officers	Audit Law
	Drug & Alcohol Free Workplace	Removal Law	Cemetery Law
	Endowments	Rules of Civil Procedure	Comprehensive Policy
	Election Law		Hunting, Fishing Trapping
	Garnishment Law		Landlord-Tenant
	Hunting, Fishing and Trapping Law		On-Site Waste Disposal
	Investigative Leave Policy		Public Use of Tribal Land

	Marriage Law (2015 & 2016)		Tribal Environmental Response
	Motor Vehicle Registration		Water Resources
	ONGO		Well Abandonment
	Per Capita law		
	Public Use of Tribal Land (2014 & 2016)		
	Real Property Law (2015 & 2017)		
	Rules of Appellate Procedure		
	Tobacco Ordinance		
	Vehicle Driver / Fleet Management		
	Vendor Licensing Law		
BYLAWS	Completed	Outstanding	Anticipate Completing This Term
	Audit Committee	Election Board	
	Pow-wow Committee	Land Commission	
		Personnel Commission	
		Trust Enrollment	
OTHER ITEMS	Completed	Outstanding	Anticipate Completing This Term
	Personnel Policies Re: Job Duties and Work Assignments (Emergency only)		
	OAC References Removal		
	Judiciary Law/Transition Plan Emergency Amendments		
	APA Repeal		
	Code of Laws Reorganization		
	Code of Laws Reorganization		
	Election Law – Campaign Financing Research		
Items LOC declined to place on active files list	1. Per Capita Law Emergency Amendments		
Items LOC added and later removed from the active files list	1. Administrative Hearing Court 2. Agriculture Law 3. Capping Damages and Awards - Judicial System 4. Employee Advocacy Law 5. Environmental, Health and Safety Law 6. Family Court Law Amendments: Bench Warrants 7. Fitness for Duty		

	<ol style="list-style-type: none"> 8. Legal Resource Center Governing Documents 9. Legislative Procedures Act Amendments 10. Membership Ordinance Amendments 11. Membership Ordinance Emergency Amendments 12. Probate Law 13. Rules of Administrative Procedure 14. Tribally-Owned Business Organization Code 15. Violence Against Women Act (VAWA)
Certified Rules	<ol style="list-style-type: none"> 1. Eviction and Termination—#1 – Disposal of Abandoned Personal Property 2. Hunting, Fishing Trapping—# 1-13 HFT Handbook 3. Landlord Tenant Law Rule #1 – General Rental Program Eligibility, Selection and Other Requirements 4. Landlord Tenant Law Rule #2 – Income Based Rental Program 5. Landlord Tenant Law Rule #3 – Elder Rental Program 6. Landlord Tenant Law Rule #4—Income-Based Rent to Own Program Eligibility, Selection and Other Criteria 7. Marriage Law Rule # 1 – Marriage License Fee Schedule 8. Marriage Law Rule #2 – Marriage Law Fine Schedule 9. Mortgage and Foreclosure Law Rule #1 – Mortgage Programs, Guidelines and Requirements 10. Per Capita Rule # 1 – Distribution 11. Real Property Law #2 – Comprehensive Housing Division Residential Sites
Pending GTC Petitions	<ol style="list-style-type: none"> 1. Benton- Change Pre-employment Drug Testing for Marijuana 2. Debraska - Health Care Board 3. Delgado – Trust Land Distribution 4. Delgado-Panel of Educators & Retention/Kindergarten Students 5. Vandehei- BC E-Polls
Closed GTC Petitions	<ol style="list-style-type: none"> 1. Barton – Emergency Food Pantry 2. Cornelius - 4 Resolutions 3. Dallas - Real Estate Taxes for all Tribe Owned Property Paid by Tribe 4. Danforth - Constitution Amendments in Regards to Membership 5. Debraska - Per Capita Distribution 6. Dodge et. al. - Hold a GTC Meeting to Address Tribal Election Issues 7. Genskow - 3 Resolutions 8. Genskow - 4 Resolutions 9. Genskow - 6 Resolutions 10. Genskow - Publishing Names and Addresses of Petition Signers in GTC Mailouts 11. Genskow - Responding to Questions and Comments from the Floor at GTC 12. Genskow/Metivier: Incentive stipends for Oneida Elections 13. Metivier - Directing a “Stall Mall” be Created 14. Metivier - Per Capita FY17 through FY21

- | | |
|--|---|
| | <ul style="list-style-type: none">15. Metivier - Raise Employee Salaries .99 Cents16. Powless - Dialysis Center Development17. Powless Jr. - Per Capita Payments18. Powless - Judiciary Support System |
|--|---|

This message was sent with High importance.

From: Jennifer A. Falck Sent: Thu 7/6/2017 11:21 AM

To: Brandon L. Yellowbird-Stevens (BSTEVENS@oneidation.org); Rhiannon R. Metoxen (rmetoxe2@oneidation.org); Ronald W. Hill (RHILL7@oneidation.org); Danelle A. Wilson (DWILSON1@ONEIDANATION.org); Fawn J. Billie (fbillie@oneidation.org); Cathy L. Bachhuber; David P. Jordan (djordan1@oneidation.org); Leyne C. Orosco (lorosco@oneidation.org); Jennifer A. Webster

Cc:

Subject: LRC E-poll With Attachment

Message 2017 07 20 UPDATED Legal Resource Center PM Packet.pdf (639 KB)

I apologize, the first email did not have an attachment.

Good Afternoon-

At the June 28, 2017 BC meeting, a motion passed to revise the job description and place the attorney position on a special election- and remove the duties for the advocates.

Attached is an updated public meeting packet that reflects this action. The draft and the analysis have been changed to reflect that the advocates will not have supervising duties.

Please indicate APPROVAL or DISAPPROVAL of the updated public meeting packet by Thursday, July 7 at NOON.

Thank You-

Delete	Respond	Quick Steps	Move	Tags	Editing	Zoom
<p>From: Brandon L. Yellowbird-Stevens Sent: Thu 7/6/2017 2:45 PM</p> <p>To: Jennifer A. Falck; Rhiannon R. Metoxen; Ronald W. Hill; Danelle A. Wilson; Fawn J. Billie; Cathy L. Bachhuber; David P. Jordan; Leyne C. Orosco; Jennifer A. Webster</p> <p>Cc:</p> <p>Subject: RE: LRC E-poll With Attachment</p> <p>Approve</p>						

<p>From: Ronald W. Hill Sent: Thu 7/6/2017 3:25 PM</p> <p>To: Brandon L. Yellowbird-Stevens</p> <p>Cc: Jennifer A. Falck; Rhiannon R. Metoxen; Danelle A. Wilson; Fawn J. Billie; Cathy L. Bachhuber; David P. Jordan; Leyne C. Orosco; Jennifer A. Webster</p> <p>Subject: Re: LRC E-poll With Attachment</p> <p>Support</p>

<p>From: David P. Jordan Sent: Thu 7/6/2017 11:49 AM</p> <p>To: Jennifer A. Falck</p> <p>Cc: David P. Jordan</p> <p>Subject: RE: LRC E-poll With Attachment</p> <p>Approve Please make sure all management receives a copy.</p>

<p>From: Jennifer A. Webster Sent: Thu 7/6/2017 11:47 AM</p> <p>To: Jennifer A. Falck; Brandon L. Yellowbird-Stevens; Rhiannon R. Metoxen; Ronald W. Hill; Danelle A. Wilson; Fawn J. Billie; Cathy L. Bachhuber; David P. Jordan; Leyne C. Orosco</p> <p>Cc:</p> <p>Subject: RE: LRC E-poll With Attachment</p> <p>Approve, Jenny</p>
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Delete	Respond	Quick Steps	Move	Tags	Editing	Zoom
<p>From: Fawn J. Billie Sent: Thu 7/6/2017 1:32 PM</p> <p>To: Jennifer A. Falck</p> <p>Cc:</p> <p>Subject: RE: LRC E-poll With Attachment</p> <p>Approve</p>						

July 2017

July 2017							August 2017						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
						1			1	2	3	4	5
2	3	4	5	6	7	8	6	7	8	9	10	11	12
9	10	11	12	13	14	15	13	14	15	16	17	18	19
16	17	18	19	20	21	22	20	21	22	23	24	25	26
23	24	25	26	27	28	29	27	28	29	30	31		
30	31												

	Sun	Mon	Tue	Wed	Thu	Fri	Sat
Jun 25 - Jul 1	Jun 25	26	27	28	29	30	Jul 1
Jul 2 - 8	2	3	4	5	6	7	8
			3:00pm 4:00pm Canceled: LOC Prep Meeting (BC_Conf_Ro om) - Jennife				
Jul 9 - 15	9	10	11	12	13	14	15
				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert			
Jul 16 - 22	16	17	18	19	20	21	22
		6:00pm 10:00p m GTC Meeting (Radisson)	3:00pm 4:00pm LOC prep	9:00am 2:00pm LOC Meeting 9:00am 12:00pm LOC Meeting 10:30am 12:00p m LOC Work	12:15pm 2:15p m LOC PM: Professional Conduct & Legal Resource Cen		
Jul 23 - 29	23	24	25	26	27	28	29
				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd FI			
Jul 30 - Aug 5	30	31	Aug 1	2	3	4	5

August 2017

August 2017						
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September 2017						
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	Sun	Mon	Tue	Wed	Thu	Fri	Sat
	Jul 30	31	Aug 1	2	3	4	5
Jul 30 - Aug 5			3:00pm 4:30pm LOC Prep Meeting (BC_Conf_Room) - Jennifer A. Falck	9:00am 2:00pm LOC Meeting (BC_Conf_Room) - Taniquelle J. Thurner			
	6	7	8	9	10	11	12
Aug 6 - 12				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)			
	13	14	15	16	17	18	19
Aug 13 - 19		6:00pm 10:00pm GTC Special Mtg (Radisson)	3:00pm 4:00pm LOC prep	9:00am 2:00pm LOC Meeting (BC_Conf_Room) - Taniqu 9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC			
	20	21	22	23	24	25	26
Aug 20 - 26				8:30am 4:30pm Cancelled BC Meeting (Business Committee Conference Room, 2nd Floor Norber			
	27	28	29	30	31	Sep 1	2
Aug 27 - Sep 2							

LOC 3 7/14/2017 1:40 PM