



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA - REVISED

Business Committee Conference Room-2nd Floor Norbert Hill Center

August 2, 2017 9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be approved**
 - 1. July 19, 2017 LOC Meeting Minutes
- III. Current Business**
 - 1. Petition: Child Care Department Consumer Complaint Policy
 - 2. Administrative Rulemaking Amendments
 - 3. Comprehensive Policy Governing Boards, Committees and Commissions Amendments
 - 4. General Tribal Council Meetings Law
 - 5. Audit Law Amendments
- IV. New Submissions**
- V. Additions**
 - 1. Professional Conduct for Attorneys and Advocates
- VI. Administrative Updates**
 - 1. Public Meeting Standard Operating Procedure
- 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

July 19, 2017

9:00 a.m.

Present: Brandon Stevens, Jennifer Webster, David P. Jordan

Excused: Tehassi Hill and Fawn Billie

Others Present: Candice Skenandore, Tani Thurner, Clorissa Santiago, Maureen Perkins, Jen Falck, Rae Skenandore, Lee Cornelius, Krystal John, Kelly McAndrews, Bradley Graham, Bill Graham, Nancy Barton, Bonnie Pigman, Mike Debraska, Ed Delgado, Cathy L. Metoxen, Cathy Bachhuber, JoAnne House, Susan White

I. Call to Order and Approval of the Agenda

Brandon Stevens called the July 19, 2017 Legislative Operating Committee meeting to order at 9:05 a.m.

Motion by Jennifer Webster to adopt the agenda with the addition of the Landlord-Tenant Emergency Amendments, seconded by David P. Jordan. Motion carried unanimously.

II. Minutes to be approved

1. June 21, 2017 LOC Meeting Minutes

Motion by David P. Jordan to approve the June 21, 2017 LOC meeting minutes; seconded by Jennifer Webster. Motion carried unanimously.

III. Current Business

1. Cemetery Law Amendments (01:40-42:01)

Motion by Jennifer Webster to approve the adoption packet and forward the Cemetery Law Amendments to the Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.

2. Hunting, Fishing, and Trapping Law Amendments (42:01-42:33)

Motion by Jennifer Webster to accept the public meeting comments and forward the Hunting, Fishing, and Trapping Law Amendments adoption packet to the Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.

3. All-Terrain Vehicle Law Amendments (42:34-43:36)

Motion by David P. Jordan to accept the public meeting comments and forward the All-Terrain Vehicle Law Amendments adoption packet to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.

4. Public Use of Tribal Land Law Amendments (43:37-46:03)

Motion by Jennifer Webster to accept the public meeting comments and forward the

- Public Use of Tribal Land Law Amendments adoption packet to the Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.
5. **On-Site Waste Disposal Law Amendments (46:04-57:50)**
Motion by David P. Jordan to accept the public meeting comments and forward the On-Site Waste Disposal Law Amendments adoption packet to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.
 6. **Tribal Environmental Response Law Amendments (57:51-58:18)**
Motion by Jennifer Webster to accept the public meeting comments and forward the Tribal Environmental Response Law Amendments adoption packet to the Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.
 7. **Well Abandonment Law Amendments (58:20-58:44)**
Motion by Jennifer Webster to accept the public meeting comments and forward the Well Abandonment Law Amendments adoption packet to the Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.
 8. **Water Resources Ordinance Amendments (58:45-59:15)**
Motion by Jennifer Webster to accept the public meeting comments and forward the Water Resources Ordinance Amendments adoption packet to the Oneida Business Committee for their consideration; seconded by David P. Jordan. Motion carried unanimously.
 9. **Business Committee Meetings Law (59:16-1:31:57)**
Motion by Jennifer Webster to approve the adoption packet and forward to the Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.
- Motion by David P. Jordan to recess at 10:37a.m. until 11:15 a.m., seconded by Jennifer Webster.*
- LOC went back into session at 11:37 a.m.*
10. **Petition: Child Care Department Consumer Complaint Policy (1:32:40-1:33:34)**
Motion by Jennifer Webster to accept the public meeting comments regarding the Petition: Child Care Department Consumer Complaint Policy and defer to a work meeting; seconded by David P. Jordan. Motion carried unanimously.
 11. **Administrative Rulemaking Amendments (1:33:35-1:34:02)**
Motion by David P. Jordan to accept the public meeting comments regarding the Administrative Rulemaking Amendments and defer the public meeting comments to a work meeting; seconded by Jennifer Webster. Motion carried unanimously.
 12. **Sanctions and Penalties Law (1:34:03-1:35:22)**

Motion by Jennifer Webster to accept the memo regarding the Sanctions & Penalties Legislative Analysis and direct the LRO to bring the analysis back when it's complete; seconded by David P. Jordan. Motion carried unanimously.

Note: it is the recommendation of the Legislative Operating Committee that when this item is presented to the Business Committee, that the Business Committee then present this item to General Tribal Council.

13. Comprehensive Policy Governing Boards, Committees and Commissions Amendments (1:35:23-1:35:48)

Motion by Jennifer Webster to accept the public meeting comments regarding the Comprehensive Policy Governing Boards, Committees and Commissions and defer to a work meeting; seconded by David P. Jordan. Motion carried unanimously.

14. Children's Code (1:35:49 -1:37:23)

Motion by Jennifer Webster to approve the adoption packet and forward the Children's Code to the Oneida Business Committee for their consideration; seconded by David P. Jordan. Motion carried unanimously.

15. Audit Law Amendments

(1:36:44-1:37:53)

Motion to David P. Jordan move Audit Law Amendments to the bottom of the agenda.

(1:42:23 -1:54:45)

Motion by David P. Jordan to accept the public meeting comments memo and approve the adoption packet with the noted changes and forward to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.

The noted changes include:

- *Line 70: insert comma and add "except gaming compliance audits"*
- *Line 131 revised to read "notice of the time requirements for response, including the deadline for requesting an extension"*
- *Line 139 – broadened to cross out (b) starting with "within 14 days" and replace with "within the timeframe provided within the written request"*
- *Line 158 (section 106.6-6) changed from 14 days to "within the timeframe provided"*
- *Section 108.6-6 line 161 – include revisions to capture that the preliminary consultation is required to be done with the internal audit department prior to requesting a consultation with the Audit Committee*
- *Line 179 – "once the Audit Committee has reviewed the management response and approved the final audit report, the approved audit report is forwarded to the Oneida Business Committee for acceptance, and revising this section to recognize that the report would be released as a whole, except for the redacted portions approved by the law office.*
- *Line 205 to change to read "directing the appropriate corrective action,*

which may include discipline”

- *108.8-3 - revised to recognize that the annual financial audit is available at all of those locations, but that all other external audits are with the entity.*

Noted for the record: The Fiscal Impact Statement will be provided for the OBC when it is brought forward for adoption. The LOC will approve the full and updated adoption packet, including the Fiscal Impact Statement, by e-poll.

IV. New Submissions

V. Additions

1. Landlord Tenant Emergency Amendments Extension (1:37:54 -1:40:18)

Motion by David P. Jordan to approve the emergency amendments extension adoption packet and forward the Landlord-Tenant Emergency Amendments Extension Resolution to the Oneida Business Committee for their consideration; seconded by Jennifer Webster. Motion carried unanimously.

Noted for the record: This item extends the existing adoption of emergency amendments for an additional six months.

VI. Administrative Updates

1. LOC Quarterly Report (1:40:18-1:41:15)

Motion by David P. Jordan to approve the LOC Quarterly Report and forward to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.

2. Legal Resource Center Public Meeting Packet E-Poll (1:41:15-1:42:19)

Motion by David P. Jordan to enter the July 5th E-poll results into the record which updated the public meeting packet for the Legal Resource Center; seconded by Jennifer Webster. Motion carried unanimously.

VII. Executive Session

VIII. Adjourn

Motion by David P. Jordan to adjourn the July 19, 2017 Legislative Operating Committee meeting at 12:03 p.m.; seconded by Jennifer Webster. Motion carried unanimously.



Legislative Operating Committee
August 2, 2017

Petition: Child Care Department Consumer Complaint Policy

Submission Date: 9/17/14	Public Meetings: 10/31/13, 2/27/14, 6/26/17, and 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.
- 6/26/17:** Public meeting held.
- 6/29/17:** Public meeting held.
- 7/19/17 LOC:** Motion by Jennifer Webster to accept the public meeting comments regarding the Petition: Child Care Department Consumer Complaint Policy and defer to a work meeting; seconded by David P. Jordan. Motion carried unanimously.
- 7/19/17:** *Work meeting held, public comment review:* Clorissa Santiago, Candice Skenandore, David P. Jordan, Brandon Stevens, Jennifer Webster.

Next Steps:

- Approve the public meeting comment review memo and updated draft; and
- Approve the adoption packet and forward the Petition: Child Care Department Consumer Complaint Policy to the Oneida Business Committee for consideration.



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney
DATE: August 2, 2017
RE: Child Care Department Consumer Complaint Law: Public Meeting Comment
Review with LOC Consideration

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 Legislative Operating Committee held a work meeting July 19, 2017, to review and consider the public comments.

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

The Legislative Operating Committee opened the discussion on this comment by discussing what cases the Nation's Court of Appeals currently hears and has jurisdiction over. The LOC discussed the fact that the Rules of Appellate Procedure allow appeals to be made to the Court of Appeals by any individual who is aggrieved by a final judgment or order of an original hearing body. The LOC intended for the Governmental Services Division Director to serve as the original hearing body for complaints against the Child Care Department, therefore not eliminating the requirement of a hearing for the Court of Appeals to review.

The LOC determined that the intent of the Governmental Services Division Director to serve as the original hearing body for complaints against the Child Care Department could be made more clear, and requested the following revision be made to the Law:

902.11-2. The Division Director shall serve as the original hearing body for appeals of contested results of a complaint investigation against the Department. 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.

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;
- (5) Causing mental harm to a child; or

- (6) Causing a child to view or listen to sexual activity or sexually explicit materials.
- (b) “Area Manager” means the individual employed by the Nation as the Area Manager of Education and Training within the Governmental Services Division.
- (c) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
- (d) “Complaint” means an allegation of certain wrongdoing against the Oneida Child Care Department or employee.
- (e) “Complaint coordinator” means the individual designated to receive and handle all complaints alleged against the Oneida Child Care Department.
- (f) “Complaint investigator” means any of the following individuals as recommended by the complaint coordinator to investigate alleged complaints against the Oneida Child Care Department:
- (1) the supervisor of an Oneida Child Care Department employee that has a complaint alleged against him or her;
 - (2) the supervisor’s substitute; and/or
 - (3) an outside agency designated to investigate a complaint, including but not limited to, the Wisconsin Department of Children and Families and a law enforcement agency.
- (g) “Conflict of interest” means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which a person or their immediate family, friends, associates, or any other person with whom they have contact with, have that conflicts with any right or interest of the Nation. Conflicts of interest include any situation that has the potential to corrupt a person’s motivation or decision making, because of an actual or apparent divergence between the person’s self-interests, and the best interests of the Nation.
- (h) “Department” means the Oneida Child Care Department.
- (i) “Director” means the individual employed by the Nation as the Oneida Child Care Department Director.
- (j) “Division Director” means the individual employed by the Nation as the Governmental Services Division Director.
- (k) “Employee” means an individual employed by the Nation in the Oneida Child Care Department.
- (l) “Nation” means the Oneida Nation.
- (m) “Neglect” means a failure, refusal or inability of an Oneida Child Care Department employee to provide necessary care, food, clothing, medical care or shelter so as to seriously endanger the physical health of a child, lack of supervision, or total abandonment.
- (n) “Ombudsperson” means an individual employed by the Nation who functions as a designated confidential, independent, neutral and informal dispute resolution resource that does not represent the Nation or any specific party, but advocates for fairness and the application of a fair and equitable process.
- (o) “Substantiated” means a finding that the complaint or allegation in the complaint is valid because there is proof by a preponderance of the evidence.
- (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:

- (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;
- (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.

(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 the 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.

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 overriding 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 the corrective action plan.

902.11-2. The Division Director shall serve as the original hearing body for appeals of contested results of a complaint investigation against the Department. 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;

(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.

Adopted – BC

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.



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson *BS*
DATE: August 9, 2017
RE: Child Care Department Consumer Complaint Law

Please find the following attached backup documentation for your consideration of the proposed Child Care Department Consumer Complaint law:

1. Resolution: Child Care Department Consumer Complaint Law
2. Statement of Effect: Child Care Department Consumer Complaint Law
3. Child Care Department Consumer Complaint Law Legislative Analysis
4. Child Care Department Consumer Complaint Law Draft
5. Child Care Department Consumer Complaint Law Fiscal Impact Statement

Overview

This resolution adopts the proposed Child Care Department Consumer Complaint law. The proposed Child Care Department Consumer Complaint law will:

- Provide a process for filing a complaint against the Nation's Child Care Department *[see section 902.4];*
- Describe the role and responsibilities of the complaint coordinator who shall receive and handle all complaints alleged against the Child Care Department *[see section 902.5 and 902.6];*
- Describe the types of complaints that may be alleged against the Child Care Department *[see section 902.7];*
- Provides a process for how the severity of complaint will be determined, and who the complaint investigator will be *[see section 902.8];*
- Describe the process for investigating complaints *[see section 902.9 and 902.10];*
- Provide an appeal process for individuals dissatisfied with the outcome of the complaint investigation *[see section 902.11];*
- Discusses how video surveillance for the Child Care Department will be managed *[see section 902.12];*
- Provide requirements for employee self-reporting and mandatory reporting to the Oneida Business Committee *[see section 902.13 and 902.14];*
- Require the development of a parent-teacher organization *[see section 902.15];* and
- Establish the means by which the Law shall be enforced *[see section 902.16].*

In accordance with the Legislative Procedures Act, public meetings on the proposed Law were held on the following dates:

- October 31, 2013;
- February 27, 2014;
- June 26, 2017; and
- June 29, 2017.

The most recent public comment period closed on July 7, 2017. All comments received during the most recent public comment period were reviewed and accepted by the Legislative Operating Committee on July 19, 2017. Any changes made based on those comments have been incorporated into this draft.

Requested Action

Approve the Resolution: Child Care Department Consumer Complaint Law

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____
Child Care Department Consumer Complaint 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,** on May 9, 2012, the Oneida Business Committee accepted a petition which mandated the Oneida Business Committee to review, amend and implement a new complaint process for the Oneida Child Care Department; and
- WHEREAS,** the petition was presented to the General Tribal Council on November 19, 2012 and the General Tribal Council directed the Oneida Business Committee to review, amend and implement a new parent communications and grievances process for the Oneida Child Care Department; and
- WHEREAS,** an update on the development of the new parent communications and grievances process for the Oneida Child Care Department was presented and accepted by the General Tribal Council on July 1, 2013; and
- WHEREAS,** this Child Care Department Consumer Complaint law ("the Law") was developed as a result of the General Tribal Council petition; and
- WHEREAS,** the Law sets forth the process for filing a complaint against the Nation's Child Care Department and describes what types of complaints may be made; and
- WHEREAS,** the Law describes the responsibilities of the complaint coordinator who shall receive and handle all complaints alleged against the Child Care Department; and
- WHEREAS,** the Law discusses the process for determining the severity of the complaint, who shall investigate the complaint, and the process for investigating complaints; and
- WHEREAS,** the Law establishes an appeal process for individuals dissatisfied with the outcome of the complaint investigation; and
- WHEREAS,** the Law provides requirements for the management of video surveillance, employee self-reporting, mandatory reporting to the Oneida Business Committee, and the creation of a parent-teacher organization; and
- WHEREAS,** the Law establishes the means by which the Law shall be enforced; and

52 **WHEREAS,** public meetings on the proposed law were held on October 31, 2013, February 27, 2014,
53 June 26, 2017, and June 29, 2017, in accordance with the Legislative Procedures Act,
54 and the comments from the most recent public comment period were received, reviewed
55 and accepted by the Legislative Operating Committee on July 19, 2017.
56

57 **NOW THEREFORE BE IT RESOLVED,** that the Child Care Department Consumer Complaint law is
58 hereby adopted and shall become effective on November 7, 2017.
59



Statement of Effect

Child Care Department Consumer Complaint Law

Summary

This resolution adopts the Child Care Department Consumer Complaint law.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

On May 9, 2012, the Oneida Business Committee accepted a petition which mandated the Oneida Business Committee to review, amend and implement a new complaint process for the Oneida Child Care Department. The intent of this petition was 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 alleged against the Oneida Child Care Department to the Governmental Services Division Director and Oneida Business Committee.

The petition was presented to the General Tribal Council on November 19, 2012 and the General Tribal Council directed the Oneida Business Committee to review, amend and implement a new parent communications and grievances process for the Oneida Child Care Department. An update was presented and accepted by the General Tribal Council regarding this matter on July 1, 2013.

This resolution adopts a new Child Care Department Consumer Complaint law developed as a result of the General Tribal Council petition. The Child Care Department Consumer Complaint law will:

- Provide a process for filing a complaint against the Nation's Child Care Department *[see section 902.4]*;
- Describe the role and responsibilities of the complaint coordinator who shall receive and handle all complaints alleged against the Child Care Department *[see section 902.5 and 902.6]*;
- Describe the types of complaints that may be alleged against the Child Care Department *[see section 902.7]*;
- Provides a process for how the severity of complaint, and who the complaint investigator will be *[see section 902.8]*;
- Describe the process for investigating complaints *[see section 902.9 and 902.10]*;
- Provide an appeal process for individuals dissatisfied with the outcome of the complaint investigation *[see section 902.11]*;

- Discusses how video surveillance for the Child Care Department will be managed [*see section 902.12*];
- Provide requirements for employee self-reporting and mandatory reporting to the Oneida Business Committee [*see section 902.13 and 902.14*];
- Require the development of a parent-teacher organization [*see section 902.15*]; and
- Establish the means by which the Law shall be enforced [*see section 902.16*].

The Child Care Department Consumer Complaint law will repeal BC-07-26-95-A titled “Policy on Internal Investigation of Complaints.” The purpose of this resolution was to provide a format for addressing consumer complaints filed by anyone who uses Oneida Early Childhood Services. At one time the Early Childhood Services was made up of both the Oneida Head Start and Child Care Departments; however, the two departments split in 1997, and the Oneida Head Start Department moved under the direction of the Oneida Social Services Area Manager, while the Child Care Department remained and continues to remain under the direction of the Education and Training Area Manager. When the Early Childhood Services’ departments were split, the Oneida Early Childhood Program Policy-Internal Investigation of Complaints was no longer utilized but was never formally dissolved or rescinded. Therefore, the Child Care Department Consumer Complaint law will repeal the Oneida Early Childhood Program Policy-Internal Investigation of Complaints found in resolution BC-07-26-95-A.

In accordance with the Legislative Procedures Act, public meetings on the proposed Law were held on October 31, 2013, February 27, 2014, June 26, 2017, and June 29, 2017. The most recent public comment period closed on July 7, 2017. All comments received during the most recent public comment period were reviewed and accepted by the Legislative Operating Committee on July 19, 2017. Any changes made based on those comments have been incorporated into this draft.

Conclusion

Adoption of this resolution would not conflict with any of the Nation’s laws.



Child Care Department Consumer Complaint Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: Vandehei et al	SPONSOR: Jennifer Webster	DRAFTER: Clorissa Santiago	ANALYST: Candice E. Skenandore
Intent of Proposed Law	Motion by General Tribal Council to develop a parent communications and grievance process for the Child Care Department [See GTC Meeting, November 19, 2012].		
Purpose	Provide a formal process for addressing complaints for anyone that uses the services of the Oneida Child Care Department (Department). This Law is not intended to resolve employee complaints or grievances [See Child Care Department Consumer Complaint, 9 O.C. 902.1-1].		
Affected Entities	Oneida Child Care Department (including the Director, Department employees, Supervisor and Supervisor's designee), Area Manager of Education and Training, Governmental Services Division Director, Ombudsperson, Wisconsin Department of Children & Families (DCF), Oneida Police Department (OPD), parent or guardian utilizing the Department's services, anyone on the child's emergency contact list, anyone that witnesses any action that warrants an investigation, Area Manager's designee, Records Management Department, Risk Management Department, trained mediator, and the Judiciary.		
Affected Legislation	Investigative Leave Policy, Rules of Appellate Procedure, Oneida Policy on Reporting Child Abuse and Neglect, Personnel Policies and Procedures, Oneida Early Childhood Program-Internal Investigation of Complaints.		
Enforcement/Due Process	An employee that violates this Law or retaliates against the child or family involved in the complaint can be disciplined pursuant to the Personnel Policies and Procedures [See Child Care Department Consumer Complaint, 9 O.C. 902.16-1].		
Public Meeting	A public meeting was held on October 31, 2013, February 27, 2014, June 26, 2017 and June 29, 2017.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. On May 9, 2012, the Oneida Business Committee (OBC) accepted a petition which mandated the OBC to review, amend and implement a new complaint process for the Oneida Child Care. The intent of this petition was 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 Child Care Division Director and OBC. The petition was presented to the General Tribal Council (GTC) on November 19, 2012 and the GTC directed the OBC to review, amend and implement a new parent communications and grievances process for the Oneida Child Care Department.

SECTION 3. CONSULTATION

- A. The following departments/experts were consulted in the development of this Law and legislative analysis:

- LOC
- Child Care Department

- Former Area Manager of Higher Education
- Internal Audit
- Risk Management
- Finance
- Law Office
- Petitioners
- Governmental Services Division Director
- Records Management
- Management Information Systems (MIS)
- Representatives from the Chairperson's Office
- Wisconsin Department of Children & Families

B. The Investigative Leave Policy, Oneida Policy on Reporting Child Abuse, Oneida Child Care Department Grievance Process, and Neglect, and Oneida Early Childhood Program-Internal Investigation of Complaints were reviewed in drafting this analysis. Furthermore, the following documents/laws were consulted when developing this analysis:

- Sample Parent Teacher Organization (PTO) Bylaws by PTO Today
- Mille Lacs Band Statutes Annotated, Title 8 Children and Families, Ch. 11 Child Care
- DCF, Youngstar, Point Detail Report: Oneida Child Care
- Garland R. Quarles Elementary School PTO Bylaws
- Wisconsin Heights PTO Bylaws
- Deerfield Elementary School PTO Bylaws
- Spooner Area Schools PTO Bylaws
- Eagle's Landing Middle School PTO Bylaws
- Westwood Elementary School PTO Bylaws
- Fairway Elementary School PTO Bylaws
- Charlottesville High School PTO Bylaws
- Prairieview PTO Bylaws
- Wisconsin Child Care Barred Offenses Table (10/16)
- Chapter DCF 251: Group Child Care Centers
- Wisconsin Administrative Code: Division of Early Care and Education, DCF 251-Licensing Rules for Group Child Care Centers
- DCF Guide to Regulate Child Care
- Washington State Department of Early Learning
- Wis. Stats. 48 Subchapter XV: Child Care Providers
- Wisconsin Child Welfare PDS Mandated Reporter Training
- Bromley Children's Social Care Division Procedures Manual
- Children, Youth & Families Division, City of Boulder, Child Care Provider Complaint Policy
- Filing a Formal Complaint Against an Accredited Center-Accreditation Criteria and Procedures of the Nation Academy of Early Childhood Programs
- North Carolina Department of Health and Human Services: Division of Child Development & Early Education-Complaints

SECTION 4. PROCESS

A. This Law has followed the process set forth in the Legislative Procedures Act except that the public meeting notice that was published in the Kalihwisaks identified the public meeting date for Monday, June 29, 2017. The correct date should have read Thursday, June 29, 2017. In order to avoid confusion, the LOC held a public meeting on both Monday, June 26, 2017 and Thursday, June 29, 2017.

B. The following motions were made at General Tribal Council regarding this Law:

- **November 19, 2012:** Motion by Jessica Wallenfang to direct the Oneida Business Committee to review, amend and implement a new parent communications and grievances process for the Oneida Childcare Department, which includes requested actions by March 1, 2013 and a final update shall be brought back to GTC at the July 2013 Semi-Annual meeting, seconded by Bernie John Stevens. Motion carried by a show of hands.
- **July 1, 2013:** Motion by John Orie to accept the update, seconded by Francis Huntington. Motion approved by a show of hands.

C. This item was added to the active files list on June 5, 2013. It was carried over from the previous LOC term and was re-added to the active files list on September 17, 2014.

D. The following work meetings were held in developing this Law:

- June 10, 2013
- June 24, 2013
- April 17, 2014: LOC, Finance, Law Office, Internal Audit, Petitioners, Governmental Services Division (GSD) Director, Area Manager, Department, Risk Management, Chairperson
- April 30, 2014: Internal Audit, Risk Management, Finance, GSD Director, Area Manager, Department, Petitioners, Ombudsperson, LOC
- November 18, 2014: LOC, Department, Petitioners, Finance, Internal Audit, Chairperson's Office, Risk Management, Area Manager
- November 24, 2014: Records Management
- December 5, 2014: LOC, Department, Ombudsperson
- December 12, 2014: MIS, Records Management
- February 23, 2015: Area Manager, Department, LOC, Risk Management, Internal Audit, Petitioners, Finance, Chairperson's Office
- February 12, 2017: LOC, Governmental Services Division (GSD) Director, Area Manager
- May 1, 2017: LOC, Petitioners, Records Management, Director, GSD Director
- July 19, 2017: LOC, LRO –Public comment review/consideration

SECTION 5. CONTENTS OF THE LEGISLATION

A. This is a new Law that will provide a formal process for how complaints against the Department are handled. The following is an overview of this Law.

1. **Filing a Complaint.** A parent or guardian using the Department's services, anyone who is on the child's emergency contact list, and/or any person who witnesses any action by the Department or an employee that warrants an investigation can file a complaint. The complaint must be filed within 60 days of the alleged incident to guarantee a review. A complaint must be in writing or be submitted on a form that will be developed by the Department and made available both at the facility and the Department's webpage. The complaint must include a statement of facts that describes the allegations, these fact must include (if known), the names of the child(ren), employee(s) and witness(es) involved, date and time of incident, details of the allegations, noted impacts, and contact

information of the complainant. Complaints must be filed with complaint coordinator or the GSD Director. An unsubstantiated complaint cannot be re-filed unless new facts or evidence are discovered *[See Child Care Department Consumer Complaint, 9 O.C. 902.4]*.

2. Complaint Coordinator & Responsibilities. The complaint coordinator receives and handles complaints filed against the Department. The complaint coordinator will be the Area Manager, Ombudsperson or a designee of the Area Manager *[See Child Care Department Consumer Complaint, 9 O.C. 902.5]*. The complaint coordinator's responsibilities include:

- a. developing standard operating procedures for handling incomplete complaints
- b. collecting video surveillance footage
- c. notify the Department Director, GSD Director, complainant, the child's parents (if the complainant is not a parent of the child), and Risk Management (when appropriate).
- d. determine the severity level of the complainant pursuant to the Law and assign a complaint investigator *[See Child Care Department Consumer Complaint, 9 O.C. 902.6]*.

4. Types of Complaints. Section 902.7-1 lists examples of the types of complaints; however this is not an exhaustive list. Examples of the types of complaints include violations involving: licensed capacity, reports of incidents, background checks, reporting child abuse or neglect, staff orientation, supervision of children, medications, transportation, child management techniques, behavior of employees, and more.

5. Severity of Complaints. This Law identifies four levels of severity in which a complaint will be classified.

- a. *Level 1.* Level 1 complaints are considered very mild, mild or moderate and may include complaints that pertain to poor business practices, inadequate equipment and furnishings, inappropriate discipline, parents not being notified of injury. Level 1 complaints will be investigated by the supervisor *[See Child Care Department Consumer Complaint, 9 902.8-1 (a)]*.
- b. *Level 2.* Level 2 complaints are considered serious that do not pose a risk of direct harm to the child. Such complaints may include medication or drugs being left in reach of the child, failing to obtain emergency medical care for a child, or minor physical injury to a child. Level 2 complaints will be investigated by the supervisor but may also be investigated by DCF *[See Child Care Department Consumer Complaint, 9 O.C. 902.8-1 (b)]*.
- c. *Level 3.* Level 3 complaints are considered very serious and pose a risk of direct harm to the child. Such complaints may include gross violations of ratio and supervision, abandoned children, severe injury to a child, unlocked weapons accessible to children, employee under the influence of drugs or alcohol. Level 3 complaints are investigated by both the supervisor and OPD or other law enforcement agency. In addition, the DCF may also investigate the complaint. Employees accused of level 3 complaints may be placed on investigative leave pursuant to the Investigative Leave Policy. If multiple investigations are being conducted and there is no agreement on to substantiate the complaint, the complaint coordinate will have discretion to proceed with reviewing and finalizing the substantiated findings and corrective plan *[See Child Care Department Consumer Complaint, 9 O.C. 902.8-1 (c)]*.
- d. *Level 4.* Level 4 complaints deal with child abuse and neglect and result in imminent danger to a child. These complaints are investigated by supervisor, DCF and OPD or another law enforcement agency. Employees that have a level 4 complaint against them will automatically be placed on investigative leave. If the complaint is substantiated, the

employee will have his/her employment automatically terminated. If one of the investigations substantiates the complaint, the complaint coordinator will have the discretion to proceed with the termination of employment [See *Child Care Department Consumer Complaint*, 9 O.C. 902.8-1 (d)].

6. Processing Levels 1-3 Complaints. The complaint coordinator will facilitate a mediation meeting(s) between the person who filed the complaint and the Department if the person who filed the complaint agrees to mediation. The parents of the child can also attend the mediation meetings. The mediation meeting must take place within five business days of the complaint being filed. If a resolution is not reached, a full investigation will be completed and the complaint coordinator will have five business days to recommend a complaint investigator [See *Child Care Department Consumer Complaint*, 9 O.C. 902.9-1].

The complaint investigator has five business days complete an investigation. During the investigation, the complaint investigator can 1) conduct interviews with the appropriate individuals, 2) collect statements from potential witnesses, 3) review video surveillance footage, and 4) any other investigative methods appropriate to complete a thorough investigation. The complaint coordinator can grant the complaint investigator an additional five business day extension for extenuating circumstances. If an extension is granted, the complaint coordinator must provide written notice to the person filing the complaint within 24 hours of the extension [See *Child Care Department Consumer Complaint*, 9 O.C. 902.9-2].

The complaint investigator will determine whether to not to substantiate the complaint after the investigation is concluded and forward copies of all documents and findings to the complaint coordinator, Director and Division Director for review. This review must be completed within five business days of receiving the findings. If the complaint investigator determines the complaint to be unsubstantiated, the complaint coordinator, Director and Division Director can accept or override the complaint investigator's determination. If the decision is overridden, the Director must complete a corrective action plan within five business days from date the decision was overridden. The corrective action plan must be finalized by the complaint coordinator and Division Director within five business days. A decision to substantiate the finds cannot be overridden and the complaint investigator must then create a corrective action plan within five business days of forwarding the findings to substantiate the complaint. The Director and complaint coordinator must finalize the corrective action plan within five business days. When there are multiple complaint investigators investigating the same complaint (i.e. internal investigation and external investigation), a decision to substantiate the complaint will take precedence over any decision to not substantiate the complaint [See *Child Care Department Consumer Complaint*, 9 O.C. 902.9-3].

The complaint coordinator must notify the person that filed the complaint of the results of the investigation in writing within five business days of receiving a finalized corrective action plan or findings that the complaint was not substantiated. The information provided must include details of the investigation that would not compromise the legally-protected confidentiality of any person, whether or not the complaint was substantiated, any corrective act plan (if applicable) that redacts specific employee related matters or information and an explanation as to why the complaint was not substantiated, if applicable. The complaint coordinator will provide the Director and Division Director with the corrective action plan. This Law requires all employees to comply with any corrective action plan [See *Child Care Department Consumer Complaint*, 9 O.C. 902.9-5].

7. *Processing Level 4 Complaints.* When a complaint alleging child abuse or neglect is received, the complaint coordinator or anyone that receives the complaint must immediately refer the matter to the Wisconsin Department of Children and Families, the Oneida Police Department or other local law enforcement agency for investigation. The complaint coordinator must also inform the supervisor and the supervisor must perform an investigation [*See Child Care Department Consumer Complaint, 9 O.C. 902.10*].

8. *Appeal.* If the complainant or parent is dissatisfied of the decision to not substantiate the complaint or is dissatisfied with the corrective action plan, he/she can appeal the decision to the GSD Director within ten business days of receiving the investigation results and/or corrective action plan. The GSD Director will complete a review and make a determination within five business days; however, if the GSD Director determines more time is needed to do further investigations, he/she can suspend the these time limits. The GSD Director must notify the complaint of his/her decision. If the complaint is dissatisfied with the GSD Director's decision, the complainant can appeal that decision to the Judiciary [*See Child Care Department Consumer Complaint, 9 O.C. 902.11*].

9. *Video Surveillance.* This Law requires the Department to have daily video surveillance. This video surveillance footage cannot be erased by anyone in the Department and must retain the footage for at least ten business days. Records Management Department is responsible for the secured maintenance of any video surveillance footage related to a complaint.

10. *Employee Self-Reporting.* If an employee witnesses another employee behaving in an unethical/inappropriate manner, he/she must immediately document and report the behavior to the complaint coordinator. The complaint coordinator will handle the report as if a complaint were filed. If an employee witnesses another employee engaging in child abuse or neglect, he/she must report the action(s) in accordance with the Oneida Policy on Reporting Child Abuse and Neglect [*See Child Care Department Consumer Complaint, 9 O.C. 902.13*].

11. *Mandatory Reporting to OBC.* The GSD Division must include complaint information regarding the Department in its quarterly report to the OBC. This information must include the number of complaints filed, how many complaints were substantiated and how many investigations were conducted. In addition, the GSD Division Director is required to report any continuous patterns of failure by the Department to follow the corrective actions plans to the OBC [*See Child Care Department Consumer Complaint, 9 O.C. 902.14*].

12. *Parent Teacher Organization.* This Law requires that a Parent Teacher Organization (PTO) be created which will all parents and the Department to collaborate to help improve the Department and lives of children [*See Child Care Department Consumer Complaint, 9 O.C. 902.15*]. The creation of the PTO is mandated the by General Tribal Council.

SECTION 6. EFFECT ON EXISTING LEGISLATION

A. *Repeal the Oneida Early Childhood Program Policy-Internal Investigation of Complaints.* This Law repeals the Resolution BC 07-26-95-A Oneida Early Childhood Program Policy-Internal Investigation of Complaints. The purpose of the Oneida Early Childhood Program Policy-Internal Investigation of Complaints is to provide a format for addressing consumer complaints filed by anyone who uses Early Childhood Services [*See Oneida Early Childhood Program Policy-Internal Investigation of Complaints*]. At one time the Early Childhood Services was made up of both the Oneida Head Start and Child Care Departments; however, the two departments split in 1997, and the Oneida Head Start Department moved under the direction of the Oneida Social Services Area Manager, while the Child Care

Department remained and continues to remain under the direction of the Education and Training Area Manager. When the Early Childhood Services' departments were split, the Oneida Early Childhood Program Policy-Internal Investigation of Complaints was no longer utilized but was never formally dissolved or rescinded. That is why this Policy will supersede the Oneida Early Childhood Program Policy-Internal Investigation of Complaints.

B. Investigative Leave Policy. This Law states that if an employee is accused of child abuse or neglect, he/she will automatically be placed on investigative leave in accordance with the Investigative Leave Policy except that the Department does not need prior approval from the Human Resources Department (HRD) and the Division Director before placing the employee on leave which is a requirement in the Investigative Leave Policy [See *Child Care Department Consumer Complaint*, 9 O.C. 902.8-1 (d)(4) and *Investigative Leave Policy* 2 O.C. 208.5-1]. It may be more appropriate to include this exception language in the Investigative Leave Policy. The LOC may want to consider the following:

1. Leave the language in this Law that says that HRD and Division Director approval are not required prior to placing an employee on investigative leave for allegations of child abuse or neglect; or
2. Amend the Investigative Leave Policy to allow for automatic placement on investigative leave for allegations regarding criminal actions, actions that may affect licensing and actions alleging child abuse and/or neglect.

SECTION 7. OTHER CONSIDERATIONS

A. If an employee is placed on leave during the investigation, it may disrupt child care operations due to State law restrictions that set how many children a child care worker can supervise. The following chart shows the children to child care worker ratio that is required by the State law [See *Wis. Admin. Code DCF ' 251.05 (4)*]. The Department will need to be aware of worker to child ratios when an employee is placed on investigative leave.

Maximum Group Size and Minimum Number of Child Care Workers in Group Child Care Centers		
Age of Children	Minimum Number of Child Care Workers to Children	Maximum Number of Children in a Group
Birth to 2 years	1:4	8
2 years to 2 ½ years	1:6	12
2 ½ years to 3 years	1:8	16
3 years to 4 years	1:10	20
4 years to 5 years	1:13	24
5 years to 6 years	1:17	34
6 years and over	1:18	36

B. According to the Department there have been 24 total complaints received from January of 2012 till April of 2017. Of the complaints, 19 were substantiated and 5 were found unsubstantiated. The following table illustrates the number of consumer complaints the Department received, the type of complaints and whether or not they were substantiated.

Child Care Department Consumer Complaints (01/2012-04/2017)				
<i>Year</i>	<i>Complaints</i>	<i>Type</i>	<i>Substantiated</i>	<i>Unsubstantiated</i>
2012	ARCC	None		
	NHCC 1	1-Teacher against Parent	Police matter/was borderline disorderly	
2013	ARCC 2	1-Parent against Teacher		Teacher did not put hands around child's neck
		1-Teacher against Grandparent	Teacher did not have child's schedule as required.	
	NHCC 4	1-Employee against Employee	Employee was discourteous towards other Employee	
		1-Employee against 3 Teachers	The 3 teachers did not closely supervise the child	
		1-Parent against Teacher	Teacher will use positive approach when dealing with parents	
		1-Employee against Teacher	Teacher will treat co-workers with tact, courtesy, respect, objectivity and maturity	
2014	ARCC 2	1-Grandparent against infant room policies about care	Policy was changed	
		1-Employee against Teacher	Disrespectful to training speaker	
	NHCC	None		
2015	ARCC 3	2-Parent against Teacher	Child was left unattended outside	
			Mistreatment, was reminded to be aware of how Teacher was talking to the children	
		1-Supervisor against Teacher	Disrespectful to Supervisor, will be more courteous	
	NHCC 3	1-Parent against Teacher	Getting bleach on child's shirt, Teacher will wipe off tables after spraying bleach solution disinfectant	
		2-Complaint on Teacher	Teacher yelling at children, Supervisor will work with Teacher	
				Alleging Teacher was disrespectful, Teacher left prior to investigation
2016	ARCC 9	1-Parent against Teacher	Leaving child on floor crying unattended, Teacher will acknowledge child in distress and ensure child is safe	
		3-Employee against Teacher	Had bottle of soda in front of children, will leave soda in	

			locker room	
			Eating fast food in front of children, Teacher will eat before punching in or during lunch break	
				Doing personal business during work time, was not found doing personal business
		1-Complaint against Teacher	Children in buggies too long, in the future children are only allowed to be in buggies for 20 minutes	
		1-Supervisor against Teacher		Teacher was asleep during nap time, Teacher was not napping
		1-Complaint against staff		Staff person was not found loitering in the hall
		1-Teacher against Teacher	Teacher left classroom leaving classroom out of ratio, verbal warning was given and Teacher will ensure that classroom will have required ratio prior to leaving	
		1-Complaint against West Wing	West Wing was not taking children outside, YoungStar requirements will be followed	
2017	ARCC	None		
TOTAL COMPLAINTS: 24			19	5

- C. This Law mentions possible usage of an Ombudsperson; however, the GTC will consider a re-organization proposal of the Nation which may or may not include the Ombudsperson position. At the May 16, 2017 GTC meeting, a motion was made to leave the re-organization proposal on the table until the new BC administration comes into office [See *GTC Action Report Draft, Sunday, May 19, 2017; Tuesday, May 16, 2017*].
- D. This Law requires the complaint coordinator to facilitate mediation meetings between the Department and the person who filed and complaint and/or the child's parents. The complaint coordinator can also use a trained mediator to facilitate the mediation meetings [See *Child Care Department Consumer Complaint, 9 O.C. 902.9-1*]. According to HRD, no mediation training is available through the training and development but the Equal Employment Opportunity Department has mediators. In the past, HRD had people certified in mediation and used the Winnebago Mediation Conflict Resolution Center to do the training [See <http://www.mediationwcrc.org/training>]. The LOC may want to consider adding language in the Law that requires HRD to provide mediation training.
- E. Please refer to the fiscal impact statement for any financial impacts.

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;
- (5) Causing mental harm to a child; or

- (6) Causing a child to view or listen to sexual activity or sexually explicit materials.
- (b) “Area Manager” means the individual employed by the Nation as the Area Manager of Education and Training within the Governmental Services Division.
- (c) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
- (d) “Complaint” means an allegation of certain wrongdoing against the Oneida Child Care Department or employee.
- (e) “Complaint coordinator” means the individual designated to receive and handle all complaints alleged against the Oneida Child Care Department.
- (f) “Complaint investigator” means any of the following individuals as recommended by the complaint coordinator to investigate alleged complaints against the Oneida Child Care Department:
- (1) the supervisor of an Oneida Child Care Department employee that has a complaint alleged against him or her;
 - (2) the supervisor’s substitute; and/or
 - (3) an outside agency designated to investigate a complaint, including but not limited to, the Wisconsin Department of Children and Families and a law enforcement agency.
- (g) “Conflict of interest” means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which a person or their immediate family, friends, associates, or any other person with whom they have contact with, have that conflicts with any right or interest of the Nation. Conflicts of interest include any situation that has the potential to corrupt a person’s motivation or decision making, because of an actual or apparent divergence between the person’s self-interests, and the best interests of the Nation.
- (h) “Department” means the Oneida Child Care Department.
- (i) “Director” means the individual employed by the Nation as the Oneida Child Care Department Director.
- (j) “Division Director” means the individual employed by the Nation as the Governmental Services Division Director.
- (k) “Employee” means an individual employed by the Nation in the Oneida Child Care Department.
- (l) “Nation” means the Oneida Nation.
- (m) “Neglect” means a failure, refusal or inability of an Oneida Child Care Department employee to provide necessary care, food, clothing, medical care or shelter so as to seriously endanger the physical health of a child, lack of supervision, or total abandonment.
- (n) “Ombudsperson” means an individual employed by the Nation who functions as a designated confidential, independent, neutral and informal dispute resolution resource that does not represent the Nation or any specific party, but advocates for fairness and the application of a fair and equitable process.
- (o) “Substantiated” means a finding that the complaint or allegation in the complaint is valid because there is proof by a preponderance of the evidence.

- (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:

- (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;
- (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.

(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 the 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.

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 overriding 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 the corrective action plan.

902.11-2. The Division Director shall serve as the original hearing body for appeals of contested results of a complaint investigation against the Department. 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;
- (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.

Adopted – BC

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.

FINANCE ADMINISTRATION

Fiscal Impact Statement

HANDOUT



MEMORANDUM

DATE: July 17, 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 Child Care Department Consumer Complaint Law**

I. Estimated Fiscal Impact Summary

Law: Child Care Department Consumer Complaint Law		Draft 23
Implementing Agency	Oneida Child Care Department Education and Training Governmental Services Ombudsperson Wisconsin Department of Children & Families (DCF) Oneida Police Department (OPD) Records Management Department	
Estimated time to comply	In compliance with the Legislative Procedures Act (10 days)	
Estimated Impact	Current Fiscal Year	10 Year Estimate
Total Estimated Fiscal Impact	\$0	\$0
Revenue and cost considerations		
Uncertainties and Unknowns	Future status of the Ombudsperson position.	

II. Background

A. Legislative History

On May 9, 2012, the Oneida Business Committee (OBC) accepted a petition which mandated the OBC to review, amend and implement a new complaint process for the Oneida Child Care. The petition was presented to General Tribal Council (GTC) on November 19, 2012 and GTC direct the OBC to review, amend and implement a new parent communication and grievance process for the Oneida Child Care Department. A public meeting was held on October 31, 2013 and again on February 27, 2014.

B. Summary of Content

The following is an overview of the Policy;

1. Provides a formal process for addressing consumer complaints.
2. Explains the process of filing a complaint including timeframes, who can file a complaint, what information must be included in the complaint, how and where to file the complaint and how repeat complaints are handled.
3. Complaint Coordinator & Responsibilities.
4. Types of Complaints.
5. Severity of Complaints. This Law identifies four levels of severity in which a complaint will be classified.
 - a) Level 1 complaints are considered very mild, mild or moderate and may include complaints that pertain to poor business practices, inadequate equipment and furnishings, inappropriate discipline, parents not being notified of injury. Level 1 complaints will be investigated by the supervisor.
 - b) Level 2 complaints are considered serious that do not pose a risk of direct harm to the child. Such complaints may include medication or drugs being left in reach of the child, failing to obtain emergency medical care for a child, or minor physical injury to a child. Level 2 complaints will be investigated by the supervisor but may also be investigated by the Department of Children and Families.
 - c) Level 3 complaints are considered very serious and pose a risk of direct harm to the child. Such complaints may include gross violations of ratio and supervision, abandoned children, severe injury to a child, unlocked weapons accessible to children, employee under the influence of drugs or alcohol. Level 3 complaints are investigated by both the supervisor and OPD or other law enforcement agency. In addition, the DCF may also investigate the complaint. Employees accused of level 3 complaints may be placed on investigative leave.
 - d) Level 4 complaints deal with child abuse and neglect and result in imminent danger to a child. These complaints are investigated by supervisor, DCF and OPD or another Law Enforcement agency.

Employees that have a level 4 complaint against them will automatically be placed on investigative leave.

6. Processing Levels 1-3 Complaints.
7. Processing Level 4 Complaints.
8. Appeal.
9. Video Surveillance. This Law requires the Department to have daily video surveillance. This video surveillance footage cannot be erased by anyone in the Child Care Department and must retain the footage for at least ten business days. Records Management Department is responsible for the secured maintenance of any video surveillance footage related to a complaint.
10. Employee Self-Reporting.
11. Mandatory Reporting to OBC.
12. Parent Teacher Organization. This Law requires that a Parent Teacher Organization (PTO) be created which will all parents and the Department to collaborate to help improve the Department and lives of children. The creation of the PTO is mandated the by General Tribal Council.

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 no startup costs, personnel, office, or documentation costs and the policy can be implemented within 10 days of approval. Existing personnel will carry out the responsibilities listed within the process.

III. Financial Impact

No Fiscal 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
August 2, 2017

Administrative Rulemaking Law Amendments

Submission Date: 03/15/17	Public Meeting: 6/26/17 and 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.

6/26/17: Public Meeting Held.

6/29/17: Public Meeting Held.

7/19/17 LOC: Motion by David P. Jordan to accept the public meeting comments regarding the Administrative Rulemaking law amendments and defer to a work meeting; seconded by Jennifer Webster. Motion carried unanimously.

7/19/17: *Work meeting held, public comment review:* Clorissa Santiago, Candice Skenandore, David P. Jordan, Brandon Stevens, Jennifer Webster, Maureen Perkins.

Next Steps:

- Approve the public meeting comment review memo and updated draft; and
- Approve the adoption packet and forward the Administrative Rulemaking law amendments to the Oneida Business Committee for consideration.



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney
DATE: August 2, 2017
RE: Administrative Rulemaking Law Amendments: Public Meeting Comment
Review with LOC Consideration

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 Legislative Operating Committee held a work meeting July 19, 2017, to review and consider the public comments.

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

The LOC recognized that the public meeting had four (4) legislative items on the agenda to be discussed, and that the commenter was mistaken on which proposed law was up for discussion.

The LOC determined there is no revision necessary based on this comment.

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

The LOC discussed whether the public meeting sign-in sheet should be a required portion of the administrative record. The LOC recognized the fact that the memorandum containing public comments received states the name of the individual making each comment, and that this document is included in the administrative record. This memorandum is illustrative of those individuals that participated in the public meeting and comment period by providing public comments. The LOC then discussed whether it would be necessary to know those in attendance at the public meeting who did not actually make a public comment, but who were still present for the public meeting and signed into the sign-in sheet. The LOC spent some time discussing the merits of using this information and if it could be useful. The LOC determined that since the sign-in sheet is already a required document, there is no harm in requiring it as a part of the administrative record since the information contained in the document might be useful as a tool to demonstrate public participation in the rulemaking process.

The LOC determined the following revision should be made to the Law:

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) The public meeting sign-in sheet;
- (ef) If the rule is being amended, redline drafts from the currently effective rule illustrating the proposed amendments;
- (fg) 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 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.

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

The LOC discussed the fact that the General Tribal Council must adopt or amend laws that delegate rulemaking authority with the understanding that the rulemaking process outlined in this Law must be followed, and that includes adoption by the Oneida Business Committee. The LOC discussed the fact that although the General Tribal Council is not adopting rules, the General Tribal Council has the authority to review or request to adopt a specific law or rule. The LOC also discussed the intent behind the decision to have the Oneida Business Committee adopt proposed rules, which was to create an effective, efficient, streamlined process that ensures the subject matter experts draft proposed rules while the Oneida Business Committee can ensure that the broad policy goals and values of the Nation are reflected in the proposed rule.

The LOC determined no revision is necessary based on this comment.

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

The LOC determined there is no revision necessary based on this comment.

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

The LOC began the consideration of this comment by discussing the intent of the Administrative Rulemaking law. The LOC discussed the fact that every member of the Oneida Business Committee should be informed and aware of all proposed legislation and rules, and that there are efforts every Oneida Business Committee member can make to ensure they are educated about proposed laws and rules. The LOC discussed the fact that the major benefit of rules adopted by the Oneida Business Committee is that the Oneida Business Committee can ensure that the values and policies of the Nation as a whole are maintained since the members of the Oneida Business Committee are tasked with ensuring that the Nation's best interests are always represented. It is for that reason that the LOC determined that there is no revision necessary based on this comment.

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. The details surrounding the review process were 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

The LOC determined there is no revision necessary based on this comment because it is up to the authorized agency to determine how the biennial review shall be conducted and who shall enforce the reviews to ensure they are occurring.

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

Consideration of this comment garnered a lengthy discussion from the LOC. The LOC began the discussion with general conversation on 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. The LOC then weighed the desire for more outreach by an authorized agency with the burden making that additional outreach might have on the

authorized agency. The LOC discussed situations in which this clause might be used, and determined that the additional outreach afforded to those substantially affected by a proposed rule is necessary to include in the Law. The LOC then spent time discussing matters such as how an authorized agency will identify individuals that need additional notice of the public meeting for a proposed rule, what methods of additional notice are permissible, and how the LOC will ensure this additional notice has occurred when determining if the LOC should certify the proposed rule. After much discussion, the LOC narrowed down what they were looking for and came to a determination that those individuals whose existing eligibility in a program of a Nation that may be substantially affected by a proposed rule should receive additional notice of the public meeting for the proposed rule. The LOC decided language should be developed to reflect that decision, and then be brought back for review.

The LOC had an additional meeting on July 27, 2017, to reconsider this comment and whether authorized agencies should be required to provide additional public notice in certain situations when promulgating rules. The LOC revisited the previous decisions made on this matter, and decided to have one last comprehensive discussion of the merits of this provision being a requirement as opposed to a recommendation.

The LOC discussed benefits of requiring authorized agencies to provide additional public notice in certain situations when promulgating rules include:

- More efforts for community outreach is always a good thing.
- One goal of administrative rulemaking is community involvement and public input on proposed rules, and this extra outreach might help garner more participation during the public meeting.
- Those individuals whose existing eligibility in a program of the Nation might be directly affected by a rule should have notice that their eligibility might change, and then have the opportunity to provide comments and opinions on the matter.

The LOC also discussed potential consequences of required authorized agencies to provide additional public notice in certain situations when promulgating rules, instead of just recommending that the additional notice be made. Potential consequences include:

- This requirement imposes a duty on authorized agencies when making rules that the LOC is not obligated to follow when making laws. If a rule and a law have the same force and effect, then they should follow a similar process, and there is no situation where the Legislative Procedures Act requires special notice to be given to individuals.
- The LOC previously discussed the requirement of special notice for individuals when their existing eligibility in a program might be substantially affected. The LOC questioned whether legislating for individuals would be a high burden to place on authorized agencies. An authorized agency might not know specifically which individuals in a program might be substantially affected by a proposed rule. The agency might easily ascertain how many individuals are participating in a program, but it might be a higher burden to determine which individuals will be affected. The LOC discussed using the word “parties” instead, and discussed a recommendation to send the notice to all parties currently participating in the program might be more realistic. Using the term parties would provide less of a burden on the agencies to determine which individuals specifically might be affected, but it also might lead to a higher cost and

burden in actually making that special notice (i.e. you might have to send 300 letters out to the whole program when only 2 people might actually be affected by the rule change). The LOC discussed the difficulty in attempts to balance the need for outreach with the burden that outreach would cause for agencies.

- The requirement to provide special notice to certain individuals could have potential impacts on the budgets of authorized agencies, because authorized agencies would now have to budget to ensure they are able to make that special outreach if that comes as a result of rulemaking.

After much discussion on the matter, the LOC determined that special notice to certain individuals should be a recommendation, and not a requirement in the Law. The LOC determined that the Oneida Business Committee may always direct specific authorized agencies to provide special notice when it is determined necessary and appropriate, or authorized agencies can be encouraged to develop their own standard operating procedures to address situations in which individuals whose existing eligibility in a program of the Nation might be directly affected by a rule should have notice that their eligibility might change and therefore receive special notice of the public meeting.

The LOC directed the following revision be made to the Law:

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.~~

(1) *Special Notice.* It is recommended, but not required, that authorized agencies provide an additional special notice to affected parties when a proposed rule or amendments to a rule modify eligibility requirements for the Nation's programs. The extent and form of any such notice is within the authorized agency's discretion to determine.

Title 1. Government and Finances – Chapter 106
ADMINISTRATIVE RULEMAKING

~~Thotih<4& lutyani<slu-n\$he>~~

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

Draft 3 (Redline to PM Draft)

2017 08 02

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

Draft 3 (Redline to PM Draft)

2017 08 02

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.

106.4-4. *Exemption to Administrative Rulemaking Requirements.* When an authorized agency is delegated rulemaking authority through a new law or an amendment to an existing law, any standard operating procedures, policies or plans the authorized agency is currently using and wishes to continue using as a rule shall be presented to the Legislative Operating Committee for acknowledgement and publication as a rule on the Oneida Register as long as the following conditions are met:

(a) The standard operating procedure, policy or plan shall have no substantive change to its content; and

(b) A preliminary review by the Oneida Law Office shall reveal no conflict between the standard operating procedure, policy or plan and any law, policy, rule, or resolution of the Nation.

(c) The existing standard operating procedure, policy, or plan shall be formatted into the administrative rulemaking template approved by the Legislative Operating Committee.

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.

Draft 3 (Redline to PM Draft)
2017 08 02

(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.

(1a) 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.

(2b) 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.

(1) *Special Notice.* It is recommended, but not required, that authorized agencies provide an additional special notice to affected parties when a proposed rule or amendments to a rule modify eligibility requirements for the Nation's programs. The extent and form of any such notice is within the authorized agency's discretion to determine. ~~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

Draft 3 (Redline to PM Draft)
2017 08 02

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.

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.

(a) The authorized agency shall submit the rule for certification by the Legislative Operating Committee within six (6) months after the public comment period has expired, unless the Legislative Operating Committee determines there is good cause to go outside the time limits.

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

Draft 3 (Redline to PM Draft)
2017 08 02

(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.

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.

Draft 3 (Redline to PM Draft)
2017 08 02

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 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

Draft 3 (Redline to PM Draft)
2017 08 02

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) The public meeting sign-in sheet;

~~(ef)~~— If the rule is being amended, redline drafts from the currently effective rule illustrating the proposed amendments;

~~(fg)~~ 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 commission, a memo from the authorized agency's highest level of management approving the proposed rule;

~~(gh)~~ 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

~~(hi)~~ The effective dates of the original rule and any rule amendments subsequently made as established by the authorized agency; and

~~(ij)~~ 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

Draft 3 (Redline to PM Draft)

2017 08 02

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;
- (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-



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson *BS*
DATE: August 9, 2017
RE: Administrative Rulemaking Law Amendments

Please find the following attached backup documentation for your consideration of the proposed amendments to the Administrative Rulemaking law:

1. Resolution: Administrative Rulemaking Law Amendments
2. Statement of Effect: Administrative Rulemaking Law Amendments
3. Administrative Rulemaking Law Amendments Legislative Analysis
4. Administrative Rulemaking Law Amendments Draft
5. Administrative Rulemaking Law Amendments Fiscal Impact Statement

Overview

This resolution adopts proposed amendments to the Administrative Rulemaking law. The amendments to the Administrative Rulemaking law will:

- 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 *[see 106.4-1(b)]*;
- Provide an exemption to the administrative rulemaking process requirements, or grandfather clause, for those current and existing standard operating procedures and policies the authorized agency wishes to continue using so long as there are no substantive changes to the content of the standard operating procedures and policies when delegated rulemaking authority and the Oneida Law Office performs preliminary review *[see 106.4-4]*;
- Provide a recommendation that authorized agencies provide an additional special notice to affected parties when a proposed rule or amendments to a rule modify eligibility requirements for the Nation's programs *[see 106.6-2(a)(1)]*;
- Require additional public meetings to occur if substantial changes are made to the proposed rule after a public meeting *[see 106.6-6]*;
- Provide a time limitation for when an authorized agency shall submit a proposed rule for certification to the Legislative Operating Committee after the public comment period has expired *[see 106.7-1(a)]*;
- Clarify what requirements the Legislative Operating Committee must ensure are met before certification of the proposed rule *[see 106.7-2]*;

- Provide that after certification by the Legislative Operating Committee, the proposed rule must be adopted by the Oneida Business Committee, and clarify that the Oneida Business Committee shall adopt the rule before it may become effective *[see 106.8 and 106.9]*; and
- Require an authorized agency to conduct a review of each adopted rule every two (2) years after the rule is adopted *[see 106.12]*.

In accordance with the Legislative Procedures Act, public meetings on the proposed Law were held on June 26, 2017, and June 29, 2017. The public comment period closed on July 7, 2017. All comments received during the public comment period were reviewed and accepted by the Legislative Operating Committee on July 19, 2017. Any changes made based on those comments have been incorporated into this draft.

Requested Action

Approve the Resolution: Administrative Rulemaking Law Amendments

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____
Administrative Rulemaking 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 adopted the Administrative Rulemaking law ("the Law") through resolution BC-02-24-16-C; and
- WHEREAS,** the intent of the Law was to create a standardized process for how entities of the Nation may promulgate rules in furtherance of the responsibilities delegated to them to interpret, implement and/or enforce laws and policies of the Nation; and
- WHEREAS,** the amendments to the Law clarify that a rule developed pursuant to this Law shall not conflict or supersede a law, policy, rule, or resolution of the Nation; and
- WHEREAS,** the amendments to the Law provide an exemption to the administrative rulemaking process requirements, or grandfather clause, for those current and existing standard operating procedures and policies the authorized agency wishes to continue using so long as there are no substantive changes to the content of the standard operating procedures and policies when delegated rulemaking authority and the Oneida Law Office conducts a preliminary review of the materials for potential conflicts; and
- WHEREAS,** the amendments to the Law provide a recommendation that authorized agencies provide an additional special notice to affected parties when a proposed rule or amendments to a rule modify eligibility requirements for the Nation's programs; and
- WHEREAS,** the amendments require additional public meetings to be held on a proposed rule if substantial changes are made to the proposed rule after a public meeting, and also set a time limitation for when an authorized agency shall submit a proposed rule for certification to the Legislative Operating Committee after the public comment period has expired; and
- WHEREAS,** the amendments clarify what requirements the Legislative Operating Committee must ensure are met before certification of the proposed rule, require the Oneida Business Committee to adopt all proposed rules, and clarify that rule shall not become effective until after adoption by the Oneida Business Committee; and
- WHEREAS,** the amendments to the Law require an authorized agency to conduct a review of each adopted rule every two (2) years after the rule is adopted; and

52 **WHEREAS,** public meetings on the proposed law were held on June 26, 2017, and June 29, 2017, in
53 accordance with the Legislative Procedures Act, and the public comments were received,
54 reviewed and accepted by the Legislative Operating Committee on July 19, 2017.
55

56 **NOW THEREFORE BE IT RESOLVED,** that the amendments to the Administrative Rulemaking law are
57 hereby adopted and effective immediately.
58



Statement of Effect
Administrative Rulemaking Law Amendments

Summary

This resolution adopts amendments to the Administrative Rulemaking law.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

This resolution adopts amendments to the Administrative Rulemaking law which will:

- 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 *[see 106.4-1(b)]*;
- Provide an exemption to the administrative rulemaking process requirements, or grandfather clause, for those current and existing standard operating procedures and policies the authorized agency wishes to continue using without any substantive changes to the content of the standard operating procedures and policies when delegated rulemaking authority, noting that the Oneida Law Office shall conduct a preliminary review prior to becoming a rule *[see 106.4-4]*;
- Provide a recommendation that authorized agencies provide an additional special notice to affected parties when a proposed rule or amendments to a rule modify eligibility requirements for the Nation's programs *[see 106.6-2(a)(1)]*;
- Require additional public meetings to occur if substantial changes are made to the proposed rule after a public meeting *[see 106.6-6]*;
- Provide a time limitation for when an authorized agency shall submit a proposed rule for certification to the Legislative Operating Committee after the public comment period has expired *[see 106.7-1(a)]*;
- Clarify what requirements the Legislative Operating Committee must ensure are met before certification of the proposed rule *[see 106.7-2]*;
- Provide that after certification by the Legislative Operating Committee, the proposed rule must be adopted by the Oneida Business Committee, and clarify that the Oneida Business Committee shall adopt the rule before it may become effective *[see 106.8 and 106.9]*; and
- Require an authorized agency to conduct a review of each adopted rule every two (2) years after the rule is adopted *[see 106.12]*.

In accordance with the Legislative Procedures Act, public meetings on the proposed Law were held on October 31, 2013, February 27, 2014, June 26, 2017, and June 29, 2017. The most recent public comment

period closed on July 7, 2017. All comments received during the most recent public comment period were reviewed and accepted by the Legislative Operating Committee on July 19, 2017. Any changes made based on those comments have been incorporated into this draft.

Conclusion

Adoption of this resolution would not conflict with any of the Nation's laws.



Administrative Rulemaking Amendments Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: LRO	SPONSOR: Brandon Stevens	DRAFTER: Clorissa N. Santiago	ANALYST: Maureen Perkins
Intent of the Amendments	Revise the law to clarify timelines and when a rule becomes effective, and to make additional revisions to update the law.		
Purpose	The purpose of this law is to provide a process for the adoption and amendment of administrative rules <i>[see 106.1-1]</i> .		
Affected Entities	Legislative Operating Committee (LOC) and Legislative Reference Office (LRO) are given duties under this law; rules become effective upon Oneida Business Committee (OBC) adoption, all of the Nation's boards, committees, commissions, departments and officials with "Rulemaking Authority" are affected when developing/amending rules.		
Affected Legislation	The Legislative Procedures Act (LPA) identifies a similar process for the promulgation and adoption of the Nation's laws.		
Enforcement/Due Process	Judicial review of rules authorizes the Judiciary to issue declaratory judgments to determine the validity of a Rule in the same way it does for laws, as provided in 801.5-2(e) of the Judiciary Law. Rules can be challenged if they are not promulgated in accordance with this law.		
Public Meeting	A public meeting has not been held.		

SECTION 2. LEGISLATIVE DEVELOPMENT

A. The current amendments to the Administrative Rulemaking law include the following:

- Additional definitions *[see 106.3-1]*:
 - Program was added to the definition of entity *[see (d)]*.
 - Nation *[see (e)]*.
 - Officer *[see (f)]*.
 - Oneida Register was updated *[see (g)]*.
 - Statement of effect *[see (k)]*.
- An exemption section was added regarding the current SOPs, policies or plans of authorized agencies that are granted rule making authority. These agencies are not required to submit these current SOPs, policies or plans through the rulemaking process if there are no changes and if a preliminary review reveals no conflict between the SOP, policy or plan with any law, policy, rule or resolution of the Nation *[see 106.4-4]*.
- Additional detail was included to ensure that rules do not conflict or supersede a law of the Nation or a resolution passed by the OBC or the GTC *[see 106.4-1(b)] and [see 106.5-2(b)] and [see 106.7-2(c)]*.
- New detail was added regarding the **recommendation, but not a requirement**, that **additional public outreach** of the public meeting held by the authorized agency, at the agency's discretion, to reach individuals **whose exiting eligibility** in a program or matter governed by a proposed rule **is substantially affected** by the proposed rule *[see 106.6-2(a)(1)]*.

- A time limitation of not less than five (5) minutes for oral comments at public meetings was added and shall be enforced at the discretion of the presiding representative *[see 106.6-2(e)]*.
 - The authorized agency may extend the public comment period by posting an amended public meeting notice before the close of the original comment period *[see 106.6-3]*.
 - The Oneida Business Committee process for denial of a proposed rule has changed. The OBC may now adopt a proposed rule or send it back to the authorized agency for requested revisions *[see 106.8]*.
 - A time limit of six (6) months was added for the submission of the rule certification by the LOC after the public meeting period has expired unless there is good cause to go outside this established time limit *[see 106.7-1(a)]*.
 - Clarification was added that a rule becomes effective upon OBC adoption *[see 106.8-2]*.
 - The effective date of a rule has changed from the LOC written certification of a proposed rule to the OBC adoption of the proposed rule *[see 106.9]*.
 - The authorized agency shall create the administrative record and the LRO shall maintain the record *[see 106.11-2]*.
 - The public meeting sign in sheet was added to administrative record *[see 106.11-1(e)]*.
 - A review process has been implemented for authorized agencies to review each adopted rule at least once every two years to ensure the rule is still effective and continues to serve the intended purpose. The OBC may not compel the authorized agency to amend a rule *[see 106.12]*.
- B. There were not any alternatives considered that were not legislative.
- C. The benefits expected from the proposed amendments include a process that allows the OBC to work with the authorized agency to draft rules that reflect the OBC's direction and the clarification of timelines and the process for authorized agencies.

SECTION 3. CONSULTATION

- A. The Oneida Law Office was consulted regarding the proposed amendments to this law. The proposed amendments clarify and simplify the process contained in the law. Proposed amendments reflect the LOC's and the LRO's experience with the law.
- B. No other tribal laws have been researched or other organizations been consulted because the proposed amendments merely clarify the process.

SECTION 4. PROCESS

- A. The correct legislative process has been followed.
- B. The Administrative Rulemaking amendments were added to the Active Files List on 3/15/17 as a high priority with Brandon Stevens as the sponsor. A public meeting was held July 20, 2017. The LOC met on July 19, 2017 to consider the public comments received and directed changes are included in the current draft.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. This law establishes the process and requirements for adopting rules in relation to the Nation's laws. Authorized agencies are granted authority through a law to develop rules in relation to a specified aspect of the law. The law contains detail related to the process of developing rules.
- B. The proposed amendments clarify and simplify the rulemaking process.

SECTION 6. INTENT

- The purpose of the law is clearly stated to provide a process for the adoption and amendment of administrative rules.
- It is clear that the legislation applies to agencies authorized by law to develop administrative rules, the OBC, the LOC, and the LRO.

SECTION 7. EFFECT ON EXISTING LEGISLATION

- A. No other laws are impacted or conflict with the amendments to this legislation.

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

- A. No existing rights, benefits or privileges are impacted by these amendments.
- B. Due process is addressed by Judicial review of a rule and also the standard of review for actions taken by authorized agencies sections of the law [*see 106.13 and 106.14*].

SECTION 9. ENFORCEMENT

- A. Rules promulgated by authorized agencies under this law have the same force and effect as law; therefore the rules are enforced according to how the rules are drafted by the authorized agency.
- B. The law is currently in place; the amendments do not affect any human resources to implement the changes.

SECTION 10. ACCOUNTABILITY

- A. The agency authorized to develop the rule will be accountable for the implementation and operation of the rule.
- B. There are no required reports; however the agency is responsible for reviewing all rules every two years to ensure the rule still serves the intended purpose and if any amendments are necessary [*see 106.12*].

Title 1. Government and Finances – Chapter 106**ADMINISTRATIVE RULEMAKING****Thotih<4& lutyani<slu-n>she>***they are the leaders, they are making the laws, policies and rules*

106.1. ___ Purpose and Policy	106.8. 9. Effective Date of Rules
106.2. ___ Adoption, Amendment, Repeal	106.9. 10. Emergency Rules
106.3. ___ Definitions	
106.4. ___ General	106.11. <u>Creating and Maintaining an Administrative Record</u>
106.5. ___ Preparation of Proposed Rules	106.12. <u>Review by the Authorized Agency</u>
106.6. ___ Public Comment Period on Proposed Rules	106.13. <u>Judicial Review of a Rule</u>
106.7. Oneida, ___ Legislative Operating Committee Certification of <u>Procedural Compliance and Business Committee Review</u>	106.14. <u>Standard of Review for Actions Taken by Authorized Agency</u>
106.8. <u>Oneida Business Committee Adoption</u>	

106.1. Purpose and Policy

106.1-1. *Purpose.* The purpose of this ~~Law~~law is to provide a process for the adoption and amendment of administrative ~~Rules~~rules.

106.1-2. *Policy.* It is the policy of the ~~Tribe~~Nation to ensure:

(a) ~~There~~ there is an efficient, effective and democratic process for enacting and revising administrative ~~Rules~~rules.

(b) ~~That Authorized Agencies~~rules, and that authorized agencies act in a responsible and consistent manner when enacting and revising ~~the administrative Rules~~rules.

106.2. Adoption, Amendment, Repeal

106.2-1. This ~~Law~~law was adopted by the Oneida Business Committee by resolution ~~BC-02-24-16-C-~~ and amended by BC.

106.2-2. This ~~Law~~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~~law or the application thereof to any person or circumstances be held as invalid, such invalidity ~~does~~shall not affect other provisions of this ~~Law~~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~~law and a provision of another law, the provisions of this ~~Law~~law shall control.

106.2-5. This ~~Law~~law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~Nation.

106.3. Definitions

106.3-1. This ~~Section governs~~section shall govern the definitions of words and phrases used within this ~~Law~~law. All words not defined herein ~~are to~~shall be used in their ordinary and everyday ~~use~~sense.

(a) “Authorized ~~Agency~~agency” means any board, committee, commission, department, program or officer of the ~~Tribe~~Nation that has been granted ~~Rulemaking Authority~~rulemaking authority.

(b) “Business ~~Day~~day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the ~~Tribe~~Nation.

(c) “Financial ~~Analysis~~analysis” means an estimate of the total fiscal year financial effects associated with a proposed ~~Rule~~rule prepared by the ~~Authorized~~

Draft 3 for OBC Consideration
2017 08 09

Agency~~authorized agency~~ proposing the Rule~~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~~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 Oneida Business Committee or elected by the majority of the Tribe’s~~Nation’s~~ eligible voters, and also any department or program of the Tribe~~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 ~~free legal periodical published on the Tribe’s website by the~~ Legislative Operating ~~Committee which contains~~ Committee’s publication on the Nation’s website containing, at a minimum, agency Rules~~rules~~, proposed legislation and notices, and ~~either the Oneida Code of Laws or directions to obtain free access to the Oneida Code of Laws.~~

(~~h~~) “Rule” means a set of requirements enacted by an ~~Authorized Agency~~authorized agency in order to implement, interpret and/or enforce a law of the Tribe~~Nation~~, which ~~includes~~may include citation fee and penalty schedules.

(~~g~~) “Rulemaking Authority~~authority~~” means the delegation of authority to ~~Authorized Agencies~~authorized agencies found in the Tribe’s~~Nation’s~~ laws, other than this Law~~law~~, which allows ~~Authorized Agencies~~authorized agencies to implement, interpret and/or enforce a law of the Tribe~~Nation~~.

(~~h~~) “Statement of Effect” means ~~a legislative and legal analysis which explains the effects that adopting a Rule would have on the Tribe.~~

(~~i~~) “Tribe” means the ~~Oneida Tribe of Indians of Wisconsin.~~

~~106.4. General~~

~~“Standard 106.4 1. Administrative Rulemaking. Only Authorized Agencies may promulgate Rules; this Law does not confer Rulemaking Authority. Authorized Agencies shall adhere to the Rulemaking procedures as provided in this Law. Authorized Agencies may promulgate Rules interpreting the provisions of any law enforced or administered by it; provided that, a Rule may not exceed the Rulemaking Authority granted under the law for which the Rule is being promulgated.~~

(j) (~~a~~) ~~This Law does not apply to standard operating procedures, which for the purposes of this section are”~~ 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.

Draft 3 for OBC Consideration
2017 08 09

106.4. General

106.4-1. Administrative Rulemaking. ~~(b)~~ 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~~law~~ have the same force and effect as the law which delegated the ~~Authorized Agency Rulemaking Authority and must~~ authorized agency rulemaking authority and shall be followed by both the general public and the ~~Authorized Agency~~ authorized agency promulgating the ~~Rule~~ 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. ~~Authorized Agency~~ Solicitation of Comment on General Subject Matter. For the purpose of soliciting public ~~comment, an Authorized Agency~~ comments, ideas and opinions, an authorized agency may hold a public meeting on the general subject matter of a possible or anticipated ~~Rule~~ rule before preparing a proposed ~~Rule~~ rule. However, a rule. A public meeting under this subsection does not satisfy the public comment period requirements of ~~Section~~ section 106.6 hereof with respect to promulgation of a specific proposed ~~Rule~~ rule.

106.4-3. Substantial Compliance. Any ~~Rule~~ rule hereafter adopted is valid only if adopted in substantial compliance with this Law, ~~however~~ law. Rules already in effect at the time of this Law's~~law's~~ adoption remain in effect unless directed to be updated based on this Law's~~law's~~ requirements by the Oneida Business Committee. Any amendments made to ~~Rules~~ rules already in effect ~~must~~ shall follow the requirements of this Law~~law~~.

106.4-4. Exemption to Administrative Rulemaking Requirements. When an authorized agency is delegated rulemaking authority through a new law or an amendment to an existing law, any standard operating procedures, policies, or plans the authorized agency is currently using and wishes to continue using as a rule shall be presented to the Legislative Operating Committee for acknowledgement and publication as a rule on the Oneida Register as long as the following conditions are met:

(a) The standard operating procedure, policy or plan shall have no substantive change to its content; and

(b) A preliminary review by the Oneida Law Office shall reveal no conflict between the standard operating procedure, policy or plan and any law, policy, rule, or resolution of the Nation.

(c) The existing standard operating procedure, policy, or plan shall be formatted into the administrative rulemaking template approved by the Legislative Operating Committee.

Draft 3 for OBC Consideration
2017 08 09

106.5. Preparation of Proposed Rules

106.5-1. *Form and Style.* The Legislative Operating Committee shall create a template for ~~Rules~~rules with which ~~Authorized Agencies~~authorized agencies shall comply; the ~~said~~ template is not subject to the procedural requirements of this ~~Law~~law.

(a) At a minimum, all ~~Rules must~~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 ~~must~~shall be in a logical manner.

106.5-2. *Summary Report.* The ~~Authorized Agency~~authorized agency shall prepare a summary report regarding each proposed ~~Rule, which must~~rule. The summary report shall be attached to the proposed ~~Rule~~rule when presented for public comment, and included in the administrative record for ~~approval through~~certification by the ~~Oneida~~-Legislative Operating Committee and ultimately for adoption by the Oneida Business Committee. The summary report ~~must~~shall include the following:

- (a) the name of the proposed ~~Rule~~rule;
- (b) a reference to the law that the proposed ~~Rule~~rule interprets, along with a list of any other related laws ~~or~~, rules, or resolutions that may be affected by the proposed ~~Rule~~rule;
- (c) a brief summary of the proposed ~~Rule and~~rule;
- (d) any changes made to the proposed ~~Rule~~rule based on the public comment period required by ~~Section~~section 106.6 ~~hereof~~, if applicable;
- (~~e~~) a ~~Statement~~statement of ~~Effect~~effect for the ~~Rule which~~rule prepared by the Legislative Reference Office ~~shall prepare~~ upon request by the ~~Authorized Agency~~authorized agency; and
- (~~e~~) the ~~Financial Analysis, for which~~financial analysis.

(1) The authorized agency shall prepare the ~~Authorized Agency~~financial analysis. The authorized agency shall send a written request to each ~~Entity~~entity that may be affected by the proposed ~~Rule~~rule soliciting information on how the proposed ~~Rule~~rule would financially affect the ~~Entity; each Entity's~~entity. Each entity's response indicating its financial affects ~~must~~shall be included in the ~~Financial Analysis~~financial analysis.

(~~1~~2) If an ~~Authorized Agency~~authorized agency does not receive a response from one (1) or more ~~Entities~~entities regarding its request for the ~~Entities'~~ financial effects of the ~~Rule~~rule on the entity within ten (10) business days of the date of the request, ~~it~~the authorized agency may submit a ~~Financial Analysis~~financial analysis noting which ~~Entities~~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, except a Rule promulgated under the emergency Rules exemptions under Section 106.9, must~~rule shall be preceded by a public

Draft 3 for OBC Consideration
2017 08 09

comment period, which ~~must~~shall include a public meeting.

(a) 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.

(b) Nothing in this Section~~section~~ prohibits or restricts the holding of any other type of community meeting which may be used to gather input on ~~Rules~~rules.

106.6-2. *Public Meetings.* ~~When a~~A public meeting on a proposed ~~Rule is scheduled by an Authorized Agency, it must rule shall~~ be held in accordance with the following requirements.

(a) Notice. The ~~Authorized Agency~~authorized agency shall set a date for the public meeting and have ~~the~~a public meeting notice published in the Kalihwisaks and on the Oneida Register not less than ten (10) business days prior to the meeting.

~~(b) The notice must include:~~

~~(1)~~(1) Special Notice. It is recommended, but not required, that authorized agencies provide an additional special notice to affected parties when a proposed rule or amendments to a rule modify eligibility requirements for the Nation's programs. The extent and form of any such notice is within the authorized agency's discretion to determine.

(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 required under Section 106.5 2 and and a statement that hard copies of the materials will be available with the Entity;

~~(2) the date, time, and place of the scheduled public meeting; authorized agency;~~
and

(3) the name, address, phone number, and other appropriate information to submit written comments on the Rule~~rule~~ and the time period during which the Authorized Agency~~authorized agency~~ shall accept written comments.

(c) The ~~Authorized Agency~~authorized agency shall hold a public meeting at the date, time and place designated in the meeting notice.

(d) Presiding Representative. The ~~Authorized Agency~~authorized agency holding the public meeting shall have a representative to preside at the meeting who shall briefly describe the ~~Rule~~rule which is the subject of the public meeting and the nature of the ~~Rule's~~rule's requirements, and then open the meeting for comments.

(1) The Authorized Agency's~~authorized agency's~~ presiding representative is not required to comment or respond to comments at the meeting, but may, at his/ or her discretion, offer clarity.

(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~~authorized agency~~ shall create and bring to the public meeting a sign-in sheet; persons. Persons attending the public meeting shall register at the meeting by signing the sign-in sheet.

~~(fg)~~(g) The ~~Authorized Agency~~authorized agency shall audio record the public meeting and persons who provide oral comments shall state their name for the record.

Draft 3 for OBC Consideration
2017 08 09

(gh) The ~~Authorized Agency~~ 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, ~~provided that, the Authorized Agency may extend the comment period as it deems appropriate by posting an amended Notice of Public Meeting based on the notice requirements found in Section 106.6-2(b) at any time prior to the close of the original public comment period which identifies the extended comment period ending date.~~

~~106.6-3. Public Comments. The Authorized Agency~~ 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.

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~~ 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. ~~Oneida~~ Legislative Operating Committee Certification ~~of Procedural Compliance and Business Committee Review~~

106.7-1. Submission of Rule Certification Materials. ~~After a public meeting is held and the public comment period has expired, the Authorized Agency and the authorized agency has considered all public comments received, the authorized agency shall submit the proposed Rule rule and the all items it must contribute for contained in the administrative record pursuant to Section described in section 106.4011 to the Legislative Operating Committee, which is.~~

(a) The authorized agency shall submit the rule for certification by the Legislative Operating Committee within six (6) months after the public comment period has expired, unless the Legislative Operating Committee determines there is good cause to go outside the time limits.

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~~ rule complies with the procedural requirements contained in this ~~Law~~ 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.

~~106.7-2. 3. Rule Certification.~~ Upon receipt of a complete rule certification submission, ~~as required by this Section,~~ the Legislative Operating Committee shall take one (1) of the following actions:

Draft 3 for OBC Consideration
2017 08 09

(a) *Certify the Rule.* If the Legislative Operating Committee ~~is able to certify that the Authorized Agency determines the authorized agency~~ has complied ~~herewith, it 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 items (b) and (c) of the Administrative Record under Section 106.10 received the administrative record to the Oneida Business Committee.

(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 ~~to the~~ once all requirements for certification have been met.

106.8. Oneida Business Committee ~~with a written certification that the requirements of this Law have been fulfilled, and shall publish the Rule on the Oneida Register; or~~ **Adoption**

~~(b) If the Legislative Operating Committee is not able to certify that the Authorized Agency has complied herewith, it shall return the proposed Rule to the Authorized Agency with specific feedback as to which procedural requirements were not fulfilled by the Authorized Agency.~~

~~106.7-3.~~ **106.8-1. Oneida Business Committee Consideration.** 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~~ consider the proposed rule, the administrative record, and the Legislative Operating Committee's certification of compliance. ~~If~~

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 ~~review~~ 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 Authorized Agency shall~~ rule. The Oneida Business Committee may request that the authorized agency work with the Oneida Business Committee to address any concerns.

Draft 3 for OBC Consideration
2017 08 09

~~(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.~~

106.9.

Draft 3 for OBC Consideration
2017 08 09

106.8-Effective Date of Rules

106.8-1. The ~~Authorized Agency~~ authorized agency shall determine a ~~Rule's~~ rule's effective date, provided that a ~~Rule~~ rule may not become effective until the ~~Legislative Operating Oneida Business~~ Committee ~~has provided~~ adopts the ~~Authorized Agency with the written certification required by Section~~ proposed rule.

106.7-2(a). A failure to publish an approved ~~Rule~~ rule on the Oneida Register by its effective date does not change the effective date of the ~~Rule~~ rule.

106.10.

106.9-Emergency Rules

106.9-1. *Emergency Promulgation of a Rule.* An ~~Authorized Agency~~ authorized agency may present the ~~Oneida~~ Legislative Operating Committee with a proposed emergency ~~Rule without a public comment period being held if it finds there is an~~ rule if the following conditions are met:

(a) An emergency situation exists that requires the enactment or amendment of a ~~Rule~~ rule for the immediate preservation of the public health, safety, or general welfare of the Reservation population; and ~~the~~

(b) The enactment or amendment is required sooner than would be possible under the normal rulemaking procedures.

106.10-2. Rulemaking process. The Authorized Agency *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 with reasoning to justify~~ rule;

(b) justification for the emergency promulgation of the rule; and ~~a~~

(c) the summary report, provided that.

(1) For the financial analysis contained in the summary report, the deadline for ~~Entities'~~ entities' submission of financial impacts pursuant to ~~Section~~ section

106.5-2(e)(1f) 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~~ 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~~ rule to the Oneida Business Committee.

~~106.9-2.~~ 10-4. Oneida Business Committee Adoption. If the proposed emergency ~~Rule~~ rule is forwarded to the Oneida Business Committee, the Oneida Business Committee shall review the proposed emergency ~~Rule~~ 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~~ 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~~ rule, provided that, if the Oneida Business Committee deems it necessary, it may make revisions to the emergency ~~Rule~~ rule.

Draft 3 for OBC Consideration
2017 08 09

(1) If the Oneida Business Committee makes revisions to the emergency ~~Rule~~rule that the ~~Authorized Agency~~authorized agency does not support, such concerns may be addressed when the ~~Authorized Agency~~authorized agency begins the process for enactment of the permanent ~~Rule~~rule.

~~106.9-3~~10-5. An emergency ~~Rule~~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, ~~with~~.

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~~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. ~~An emergency Rule will:~~

~~(a)~~106.10-7. Expiration of an Emergency Rule. An emergency rule will expire when:

(a) six (6) months have passed since the emergency ~~Rule~~rule went into effect and an emergency ~~Rule~~rule extension has not been approved; or

(b) ~~expire when~~ six (6) months have passed since the emergency ~~Rule~~rule extension went into effect; or

(c) ~~no longer be in effect when a Rule~~rule is permanently adopted in the emergency ~~Rule's~~rule's place before the emergency ~~Rule~~rule expires under (a) or (b).

~~106.9-4. As soon as possible after emergency adoption, and if~~10-8. Permanent Adoption of Emergency Rule. If permanent adoption of the emergency rule is desired, the ~~Authorized Agency~~authorized agency shall follow the ~~regular~~normal rulemaking procedures as provided under this ~~Law~~law to adopt the permanent ~~Rule~~rule. The authorized agency may start the permanent adoption process immediately after the emergency rule is adopted.

~~106.10-9-5~~. The Legislative Operating Committee shall publish the emergency ~~Rule~~rule on the Oneida Register.

~~106.10. Creating and Maintaining an~~

106.11. Administrative Record of Rules

~~106.10-11-1. Creation of an Administrative Record.~~ The ~~Legislative Reference Office, with information the Authorized Agencies shall provide,~~authorized agency shall create ~~and maintain a complete~~an administrative record of all proposed and adopted ~~Rules, which must rules.~~The administrative record shall include the following:

(a) A memorandum provided by the ~~Authorized Agency~~authorized agency containing the ~~Rule's~~rule's procedural timeline including the dates the requirements of this ~~Law~~law were fulfilled ~~by the Authorized Agency and any supporting documentation, which includes, but is not limited to;~~

~~(1) Drafts~~(b) The summary report required under section 106.5-2;

~~(c) Draft~~ of the ~~Rule~~proposed rule, and a draft of the rule considered for the required ~~Public Meeting~~public meeting;

~~(2d)~~ The ~~Public Meeting~~public meeting notice;

~~(3)~~(e) The public meeting sign-in sheet;

~~(f)~~ If the ~~Rule~~rule is being amended, redline drafts from the currently effective ~~Rule~~rule illustrating the proposed amendments;

~~(4g)~~ Minutes from the authorized agency's meeting during which the proposed ~~Rule~~rule

Draft 3 for OBC Consideration
2017 08 09

was considered as an agenda item, or, if the ~~Authorized Agency~~authorized agency is not a board, committee or commission, a memo from the ~~Entity's~~authorized agency's highest level of management approving the proposed ~~Rules; and~~rule;

~~(5) Any other supporting information that may be requested by the Legislative Reference Office;~~

~~(b) The summary report required under Section 106.5-2 provided by the Authorized Agency;~~

~~(e)(h)~~ A memorandum provided by the ~~Authorized Agency~~authorized agency containing the public comments that were received, both orally and written, and the ~~Authorized Agency's~~authorized agency's response to each comment; and

~~(d)~~ The effective dates of the original ~~Rules~~rule and any ~~Rule~~rule amendments subsequently made as established by the ~~Authorized Agency~~authorized agency; and

~~(j) 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. ~~106.10-2.~~ Prior to publishing approved ~~Rules~~rules on the Oneida Register ~~under either Section 106.7-3(f) or 106.9-5,~~ the Legislative Operating Committee shall create and/or update the administrative history on each ~~Rule~~rule which ~~must~~shall include the original effective date of the ~~Rule~~rule and the effective date of any amendments made to the ~~Rule~~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.

~~106.11.~~ Judicial Review of a Rule

~~106.11-13-1.~~ The ~~Judiciary~~Oneida Nation Trial Court may render a declaratory judgment to determine the validity of a ~~Rule~~rule in the same manner that the Judiciary may do so for a ~~Law~~law; as identified in ~~section 150.5-2(e) of the Nation's~~ Judiciary ~~Law. Provided that, no~~ Rulelaw. No rule may be contested based on non-compliance with the procedural requirements of this ~~Law~~law after one (1) year has elapsed from the effective date of the ~~Rule~~rule.

~~106.11-13-2.~~ Upon the ~~Authorized Agency's~~authorized agency's receipt of notice that an appeal has been filed regarding a ~~Rule~~rule of the said agency, the ~~Authorized Agency~~authorized agency that promulgated the ~~Rule~~rule shall request the ~~Administrative Record~~administrative record of

Draft 3 for OBC Consideration
2017 08 09

the ~~Rule~~rule created under ~~Section~~section 106.1011 from the Legislative Reference Office and shall submit the ~~said~~administrative record to the Oneida ~~Judiciary~~Nation Trial Court.

106.14.

~~106.12.~~ Standard of Review for Actions Taken by Authorized Agencies

106.1214-1. Any ~~Tribal body~~entity of the Nation hearing an appeal or contest of an action taken pursuant to ~~Rules~~rules created under ~~Authorized Agencies~~the authority delegated ~~authority to an~~authorized agencies and the requirements of this ~~Law~~law, upon consideration of the ~~Rule~~rule and the circumstances regarding the action taken may take any one (1) of the following actions:

- (a) Uphold the action taken;
- (b) Reverse or modify the action taken; ~~or~~
- (c) If at the second level of appeal, remand the matter for further consideration.

106.1214-2. When hearing an appeal or contest of an action ~~as described in this Section~~, the ~~Tribal~~hearing body shall recognize that the ~~Authorized Agency~~authorized agency is accepted by the ~~Tribe~~Nation as the subject matter expert in the given field and shall provide the ~~Authorized Agency~~authorized agency with deference by upholding the action unless it finds that the action:

- (a) Amounts to a violation of the ~~Tribe's~~Nation's Constitution;
- (b) Was in excess of the ~~Authorized Agency's Rulemaking Authority~~authorized agency's ~~rulemaking authority~~ or is otherwise unlawful;
- (c) Was clearly erroneous in view of the entire administrative and factual records; ~~or~~
- (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-~~

Title 1. Government and Finances – Chapter 106

ADMINISTRATIVE RULEMAKING

~~Thotih<4& lutyani<slu-n\$he>~~

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

Draft 3 for OBC Consideration
2017 08 09

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

Draft 3 for OBC Consideration
2017 08 09

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.

106.4-4. *Exemption to Administrative Rulemaking Requirements.* When an authorized agency is delegated rulemaking authority through a new law or an amendment to an existing law, any standard operating procedures, policies, or plans the authorized agency is currently using and wishes to continue using as a rule shall be presented to the Legislative Operating Committee for acknowledgement and publication as a rule on the Oneida Register as long as the following conditions are met:

- (a) The standard operating procedure, policy or plan shall have no substantive change to its content; and
- (b) A preliminary review by the Oneida Law Office shall reveal no conflict between the standard operating procedure, policy or plan and any law, policy, rule, or resolution of the Nation.
- (c) The existing standard operating procedure, policy, or plan shall be formatted into the administrative rulemaking template approved by the Legislative Operating Committee.

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.

Draft 3 for OBC Consideration
2017 08 09

(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.

(a) 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.

(b) 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.

(1) *Special Notice.* It is recommended, but not required, that authorized agencies provide an additional special notice to affected parties when a proposed rule or amendments to a rule modify eligibility requirements for the Nation's programs. The extent and form of any such notice is within the authorized agency's discretion to determine.

(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.

Draft 3 for OBC Consideration
2017 08 09

(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.

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.

(a) The authorized agency shall submit the rule for certification by the Legislative Operating Committee within six (6) months after the public comment period has expired, unless the Legislative Operating Committee determines there is good cause to go outside the time limits.

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:

Draft 3 for OBC Consideration
2017 08 09

(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.

(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.

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

Draft 3 for OBC Consideration
2017 08 09

(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 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

Draft 3 for OBC Consideration
2017 08 09

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) The public meeting sign-in sheet;
- (f) If the rule is being amended, redline drafts from the currently effective rule illustrating the proposed amendments;
- (g) 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 commission, a memo from the authorized agency's highest level of management approving the proposed rule;
- (h) 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
- (i) The effective dates of the original rule and any rule amendments subsequently made as established by the authorized agency; and
- (j) 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.

Draft 3 for OBC Consideration
2017 08 09

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;
- (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-

MEMORANDUM

DATE: July 27, 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 Administrative Rulemaking Amendments**

I. Estimated Fiscal Impact Summary

Law: Administrative Rulemaking Amendments		Draft 3
Implementing Agency	Legislative Operating Committee	
Estimated time to comply	Consistent with the Legislative Procedures Act (10 days)	
Estimated Impact	Current Fiscal Year	10 Year Estimate
Total Estimated Fiscal Impact	\$0	\$0
Revenue and cost considerations		
Uncertainties and Unknowns		

II. Background

A. Legislative History

This law was adopted by the Oneida Business Committee by resolution BC-2-24-16-C. A public meeting was held on the amendments on June 29, 2017.

B. Summary of Content

A summary of the amendments is as follows;

1. 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.

2. 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.
3. Require additional public meetings to occur if substantial changes are made to the proposed rule after a public meeting.
4. Clarify what requirements the Legislative Operating Committee must ensure are met before certification of the proposed rule.
5. 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.
6. Require an authorized agency to conduct a review of each adopted rule every two (2) years after the rule is adopted.

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 no apparent startup, personnel, office, or documentation costs associated with this legislation. The amendments will be implemented within 10 days in accordance with the Legislative Procedures Act (LPA).

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
August 2, 2017

Comprehensive Policy Governing Boards, Committees and Commissions Amendments

Submission Date: 9/17/14	Public Meetings: 1/18/13, 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.*

7/19/17 LOC: Motion by Jennifer Webster to accept the public meeting comments regarding the Comprehensive Policy Governing Boards, Committees and Commissions and defer to a work meeting; seconded by David P. Jordan. Motion carried unanimously.

7/19/17: Work Meeting held. Attendees include David P. Jordan, Brandon Stevens, Tani Thurner, Jen Falck, Clorissa Santiago, Danelle Wilson, Jennifer Webster

Next Steps:

- Accept the Public Meeting Comment memo
- Approve the adoption packet and forward to the Oneida Business Committee for consideration



HANDOUT

TO: Legislative Operating Committee (LOC)
FROM: Taniquelle J. Thurner, Legislative Reference Office Staff Attorney
DATE: August 2, 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

The LOC reviewed the level of process set out in the law and determined that it was appropriate to leave it in the law. No change was made based on this comment.

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

The LOC considered this comment and determined that since the law already identifies that the form is approved by the OBC, that there is no need to add the language in again. No change was made based on this comment.

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

The LOC is aware that this definition is not identical to the definition in the Conflict of Interest law. However, the meaning of the term is intended to be broader in this law than it is in the Conflict of Interest law, where a conflict of interest is defined narrowly to address the release of sensitive information. No change was made based on this comment.

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

The LOC considered this comment and determined that “of any individual” should be replaced with “of an applicant.”

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) position applied for; and
- ~~(5)~~ (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

The LOC considered this comment and decided not to add Social Security numbers as required information for all applications. Instead, the LOC determined that it would be more appropriate to make changes to 105.4-1(b) to clarify that applicants may be required to submit additional information not only demonstrating that the applicant meets any additional qualifications established in an entity's bylaws, but also additional information “as may be required for a background check”.

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

The LOC agreed with making this change.

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

The LOC discussed this provision and ultimately determined that the provision should remain as it is; that applications by mail only need to be postmarked by deadline date, even if they are actually received within 5 business days afterwards.

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

The LOC considered this comment and determined that the minimum advance notice should be extended from 30 days to 45 days, meaning that end-of-term vacancy notices would need to be posted at least 45 days prior to the end of the term, instead of 30 days.

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 re-posted, 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

The LOC agrees that entities should be notified when deadlines that could affect their membership are changed; and agreed with making the recommended change as proposed above.

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

The LOC believes the current language is sufficient to address the obligations of Oneida Business Committee members. No change was made based on this comment.

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

The LOC considered and discussed this concern, ultimately deciding that the other provisions in the law – which require OBC approval for all bylaws amendments, and which permit members to remain on an entity for the remainder of his or her term even if the qualifications requirements change – provide sufficient protection for the concern identified by the commenter.

No change was made based on this comment.

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

After considering this comment, the LOC determined that placing a mandatory associates/bachelors degree requirement on any entity could lead to there being fewer qualified applicants, which could make it more difficult to fill vacant positions on entities.

The LOC also determined that each entity is individually qualified to determine the appropriate minimum education requirements for serving on that entity.

No change was made based on this comment.

Comment 13 – Bylaws language addressing minutes

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

The LOC considered this comment and determined that additional language could be added into 105.8-4 to reiterate that stipends can be withheld if an entity does not submit minutes as directed.

The following language was added to 105.8-4(d)(2):

“Failure to submit minutes to the Oneida Business Committee as required may result in the suspension of stipend payments to individual members, until the entity has attained compliance with such requirements.”

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.

No change is recommended based on this comment.

LOC Consideration

The LOC requested that a legal opinion be provided from the Oneida Law Office to gain additional clarity on this issue. The Law Office submitted a legal opinion on August 1, 2017; which concluded that:

“Unless an exemption from compliance is specifically written into a law, the Trust Enrollment Committee must comply with all laws of the Oneida Nation. Further, the Memorandum of Agreement cannot authorize exemptions from compliance with a law unless authority to make those exemptions is granted within the law itself.”

After reviewing and considering the legal opinion, the LOC determined no additional changes to the draft were necessary based on this comment.

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

The LOC considered this comment and determined that the minimum one-hour meeting requirement should be added back into the law. Both 105.12-2(a)(6)(A) and 105.12-2(a)(6)(B) were revised to clarify that there is a one-hour minimum meeting requirement and that members must be present for the entire meeting to qualify for the stipend.

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

The LOC considered this comment and recognized that the existing language would not be moot if a sanctions and penalties law is not adopted; because the current language is broad and allows for sanctions and penalties pursuant to *applicable law*. The LOC also determined that, because the goal is to establish one consistent set of sanctions and penalties; it would not be appropriate to permit entities to establish individual sanctions and penalties within their bylaws.

No change was made based on this comment.

Draft 21 (post Public Meeting comment review)
2017 08 02

Title 1. Government and Finances - Chapter 105
Governance of Boards, Committees and Commissions
Yolihwakwe'kú Kayanl'khsla? yethiya'tanú' nha tsi? ka'yá lonatlihu'tú'

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. Creation and 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-9-27-06-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.

- 56 (a) “Application” means the form by which a person seeks to be appointed to fill a
57 vacancy or considered as a candidate for an election to serve on an entity.
58 (b) “Appointment” means a person who is selected and approved by the Oneida Business
59 Committee to serve on an entity.
60 (c) “Business day” means Monday through Friday from 8:00 a.m. - 4:30 p.m., excluding
61 holidays recognized by the Nation.
62 (d) “Chairperson” means the current elected chairperson of the Nation or his or her
63 designee.
64 (e) “Conference” means any seminar, meeting, or other assembly of persons which is not
65 an assembly of the entity.
66 (f) “Confidential information” means all information or data, whether printed, written,
67 electronic or oral, concerning business or customers of the Nation, disclosed to, acquired
68 by, or generated by members in confidence at any time during their elected or appointed
69 term or during their employment; and includes, but is not limited to, the resources of the
70 Nation, its enterprises, programs, business interests, financial information, trade secrets
71 and any other information that could be used against the Nation or those duly authorized
72 to represent its interests.
73 (g) “Conflict of interest” means:
74 (1) any interest, real or apparent, whether it be personal, financial, political, or
75 otherwise, in which a member, or their immediate family, friends or associates, or
76 any other person with whom they have contact, have that conflicts with any right
77 of the Oneida Nation to property, information, or any other right to own and
78 operate activities free from undisclosed competition or other violation of such
79 rights of the Oneida Nation,
80 (2) any financial or familial interest that a member or their immediate family may
81 have in any transaction between the Oneida Nation and an outside party, and
82 (3) any other situation that has the potential to corrupt an member’s motivation or
83 decision making, because of an actual, or apparent divergence between the
84 member’s self-interests, and the best interests of the entity or Nation. Conflicts of
85 interest may include, but are not limited to, personal bias, financial interests of the
86 member’s or the member’s immediate family; or responsibilities to other entities
87 or areas of the Nation.
88 (h) “Descendant” means a person who is registered with the Oneida Enrollment
89 Department as a lineal descendant of enrolled members of the Nation.
90 (i) “Entity” means a board, committee or commission of the Nation created by the
91 General Tribal Council or the Oneida Business Committee with members appointed by
92 the Oneida Business Committee or elected by the Nation’s membership.
93 (j) “Immediate family” means the husband, wife, mother, father, step mother, step father,
94 son, daughter, step son, step daughter, brother, sister, step brother, step sister grandparent,
95 grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law,
96 sister-in-law.
97 (k) “Interim position” means a position on an entity that is created by a vacancy and that
98 may be filled only for the remainder of a term.
99 (l) “Member” means any person appointed or elected to serve as a member of an entity.
100 (m) “Nation” means the Oneida Nation.
101 (n) “Official media outlets” means all media outlets identified in BC Resolution 03-22-
102 17-B which include the Nation’s website and the Kalihwisaks.
103 (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~~ an applicant 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; and

(5) position applied for.

(b) Along with the application, applicants may also be required to submit additional information as may be required for a background check, and/or 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.

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:

- (a) the date the applicant's application was filed;
- (b) whether the applicant meets the eligibility requirements and will be considered for the election/appointment;
- (c) a note that further information may be requested by contacting the party sending the notice and providing such contact information;
- (d) the applicable duties for the position sought by the applicant; and
- (e) 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)~~ forty-five (45) 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. 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. ~~If~~ When 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; and

(c) The Secretary shall promptly notify the entity that notice of the vacancy has been reposted, including any changed deadlines or timelines that apply.

~~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 become effective upon approval by the Oneida Business Committee; except where General Tribal Council approval is required instead. Bylaws 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 105.12-2(a)(7), 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.

(4) *Additional Officers and Duties*. Additional sub-articles shall specifically list duties and limitations for every officer position identified in subsection (1).

(5) *How Chosen*. Bylaws shall specifically state how a member of the entity will be chosen to occupy an officer’s position.

(6) *Budgetary and Travel Sign-Off Authority*. The Purchasing Department shall confirm each position within the entity that has been designated as having sign-off authority. Bylaws shall identify:

(A) The entity’s varying levels of budgetary sign-off authority, including which members are authorized to sign-off at each level, and

(B) Which members have the authority to sign off on travel on behalf of the entity.

(7) *Personnel*. The entity’s authority for hiring personnel, if any, and the duties of such personnel.

(c) “Article III. Meetings” shall consist of the following; provided that, all meetings shall be noticed and called in accordance with the Open Records and Open Meetings law:

(1) *Regular Meetings*. The number of regular meetings the entity shall hold each year, including when and where these meetings shall be held; and how the entity shall provide notice of the meeting, agenda, documents, and minutes. The number of regular meetings identified in the bylaws may not exceed the entity’s budget for stipends.

(2) *Special Meetings*. How the entity may call special meetings and how the entity shall provide notice of special meetings. Special meetings are not scheduled regular meetings, but also do not rise to the level of emergency justification required for emergency meetings.

(3) *Emergency Meetings*. Emergency meetings are meetings that need to be called sooner than a meeting could be called if the twenty-four (24) hour notice requirement, as set out in the Open Records and Open Meetings law, is followed. Emergency meetings may only be held when necessary to maintain order and/or protect public health and safety. Bylaws shall:

(A) State how the entity may call emergency meetings and how the entity shall notice emergency meetings, and

(B) Include the following provision:

“Within seventy-two (72) hours after an emergency meeting, [the entity] shall provide the Secretary with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular or special meeting.”

(4) *Quorum*. -How many members create a quorum. At a minimum, a majority of the entity’s current members shall be required to create a quorum.

(5) *Order of Business*. - How the agenda will be set.

(6) *Voting*. Voting requirements, including the requisite percentages for passing

different items and when, if at all, the entity's chairperson may vote.

(d) "Article IV.- Reporting" shall consist of the following:

(1) *Agenda Items.* -Agenda items shall be maintained in an identified and consistent format.

(2) *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. Failure to submit minutes to the Oneida Business Committee as required may result in the suspension of stipend payments to individual members, until the entity has attained compliance with such requirements.

(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.

(v) *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.

(vi) *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.

(vii) *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 expensed 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; Prior to implementation, amendments to bylaws and shall be approved by the Oneida Business Committee, or by the General Tribal Council, when applicable. ~~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 and Standard Operating Procedures

105.10-1. Minutes.

(a) Entities shall submit all minutes to the Secretary within a reasonable time after approval by the entity.

(b) ~~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.

(c) ~~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.

105.10-2. Standard Operating Procedures. All standard operating procedures established by an entity shall be submitted to the Secretary's Office, where they shall be kept on file.

105.11. Creation and Dissolution of Entities

105.11-1. *Creation of Entities.* Entities shall be created and delegated authority by law. Provided that, an entity may be created and delegated authority through an emergency resolution adopted by the Oneida Business Committee and/or General Tribal Council, for a period not to exceed six (6) months; with a one-time opportunity for an extension of up to six (6) additional months.

105.11-2. *Dissolution of Entities.* Entities may be dissolved according to this section; however, additional specific directions may be included in an entity's bylaws.

(a) 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.

(b) 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.

(c) 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 earn stipends, in amounts established by Oneida Business Committee resolution, for the following activities:

(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.

(5) For conducting hearings administered by the entity, with stipends earned 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.

(6) Each member's attendance at entity meetings, in accordance with the following:

(A) *Appointed Entities*. Members serving on appointed entities may be paid a meeting stipend no more than once per month for attending a meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity~~-, provided that the meeting lasts for at least one (1) hour and in order to qualify for the stipend, in order to qualify for the stipend,~~ the member shall be present for the entire meeting.

(i) Should an entity require more than one (1) meeting per month and seek stipends for the additional meetings(s), 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).

(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~~-, provided that the meeting lasts for at least one (1) hour and in order to qualify for the stipend, and the member shall be present for the entire meeting. In order to qualify for the stipend, the member shall be present for the entire meeting.~~

(7) Each member's attendance at conferences and trainings, in accordance with the following:

(A) A member is eligible for a stipend for each half-day or full day the member is present at the conference or training, when:

(i) attendance at the conference or training is required by law, bylaws or Oneida Business Committee or General Tribal Council resolution, or

(ii) 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

680 from the conference or training.

681 (b) Members may earn additional stipends for activities not identified by Oneida Business
682 Committee resolution, provided that such stipends are identified in the entity's bylaws, as
683 approved by the Oneida Business Committee.

684 105.12-3. All members of entities are eligible for reimbursement for normal business expenses
685 naturally related to membership in the entity; including but not limited to, reimbursement for
686 travel and per diem costs in accordance with the Oneida Travel and Expense Policy to offset
687 members' costs for attending a conference or training, in accordance with 105.12-2(a)(7).

688 105.12-4. Task force, ad hoc committee and subcommittee members are not eligible for stipends
689 unless a specific exception is made by the Oneida Business Committee or the Oneida General
690 Tribal Council.

691
692 **105.13. Use of the Nation's Assets**

693 105.13-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the
694 Nation. The Nation shall reflect such accounts on its books in accordance with the Generally
695 Accepted Accounting Principles.

696 105.13-2. Each member shall comply with the system of internal accounting controls sufficient
697 to provide assurances that:

698 (a) all transactions are executed in accordance with procurement manual rules developed
699 by the Purchasing Department as required in the laws and rules governing budget
700 management and control; and

701 (b) access to assets is permitted only in accordance with authorization identified in the
702 procurement manual rules; and

703 (c) all transactions are recorded to permit preparation of financial statements in
704 conformity with the Generally Accepted Accounting Principles or other applicable
705 criteria.

706 105.13-3. Members shall immediately report to the internal audit staff any evidence of
707 noncompliance with any law or rule regarding the use of the Nation's assets. If the internal audit
708 staff finds evidence of noncompliance, they shall notify the Oneida Law Office. The Oneida
709 Business Committee and/or the Oneida Law Office shall then make a determination of further
710 action to be taken, if any.

711 105.13-4. Entities shall manage all records in accordance with the Open Records and Open
712 Meetings law.

713 (a) When a member is no longer serving on the entity, any official entity records
714 possessed by the member shall be provided back to the entity.

715
716 **105.14. Conflicts of Interest and Other Ethical Requirements; Adherence to Oneida Laws**

717 105.14-1. Members are at all times subject to the ethical requirements identified in the Code of
718 Ethics and the Conflict of Interest law.

719 105.14-2. Members are subject to, and shall follow, all applicable laws, policies and rules of the
720 Nation.

721 105.14-3. Each entity shall educate its members about the requirements of this law, the Conflict
722 of Interest law and the Code of Ethics; as well as any other relevant and applicable laws, rules
723 and procedures.

724
725 **105.15. Enforcement and Penalties**

726 105.15-1. Members who violate the laws and policies of the Nation may be subject to sanctions
727 or other penalties, including termination of appointment and removal from office, pursuant to

728 applicable law.

729 105.15-2. Candidates for office, and members, shall be subject to sanctions and penalties for
730 violations of this law, in accordance with the following:

731 (a) Candidates for appointment or election found to be in violation of this law may be
732 disqualified from taking office.

733 (1) The Election Board is responsible for determining whether a candidate for an
734 elected position has violated this law in such a manner that disqualification from
735 office is warranted. However, prior to making such a determination, the Election
736 Board shall provide the candidate with reasonable notice and an opportunity to
737 respond to the claim(s).

738 (2) The Oneida Business Committee is responsible for determining whether a
739 candidate for appointment has violated this law such that disqualification from
740 office is warranted.

741 (b) Members found to be in violation of this law may be subject to sanctions and
742 penalties in accordance with laws of the Nation governing sanctions and penalties for
743 officials.

744 (1) Elected members may also be removed from office pursuant to the Nation's
745 laws governing removal of elected officials.

746 (2) The Oneida Business Committee may terminate the appointment of any
747 appointed member at any time, in accordance with 105.6-5.

748 105.15-3. *Exclusion.* Except as provided in 105.8-4(a)(4)(D)(ii), if a member no longer meets
749 the eligibility requirements for office, as identified in the entity's bylaws, Oneida laws, and/or
750 the Oneida Constitution; then the member shall be excluded from office, and his or her position
751 shall be declared vacant. Exclusion is not a form of punishment.

752 (a) When a member's eligibility is questioned, the Oneida Business Committee shall
753 determine if the member meets the specific eligibility requirements. The Oneida Business
754 Committee shall declare the member excluded when appropriate.

755 (b) Within two (2) business days after the Oneida Business Committee declares a
756 member excluded, the Secretary shall notify the excluded member of the Oneida
757 Business Committee's decision. If the seat is an elected position; the Secretary shall also
758 notify the excluded member of his or her right to appeal the exclusion to the Judiciary in
759 accordance with (c).

760 (1) *Appointed Officials.* After notifying an appointed official of his or her
761 exclusion, the Secretary shall promptly ensure that any administrative duties
762 related to the vacancy are completed; including but not limited to, removing the
763 former member's name from the list of current members, disabling the former
764 member's e-mail address, and re-posting the vacancy.

765 (2) *Elected Officials.* After notifying an elected official of his or her exclusion, the
766 Secretary shall ensure that any administrative duties related to the vacancy are
767 completed. Provided that, no administrative actions shall be performed until either
768 of the following occurs:

769 (A) The deadline for filing an appeal has passed and the former elected
770 member has not filed an appeal; or

771 (B) The Trial Court has issued a final ruling upholding the exclusion.

772 (c) *Elected member appeals.*

773 (1) Within five (5) business days after receiving notice of his or her exclusion; a
774 former elected member may appeal the Oneida Business Committee's decision to
775 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:

(1) if an individual entity's bylaws provide for a longer period of ineligibility; then that longer period shall apply; and

(2) termination or removal from one (1) entity shall not affect a member's concurrent service on any other entity; except that the member may not be reappointed or re-elected during the period of ineligibility.

(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.

End.

Adopted - BC-8-2-95-A

Amended - BC-5-14-97-F

Emergency Amendments - BC-03-06-01-A (expired)

Emergency Amendments - BC-04-12-06-JJ

Emergency Amendments - BC-11-12-09-C

Emergency Amendments Extension - BC-05-12-10-I (expired)

Amended - BC-9-27-06-E (permanent adoption of emergency amendments)

Amended - BC-09-22-10-C

Amended -



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: August 9, 2017
 RE: Governance of Boards, Committees and Commissions Amendments

Please find the following attached backup documentation for your consideration of the Governance of Boards, Committees and Commissions (formerly Comprehensive Policy Governing Boards, Committees and Commissions) amendments.

1. Resolution: Adoption of the Governance of Boards, Committees and Commissions Amendments
2. Statement of Effect: Adoption of the Governance of Boards, Committees and Commissions Amendments
3. Governance of Boards, Committees and Commissions Legislative Analysis
4. Governance of Boards, Committees and Commissions (Redline to Current)
5. Governance of Boards, Committees and Commissions (Clean draft)
6. Governance of Boards, Committees and Commissions Fiscal Impact Statement

Overview

This proposal updates the Comprehensive Policy Governing Boards, Committees and Commissions; re-titling the current policy as the Governance of Boards, Committees and Commissions law. Various changes were made to update the current requirements found in the law, including:

- Updating various requirements relating to the boards, committees and commissions of the Nation, including requirements for:
 - the appointment process;
 - the information required in entity bylaws, and
 - posting for vacant positions.
- Adding detailed reporting requirements for entities.
- Adding provisions allowing for a member to be excluded from an entity if s/he no longer meets the qualifications required for his or her office.
- Removing language that overlaps with requirements already established in the Code of Ethics and the Conflict of Interest law.

In accordance with the Legislative Procedures Act, public meetings were held on July 18, 2013, January 7, 2016, June 26, 2017, and June 29, 2017.

Requested Action

Approve the Resolution: Adoption of the Governance of Boards, Committees and Commissions Amendments

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____

Adoption of the Governance of Boards, Committees and Commissions 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 Nation Constitution by the Oneida General Tribal Council; and

WHEREAS, the Oneida Business Committee adopted the Comprehensive Policy Governing Boards, Committees and Commissions on August 2, 1995, and amended that policy by resolutions BC-5-14-97-F, BC-9-27-06-E, and BC-9-22-10-C; and

WHEREAS, this proposed law would re-title that policy as the Governance of Boards, Committees and Commissions Law; and

WHEREAS, the amendments update various requirements relating to the boards, committees and commissions of the Nation, including requirements relating to the appointment process; the information required in entity bylaws, and posting for vacant positions; and

WHEREAS, the amendments add detailed reporting requirements for entities; and

WHEREAS, the amendments add a provisions allowing for a member to be excluded from an entity if s/he no longer meets the qualifications required for his or her office; and

WHEREAS, the amendments remove language that overlaps with requirements already established in the Code of Ethics and the Conflict of Interest law; and

WHEREAS, public meetings regarding this law were held on July 18, 2013, January 7, 2016, June 26, 2017, and June 29, 2017 in accordance with the Legislative Procedures Act.

NOW THEREFORE BE IT RESOLVED, that the Governance of Boards, Committees and Commissions amendments are hereby adopted.

NOW THEREFORE BE IT FURTHER RESOLVED, that all boards, committees and commissions of the Nation shall submit updated bylaws for Oneida Business Committee approval by no later than ninety (90) days after the date this resolution is adopted.

NOW THEREFORE BE IT FINALLY RESOLVED, that, in accordance with section 105.12-2 of this amended law, members of boards, committees and commissions are eligible to earn stipends as identified in the following chart; provided that;

- any other stipend or stipend amount that is established within an entity's bylaws shall remain in effect for ninety (90) days following the adoption of this resolution; or until the Oneida Business Committee approves updated bylaws for the entity; whichever occurs sooner; and
- any other stipend or stipend amount that has been established by General Tribal Council resolution or directive for members of a particular entity shall remain in effect.

Activity	Who May Earn It	Stipend Amount
Administration of a rulemaking public meeting pursuant to the Administrative Rulemaking law	1 member per public meeting	\$25 per public meeting
Attendance at a hearing before the Oneida Judiciary directly involving the entity, where attendance is at the entity's discretion, as authorized by 105.12-2(a)(2)	1 member per hearing	\$25 per hearing
Attendance at a hearing before the Oneida Judiciary where member's attendance is required by official subpoena, as authorized by 105.12-2(a)(3)	Each member who is required to attend by official subpoena	\$25 per hearing
Attendance at an OBC meeting, or a meeting of an OBC standing committee, to represent the entity's business before that body, as authorized by 105.12-2(a)(4)	1 member per meeting, except where the entity directs more than 1 member to attend	\$25 per meeting
Conducting hearings administered by the entity, as identified in 105.12-2(a)(5).	Each member necessary to conduct the hearing.	\$50 per four-hour session
Meeting Stipends, as authorized by 105.12-2(a)(6)	All members	\$50
Attendance at a conference or training, as authorized by 105.12-2(a)(7)	All members authorized to attend	\$50 per half-day or \$100 per full-day



Statement of Effect

Adoption of the Governance of Boards, Committees and Commissions Amendments

Summary

This resolution adopts amendments to the Governance of Boards, Committees and Commissions law (formerly the Comprehensive Policy Governing Boards, Committees and Commissions). Amendments include:

- Updating various requirements relating to the boards, committees and commissions of the Nation, including requirements for:
 - the appointment process;
 - the information required in entity bylaws, and
 - posting for vacant positions.
- Adding detailed reporting requirements for entities.
- Adding provisions allowing for a member to be excluded from an entity if s/he no longer meets the qualifications required for his or her office.
- Removing language that overlaps with requirements already established in the Code of Ethics and the Conflict of Interest law.

By: Taniquelle Thurner, Staff Attorney

Analysis by the Legislative Reference Office

This resolution adopts amendments to the Governance of Boards, Committees and Commissions law (formerly the Comprehensive Policy Governing Boards, Committees and Commissions.)

Public meetings were held on July 18, 2013, January 7, 2016, June 26, 2017, and June 29, 2017 in accordance with the Legislative Procedures Act.

In accordance with the Legislative Procedures Act, the effective date of these amendments would be August 23, 2017, which would be ten (10) business days after the date the resolution is adopted.

The adopting resolution also requires all boards, committees and submissions to submit updated bylaws for Oneida Business Committee approval within 90 days after the resolution is adopted.

As required by section 105.12-2 of the amended law, the adopting resolution also establishes the amounts of stipends that may be paid to members of entities for performing various activities. However, a grace period is added, whereby members of any entity that has established stipend amounts within their bylaws, may continue to earn stipends in those amounts identified in their bylaws for up to 90 days or until their amended bylaws are approved, whichever happens first.

The resolution also creates an exemption – any different stipends or stipend amounts that have been approved by General Tribal Council resolution or directive for a particular entity, will remain unaffected.

Conclusion

Adoption of this resolution would not conflict with any of the Nation's laws.



Governance of Boards, Committees and Commissions Amendments Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: Former LOC	SPONSOR: Jennifer Webster	DRAFTER: Taniquelle Thurner	ANALYST: Candice E. Skenandore
Intent of the Amendments	Amendments were originally requested to prohibit individuals from serving on multiple boards, committees and commissions at one time as well as set term limits and prohibit employees from serving on boards, committees and commissions.		
Purpose	This law governs the standard procedures regarding the appointment and election of persons to boards, committees and commissions as well as the creation of bylaws, maintenance of official records, compensation and other items that relate to boards, committees and commissions <i>[See Governance of Boards, Committees and Commissions, 1 O.C. 105.1-1]</i> .		
Affected Entities	Anyone that serves on a board, committee or commission. Specific duties are identified for the Nation's Secretary or designee, Oneida Business Committee (OBC), Enrollments Department, Oneida Election Board, Nation's Chairperson, Purchasing Department, Trial Court, Nation's Treasurer, Management Information Systems Department (MIS) This Law does not apply to the Nation's corporations <i>[See Governance of Boards, Committees and Commission, 1 O.C. 105.1-1]</i> .		
Affected Legislation	Oneida Election Law; Removal Law; Open Records and Open Meetings law; Code of Ethics; Conflict of Interest law; entities' bylaws; amendments to bylaws must conform to any law or applicable rule; the Nation's applicable computer and media related laws, policies and rules; sanctions and penalties pursuant to applicable law. This Law does not supersede the Oneida Nation Gaming Ordinance in regards to the Oneida Gaming Commission <i>[See Governance of Boards, Committees and Commissions, 1 O.C. 105.2-4]</i> .		
Enforcement/Due Process	Those that violate any law of the Nation may be subject to removal and/or sanctions and penalties <i>[See Governance of Boards, Committees and Commissions, 1 O.C. 105.15-1]</i> . The Removal Law addresses how an elected member is removed. A proposed sanctions and penalties law is currently being developed and will house the processes for imposing sanctions and penalties. An exclusion process has been added to the Law that removes a member from an entity if he/she no longer meets the qualifications for that position. The OBC can adopt additional and alternative enforcement mechanisms by resolution to impose on entities for noncompliance <i>[See Governance of Boards, Committees, and Commissions, 1 O.C. 105.15-3 & 105.15-5]</i> .		
Public Meeting	Public meetings were held on July 18, 2013, January 7, 2016, June 26, 2017 and 29, 2017.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The original intent of the requested amendments was to prohibit individuals from serving on multiple boards, committees and commissions at one time as well as set term limits and prohibit employees from serving on boards, committees or commissions. These proposed amendments do not satisfy the

original intent of the request. As this item was processed, those original revisions were considered and rejected and other changes were made to the Law.

SECTION 3. CONSULTATION

A. The Nation's Secretary, the Election Board, Finance Department, Oneida Judiciary Trial Court, Oneida Law Office, Oneida Business Committee Support Office, Central Accounting Department, and two certified public accountants were consulted in the development of this legislative analysis. The Oneida Law Office was consulted in drafting these amendments.

B. The Oneida Election Law, Oneida Travel and Expense Policy, Open Records and Open Meetings law, Code of Ethics, Conflict of Interest, Budget Management and Control and Removal Law were reviewed when developing this analysis as well as the following bylaws:

- Anna John Nursing Home Board
- Arts Board
- Audit Committee
- Election Board
- Environmental Resource Board
- Finance Committee
- Land Claims Commission
- Land Commission
- Legislative Operating Committee
- Pardon and Forgiveness Committee
- Personnel Commission
- Police Commission
- Pow wow Committee
- School Board
- South East Oneida Tribal Services (SEOTS) Board

SECTION 4. PROCESS

A. This Law has followed the process set forth in the Legislative Procedures Act except that the public meeting notice that was published in the Kalihwisaks identified the public meeting date for Monday, June 29, 2017. The correct date should have read Thursday, June 29, 2017. In order to avoid confusion, the LOC held public meetings on both Monday, June 26, 2017 and Thursday, June 29, 2017.

B. Originally added to the Active Files List on April 3, 2013, this item was carried over from the previous LOC term and was re-added to the active files list on September 17, 2014. Since then, a work meeting was held in 2015, four work meetings were held in 2016 and two work meetings were held in 2017.

SECTION 5. CONTENTS OF THE LEGISLATION

Due to the extensive changes made to the Law, this section will provide an overview of the proposed Law. To view specific changes, please refer to the redline (attached).

A. Applications. An application is a form by which a person seeks to be appointed to fill a vacancy or be considered as a candidate for an election to serve on an entity. This Law requires the OBC to approve the application that must be generated by the Secretary in which all applicants must use. Section 105.4-1 describes what must be included in the application such as the name, address, birth date, phone number,

the position applied for and more. Completed applications must be filed with the Secretary by 4:30 p.m. of the deadline date. Applications can be sent by mail so long as the envelope is postmarked by the deadline date and received within five business days of the deadline. The Election Board will verify all applications for elected positions and the Secretary will verify all applications for appointed positions to ensure that eligibility and qualification requirements are met [See *Governance of Boards, Committees and Commissions, 1 O.C. 105.4-2 & 105.4-3*]. The Election Board and Secretary must provide notice to all applicants within 15 business days from the application deadline except when good cause requires the Election Board and Secretary to go outside these time limits. This notice informs the applicant of the date the application was filed, whether the applicant meets the eligibility requirements if he/she will be considered, notice that further information may be requested, the duties of the position being sought and language that specifies that stipends paid to members of entities is reported income [See *Governance of Boards, Committees and Commissions, 1 O.C. 105.4-4*]. If there are insufficient applicants after the deadline has passed, the Secretary can repost a vacancy so long as OBC approval is received. If reposting is conducted, all prior applicants that filed applications prior to the deadline must be considered [See *Governance of Boards, Committees and Commissions, 1 O.C. 105.4-5*].

B. Vacancies. Section 105.5 of this Law discusses vacancies, more specifically, when vacancies occur and when and where a notice of a vacancy must be posted. Entities have to notify the Secretary as soon as any position has or will become vacant. The Secretary must receive OBC approval to post a notice of vacancy. Notice of vacancies must be placed in the official media outlet as well as any reasonable location request by the entity. If there is an error with the notice, the Secretary can repost the notice as soon as practicable but the reposting will trigger the start of a new timeline. Reposting a notice due to error does not require OBC approval but the Secretary must notify the OBC at the next available OBC meeting. When a notice of vacancy is reposted, the timeline that begins at the repost date, prior applicants that filed applications prior to the deadline must be considered, and the Secretary will promptly notify the entity of the repost.

C. Appointed Entities. The OBC makes all appointments at regular or special OBC meetings. The procedures for making appointments can be found in section 105.6-2 of the Law and include requiring the Secretary to provide the list of eligible candidates and a summary of their qualifications to the Chairperson within five business days after the candidate is provided notice. The Chairperson or his/her designee must select an applicant within 30 days and forward that decision, along with the list of eligible applicants, to the OBC. The OBC will either accept or reject the applicant; if rejected, the OBC must 1) direct the Chairperson to make another recommendation, 2) select and approve another applicant if the Chairperson is unable to select another applicant in which the OBC agrees with, or 3) if the OBC cannot select and approve an applicant, the OBC must direct that the vacancy be re-posted. Once a decision is made regarding the appointment, the Chairperson will forward a list of all applicants to the Secretary and the Secretary will notify all applicants of the final status of their application. All appointments are official upon taking the oath at an OBC meeting and appointed entities serve at the discretion of the OBC meaning a member can have his/her appointment terminated by the OBC by a 2/3 vote of the entire OBC. A termination of appointment is not appealable [See *Governance of Boards, Committees and Commissions, 1 O.C. 105.6*].

D. Elected Entities. Unless the bylaws state differently, an individual must be nominated at a caucus called by the Oneida Election Board or petition for ballot placement pursuant to the Oneida Election Law in order to be considered as a candidate for an elected entity. Candidates are to be notified by the Oneida Election Board within five business days from the date the OBC declares the official results of the election and all elected positions are official upon taking the oath at a OBC meeting [*See Governance of Boards, Committees and Commissions, 1 O.C. 105.7*].

E. Bylaws. Bylaws are not effective until approval by the OBC or GTC, when GTC approval is appropriate. This Law sets forth the minimum requirements for what must be included in entities' bylaws. In addition, the Law requires bylaws to follow a particular format. Every entity's bylaws must include the following five articles: [*See Governance of Boards Committees and Commissions, 1 O.C. 105.8*]:

- *Article I. Authority-* includes the name, authority, office, membership, stipends, trainings & conference and conflict of interest subsections.
- *Article II. Officers-* require a Chair and Vice Chair along with their duties, additional officers and duties, how they are chosen, budgetary and travel sign-off authority, and personnel subsections.
- *Article III. Meetings-* include regular, special and emergency meetings as well as quorum, order of business and voting subsections.
- *Article IV. Reporting-* includes agenda items, minutes and attachments, and reporting (both quarterly to OBC and annually and semi-annually to GTC) subsections. In addition, the Law requires that bylaws include language that indicates that a failure to submit minutes to the OBC as required, may result in the suspension of stipend payments. The reporting requirements section was broadly expanded to identify what must be included in OBC and GTC reports.
- *Article V. Amendments-* includes language on how entities can amend their bylaws noting that OBC or GTC approval, when GTC approval is appropriate, is required.

F. Email. This Law requires members to use an assigned Oneida email address when conducting business electronically for the entity. If the member is also an employee, the member will receive a separate email address from that of his/her work email. If the member serves on more than one entity, he/she will have the same email address for all entities in which he/she serves [*See Governance of Boards, Committees and Commissions, 1 O.C. 105.9*].

G. Minutes & Standard Operating Procedures (SOPs). Entities must submit all of their minutes to the Secretary within a reasonable time after approval by the entity. Actions are valid when the minutes are approved and the OBC is not required to take action on an entity's minutes unless their bylaws specify otherwise. All SOPs created by an entity must be submitted to the Secretary's Office where they will be kept on file [*See Governance of Boards, Committees and Commissions, 1 O.C. 105.10*].

H. Creation & Dissolution of Entities. Entities will be created and delegated authority through law; however, entities can be created through an emergency resolution that is adopted by the OBC and/or GTC for up to one year. Except a task force, ad hoc committee, or subcommittee, all other entities can be dissolved by motion of the GTC or OBC, provided that an entity created by GTC can only be dissolved by a motion of GTC. If an entity is dissolved, the Chairperson and/or Secretary of the dissolved entity must close out the entity's open business and forward all files and documents to the Nation's Secretary

within two weeks of the dissolution [*See Governance of Boards, Committees and Commissions, 1 O.C. 105.11*].

I. Stipends, Reimbursement & Compensation for Service. Members will earn stipends for each of the following: 1) holding an administrative rulemaking public meeting, 2) attending a hearing before the Judiciary that directly involves the entity, 3) attending a hearing before the Judiciary when the member is subpoenaed, 4) attending a OBC meeting or a meeting of an OBC standing committee to represent the entity when submitting a quarterly report and/or a request for attendance was made by the OBC or standing committee, 5) for conducting hearings, 6) attending meetings, conferences, and trainings as well as for activities not identified in this Law but are identified in the entity's bylaws [*See Governance of Boards, Committees and Commissions, 1 O.C. 105.12-2*].

In order for a member to earn a stipend for attending meetings, he/she must be present for at least one hour [*See Governance of Boards, Committees, and Commissions, 1 O.C. 105.12-2 (a) (6) (A & B)*].

J. Use of Nation's Assets. Entities must maintain their bank accounts in the name of the Nation. The Nation must ensure the books are in accordance with the Generally Accepted Accounting Principles. Members are required to comply with system of internal accounting controls sufficient to provide assurances that 1) all transactions are executed in accordance with the procurement manual rules developed by the Purchasing Department, 2) access is permitted only in accordance with authorization identified in the procurement manual rules, and 3) all transactions are recorded to permit preparation of financial statements. Members must immediately report any evidence of noncompliance with any law or rule regarding the Nation's assets to internal audit staff. Internal audit must notify the Oneida Law Office of any evidence of noncompliance. The OBC and/or the Oneida Law Office will then decide if further action needs to be taken. Entities must manage all records in accordance with the Open Records and Open Meetings law. Members must surrender all official entity records kept by the member once the member is no longer serving on the entity [*See Governance of Boards, Committees, and Commission, 1 O.C. 105.13*].

K. Conflicts of Interest & Other Ethical Requirements; Adherence to Oneida Laws. Members must follow the ethical requirements set forth in the Code of Ethics and Conflict of Interest laws. In addition, members are subject to and must follow all applicable laws, policies, and rules of the Nation. Each entity must educate its members about the requirements identified in this Law, the Conflict of Interest law and the Code of Ethics, and any other relevant and applicable laws, rules and procedures [*See Governance of Boards, Committees and Commissions, 1 O.C. 105.14*].

L. Enforcement and Penalties. Members that violate the laws and policies of the Nation can be subject to sanctions and other penalties, including termination of appointment or removal from office. If a member no longer meets the requirements to hold office, that member will be excluded from office; however exclusion is not a punishment. If a member's eligibility is questioned, the OBC will determine if the member meets the specific requirements and if it is determined that the member no longer meets the requirements, the OBC will declare the member excluded. The Secretary must notify the member that he/she has been excluded within two business days after the decision has been made. If the member is elected, the Secretary must also notify the excluded member of his/her right to appeal. The excluded member's position cannot be refilled until after the timeline for appeal has been exhausted or after the

180 Trial Court issues a final ruling. The excluded member can appeal the OBC's decision to the Trial Court
181 [See *Governance of Boards, Committees and Commissions, 1 O.C. 105.15-3 (c)*]. If a member has
182 his/her appointment terminated or is removed from office, he/she cannot serve on any entity for one year,
183 unless the bylaws of the entity identifies a longer time period. Termination of appointment or removal
184 from one entity does not affect the member's concurrent service on any other entity unless that member
185 cannot be reappointed or re-elected during the ineligibility period. If a member is excluded from office,
186 he/she can serve on another entity so long as the eligibility requirements are satisfied [See *Governance of*
187 *Boards, Committees and Commission, 1 O. C. 105.15-4*]. If the entity fails to comply with this Law, the
188 OBC can suspend payment of stipends until the entity becomes compliant with the Law. The OBC
189 Treasurer will notify the Accounting Department when the stipends are to be stopped and when they are
190 to resume. Stipends will accrue during the suspension and be paid out when stipends are reinstated unless
191 the OBC directs otherwise. The OBC can adopt by resolution additional or alternative enforcement
192 actions that may be imposed on entities for noncompliance [See *Governance of Boards, Committees and*
193 *Commissions, 1 O.C. 105.15-5*].

195 SECTION 6. EFFECT ON EXISTING LEGISLATION

196 **A. Oneida Travel and Expense Policy.** This Law states that members are eligible for reimbursement for
197 travel and per diem costs in accordance with the Oneida Travel and Expense Policy [See *Governance of*
198 *Boards, Committees and Commissions, 1 O.C. 105.12-3*]. The Policy can be interpreted a couple of ways
199 which may conflict with this Law. The purpose of the Policy is to establish policies "governing the
200 reimbursement of travel and expenses incurred during the conduct of business. It is the Nation's policy to
201 reimburse employees for ordinary, necessary and reasonable travel expenses that are directly connected
202 with, or pertaining to, the transaction of company business. Employees are expected to exercise prudent
203 business judgment regarding cost effective expenses covered by this policy." In addition, a "traveler",
204 according to the Policy, is an employee of the Nation in an employment capacity, who from time to time
205 may be authorized to act on behalf of the Nation [See *Oneida Travel and Expense Policy, 2 O.C. 219.1-1*
206 *& 219.3-1 (d)*]. This can be read that the Policy only applies to employees but the proposed Law applies
207 to anyone who serves on an entity, which may or may not include employees. If the intent is for the
208 Oneida Travel and Expense Policy to apply only to employees then this Law would conflict with the
209 Policy. However, section 219.4-2 of the Policy states that any travel for boards, committees, or
210 commissions must be authorized by sign off authority as indicated within approved bylaws. When
211 reading this section, the Policy seems to conflict with itself in that both the purpose of the Policy and the
212 definition for traveler clearly identify that the Policy pertains to an employee. However, section 219.4-2
213 includes boards, committees and commissions which is not compromised solely of employees. The LOC
214 may want to consider revising the Policy to clarify whether or not the Policy applies to members of
215 entities. The LOC may also want to consider further revisions to the Policy including changing
216 references to the General Manager. The General Manager position was temporarily removed from the
217 organizational structure pursuant to OBC Resolution 09-28-11-E and has yet to be filled.

219 SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR 220 OBLIGATIONS

221 **A.** If these amendments are adopted, entities will need to revise and re-submit their bylaws for OBC
222 approval to comply with the Law. Also, all entities will need to submit their SOPs to be kept on
223 file with the Secretary's Office.

- 224 **B.** This Law requires the Secretary to generate, and the OBC to approve, the application required to
225 be used by all applicants. The current application for appointment will need to be revised and
226 will require OBC approval because it does not ask the applicant for their birth date, as required by
227 this amendments [*See Governance of Boards, Committees, and Commissions, 1 O.C. 105.4-1 (a)*
228 *(3)*]. In addition, there is a separate application form for the Oneida Election Board Alternate
229 which may also need revising.
- 230 **C.** A member that no longer meets the eligibility requirements for office will be excluded from
231 office and his/her position will be declared vacant [*See Governance of Boards, Committees and*
232 *Commissions, 1 O.C. 105.15-3*]. Currently, if a member does not meet the qualifications of the
233 office, he/she can be removed pursuant to the Removal Law or have his/her appointment
234 terminated pursuant to the Comprehensive Policy Governing Boards, Committees and
235 Commissions.
- 236 **D.** The Law addresses what happens when the OBC does not agree with the Chairperson's
237 recommendation for appointment. The OBC can 1)direct the Chairperson to make another
238 recommendation, 2) the OBC can select and approve another applicant or 3) the OBC can direct
239 the vacancy be reposted [*See Governance of Boards, Committees and Commission, 1 O.C. 105.6-*
240 *2*].

241 **SECTION 8. ENFORCEMENT**

- 242 **A.** Members that violate the laws of the Nation can be subject to sanctions or other penalties, removal, or
243 have their appointment terminated pursuant to applicable law [*See Governance of Boards,*
244 *Committees and Commissions, 1 O.C. 105.15-1*]. The Removal law sets forth the process for
245 removing individuals elected to serve on boards, committees and commissions of the Nation [*See*
246 *Removal Law, 1 O.C. 104.1-1*]. Those individuals that are appointed to boards, committees and
247 commissions can have their appointment terminated in accordance with this Law. It should be noted
248 that a Sanctions and Penalties law is not in effect at this time; however, a law is currently being
249 developed.
- 250 **B.** Entities can have their stipends suspended for not complying with this Law. In addition, the OBC can
251 adopt a resolution that includes additional or alternative enforcement actions that can be imposed on
252 entities for noncompliance [*See Governance of Boards, Committees and Commissions, 1 O.C.*
253 *105.15-5*].
- 254 **C.** Also isn't exclusion a form of enforcement? I would just hammer it home again that exclusion is
255 NOT a penalty, but is a method of enforcing this law – you don't qualify, then we are enforcing this
256 law by booting you.

257 **SECTION 9. OTHER CONSIDERATIONS**

- 258 **A. Original Intent:** Based on the agenda request form submitted by a former LOC member, the original
259 request to amend this Law was to 1) prohibit individuals from serving on multiple boards, committees
260 and commissions at one time, 2) set term limits, and 3) prohibit employees from serving on boards,
261 committees and commissions. The proposed Law still allows for individuals to serve on multiple
262 entities, allows for employees to serve on entities and does not set term limits [*See Governance of*
263 *Boards, Committees and Commissions, 1 O.C. 105.9-1 & 105.9-3*].

- 267 **B. Accounting:** This Law requires the entities to maintain all bank accounts for the Nation's funds in the
268 name of the Nation. The entities must also manage all records in accordance with the Open Records
269 and Open Meetings law [*See Governance of Boards, Committees and Commissions, 1 O.C. 105.13-1*
270 *and 105.13-4*]. Finance has suggested that the best way to maintain internal control is to keep control
271 internally. The LOC may want to decide if the entity should maintain the bank accounts and manage
272 records or have Central Accounting be responsible for these actions.
- 273 In addition, section 105.13-2 (b) indicates that each member must comply with system of internal
274 accounting controls sufficient to provide assurances that access to assets is permitted only in
275 accordance with management's authorization.
- 276 ▪ The LOC may want to identify what the assets are (i.e. office supplies, cash, bank statements,
277 accounting records, etc.).
- 278 **C.** The Law requires the Secretary's Office to keep all entities' SOPs [*See Governance of Boards,*
279 *Committees and Commissions, 1 O.C. 105.10-2*]. This language came from an OBC motion made on
280 May 25, 2017 which directed the LOC to include in the Law language that requires entities to keep
281 SOPs on file with the Secretary's Office. The OBC Support Office was formerly known as the
282 Secretary's Office. The LOC may want to decide whether the term Secretary's Office or OBC
283 Support Office is appropriate.
- 284 **D.** Section 105.12-2 requires members to be present for an entire meeting and that the meeting must last
285 at least one hour in order to receive a stipend. The Law does not address what happens if a member is
286 a few minutes late for the meeting. The LOC may want to consider allowing the entity to include in
287 their bylaws, when the cut off period is for when a member is considered present for the entire
288 meeting. General Tribal Council meetings require GTC members to be in line no later than 15
289 minutes after the start of the meeting. Similar language could be used in the entity's bylaws.
- 290 **E.** Please refer to the fiscal impact statement for any financial impacts.

291

For OBC consideration (Draft 21) redline to current
2017 08 02

Title 1. Government and Finances – Chapter 105
COMPREHENSIVE POLICY GOVERNING BOARDS, COMMITTEES AND COMMISSIONS

~~Laotiyanihsla'shúha katiyohkwaya'tú-se?~~
~~Their laws of the groups we have~~

~~105.1. Purpose and Policy~~
~~105.2. Adoption, Amendment, Repeal~~
~~105.3. Definitions~~
~~105.4. Applications~~
~~105.5. Vacancies~~
~~105.6. Appointed Positions~~
~~105.7. Elected Positions~~

Committees and Commissions

~~105.9. Minutes~~
~~105.10. Dissolution of Entities~~
~~105.11. Stipends, Reimbursement and Compensation for Services~~
~~105.12. Confidential Information~~
~~105.13. Conflicts of Interest~~

~~105.8. By-Laws~~ **Governance of Boards,**

Yolihwakwe'kú Kayanl'hsa? yethiya'tanú'nha tsi? ka'yá lonatlihu'tú'

all of the matters – laws and policies – they're watching over them – the ones that have been appointed

~~105.1. Purpose and Policy~~
~~105.2. Adoption, Amendment, Repeal~~
~~105.3. Definitions~~
~~105.4. Applications~~
~~105.5. Vacancies~~
~~105.6. Appointed Entities~~
~~105.7. Elected Entities~~
~~105.8. Bylaws~~
~~105.9. Official Oneida E-mail Address Required for all Entity Members~~

~~105.10. Minutes~~
~~105.11. Creation and Dissolution of Entities~~
~~105.12. Stipends, Reimbursement and Compensation for Service~~
~~105.13. Use of the Nation's Assets~~
~~105.14. Conflicts of Interest and Other Ethical Requirements, Adherence to Oneida Laws~~
~~105.15. Enforcement and Penalties~~

105.1. Purpose and Policy

105.1-1. –It is the purpose of this policy 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 by-laws bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. –This policy law does not apply to Tribal 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 by-laws 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 policy law was adopted by the Oneida Business Committee by resolution #-BC-5-14-97-F8-2-95-A and amended by resolutions #-BC-095-14-97-F, BC-9-27-06-E-and #, BC-099-22-10-C, and BC-.

105.2-2. –This policy law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council, regardless of where the original adoption took place pursuant to the procedures set out in the Legislative Procedures Act.

105.2-3. Should a provision of this policy law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this policy law which are considered to have legal force without the invalid portions.

~~105.2-4. Any policy, regulation, rule, resolution or motion, or portion thereof, which directly~~

~~conflicts with the provisions of this policy is hereby repealed to the extent that it is inconsistent with or is contrary to this policy. — Provided that meeting stipends for elected members of a board, committee or commission that are in effect on [adoption date of the amendments] shall remain unaffected, but prior exceptions to this policy for appointed entities shall be repealed to extent that meeting stipends are inconsistent with this policy.~~

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 as used herein 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 a 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~~

Public Meeting Draft (Draft 21 – post comment review)
2017 07 20

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 ~~whose~~with members ~~are~~ appointed by the Oneida Business Committee or elected by the ~~General Tribal Council~~Nation's membership.

~~(b) "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position.~~

~~(c) "Application" means any process by which a person proceeds to be appointed to a vacancy.~~

~~(d) "Appointment" means the process by which a person is chosen to fill a vacancy.~~

~~(e) (i) "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~~force or ~~Ad Hoc~~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.

~~(f) "Conference"~~(t) "Transaction" means any ~~training, seminar, meeting, or other assembly~~activity wherein a provider of persons which~~goods and/or services is not an assembly of the entity~~compensated in any form.

~~(g) "Per Diem"~~(u) "Vacancy" means ~~the payment made by the Tribe to offset the costs of being out of town or to travel~~any position on behalf of the Oneida Tribe of Indians of Wisconsin.

~~(h) "Stipend" means~~an entity that ~~amount paid by the Oneida Tribe of Indians of~~

Wisconsin to persons serving on boards, committees and commissions of the Oneida Tribe of Indians of Wisconsin to offset the expenses of being a is available and not filled by a member on the board, committee or commission.

(i) "Official" means any person appointed or elected to membership on an entity of the Oneida Tribe.

105.4. Applications

105.4-1. ~~All applications shall be generated by the Tribal Secretary's Office~~ The Secretary shall generate, and approved by the Oneida Business Committee, shall approve, the application required to be used by all applicants.

~~105.4-2.~~ The ~~content of applications~~ application shall ~~be as follows:~~

(a) ~~contain~~ questions ~~designed to obtain the following information~~

(1) ~~name~~

(2) ~~address~~

(3) ~~phone number~~

(4) ~~enrollment number~~

(5) ~~position applied for~~

(a) ~~(b)~~ ~~applications may contain any other questions necessary~~ needed to obtain information necessary to ~~making~~ make an informed decision as to the qualifications of ~~any individual to hold any vacancy; an applicant to fill a vacancy; including, at a minimum, questions to obtain the applicant's:~~

(c) ~~Form A-1, attached, is the current approved application form in use and shall be placed in the Tribal Secretary's Office and other locations specified by the Tribal Secretary's Office.~~

(1) name;

(2) address;

(3) date of birth;

(4) phone number; and

(5) position applied for.

(b) Along with the application, applicants may also be required to submit additional information as may be required for a background check, and/or 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 Enrollment 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. ~~105.4-3.~~ Applications shall be filed with the ~~Tribal Secretary's office~~ Secretary by 4:30 p.m. of the deadline date. ~~Postmarked envelopes are accepted~~ The Secretary shall accept applications arriving by mail so long as filed if the envelope is postmarked by the deadline date and received by the ~~Tribal Secretary's Office~~ Secretary within five (5) business days of the deadline.

Public Meeting Draft (Draft 21 – post comment review)

2017 07 20

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. At the completion of the posted deadline for filing applications the Tribal Secretary shall notify by postcard all persons who have filed an application of the date the~~ 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:

- (a) the date the applicant's application was filed and;
- (b) whether ~~if~~ the applicant meets the eligibility requirements and will be considered for the election or appointment. ~~A tentative date for appointment will be placed on the post card with the instruction that this is a tentative date and;~~
- (c) a note that further information ~~can~~ may be requested by ~~calling~~ contacting the party sending the notice and providing such contact information;
- (d) the applicable duties for the position sought by the applicant; and
- (e) 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. ~~Tribal Secretary's~~ You will receive the applicable tax form(s) ~~Office. Postcard information should be in substantially similar format as that in Figure 1-), which is also forwarded to the Internal Revenue Service; it is also your responsibility to keep documentation of expenses related to this income."~~

Your application was received on:	185
Tentative date for appointment or election:	186
You application 9 is - 9 is not being considered.	187
For more information, call the Tribal Secretary's Office at 2214.	188
	189
	190
	191
	192

~~105.4-4. Applications for elected positions shall be verified according to the Oneida Election Ordinance. Applications for appointed positions shall be verified by the Tribal Secretary's Office as needed or as required in the by laws of the entity.~~

105.4-5. - In the event that there are insufficient applicants after the deadline date has passed for appointed positions, the ~~Tribal Chairperson may elect to:~~ 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.

(a) Include within the pool of appointed persons late applications, or

(b) Repost for an additional time period. In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.

105.5. Vacancies

105.5-1. -This section ~~shall govern~~governs when vacancies occur, and where and when to post notice of ~~the~~ vacancies ~~shall be posted~~.

. Notwithstanding the initial determination~~105.5-2. The following vacancies shall be effective as listed herein.~~

(a) End of Term. A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends as of the by-laws of the entity.

(b) Removal. Removal is effective, under adopted and approved procedures of the entity, when the final action has taken place. Where a final action is defined as

(1) failure to file a timely appeal,

(2) denial of appeal, or

(3) final written opinion is filed.

(c) Resignation. A resignation is effective upon:

(1) Deliverance of a letter membership to ~~the~~an entity, the member's status as appointed or

(2) Acceptance by motion of the entity of a verbal resignation.

(d) New Positions. Vacancies elected is based entirely on ~~new entities are effective upon adoption of by-laws~~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. (e) Interim Positions. Vacancies of interim positions are effective upon creation of interim positions by~~The Secretary shall request and receive permission from~~ the Oneida Business Committee ~~or General Tribal Council~~prior to posting notice of vacancies on any entity.

~~105.5-3. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification~~(a) Vacancies due to term expiration. On an annual basis, the Secretary may request permission from the Oneida Business Committee. ~~The following guidelines are minimum to post notice requirements:~~

(a) End of Term. Entity should be notified 60 days prior to end of vacancies for all positions that are expected to become vacant due to regular term by the Tribal Secretary.

(b) Removal or Resignation. Entity should be notified as soon as final action is taken ~~by expirations. Once~~ the Oneida Business Committee ~~or General Tribal Council to accept the resignation, or final action according to any Removal law of the Tribe~~has granted permission, the Secretary shall post notice for each individual term completion forty-five (45) days in advance of each term completion.

Public Meeting Draft (Draft 21 – post comment review)2017 07 20

~~105.5-4.~~ (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.~~ Notice After receiving permission from the Oneida Business Committee, the Secretary shall post notice of vacancies shall be by the Tribal Secretary's Office in the following locations:

(a) Tribal Secretary's Office

(b) ~~The Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida Community Health Center, the South Eastern Wisconsin Oneida Tribal Services (SEOTS) building and the Highway 54 and E & EE Oneida One Stops.~~

(c) Kalihwisaks

(d) ~~Minutes of the Oneida Business Committee,~~ on the Nation's official media outlets and

(e) ~~Any~~ any reasonable location requested by the entity.

~~105.5-5.~~ 105.5-5. ~~The Tribal Secretary's Office shall forward~~ In the event that there is an administrative/clerical error in the Secretary's posted notice of vacancy ~~to the Oneida Business Committee for approval and direction to post notice as set out in this section. The Tribal ; the Secretary shall post~~ may correct such error by reposting the notice of ~~vacancies at the following times:~~

(a) ~~End of Term. Automatically thirty days prior to completion of the term.~~

(b) ~~Removal. Upon notice by~~ vacancy as soon as practicable after noticing such error. Under these limited circumstances, the Secretary, ~~or other person authorized by the by-laws of the entity, to the Tribal Secretary's Office.~~

(c) ~~Resignation. Upon notice by the Secretary, or other person authorized by the by-laws of the entity, to the Tribal Secretary's Office.~~

(d) ~~New Positions. Upon one of the following conditions:~~

(1) ~~if not specified, immediately upon creation of entity or adoption of by laws, whichever is later, or~~

(2) ~~upon date specified when creating the entity.~~

(e) ~~Interim Members. Upon one of the following:~~

(1) ~~upon completion of the term designated to hold in new entity, or~~

(2) ~~upon completion of vacant term of the pre-existing entity~~

(f) ~~Termination of appointment. At the next Oneida Business Committee meeting following the termination of appointment.~~ may re-post notice without first obtaining permission from

~~105.6. Appointed~~ **Positions**

~~105.6-1.~~ All appointments shall be made by 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 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; and

(c) The Secretary shall promptly notify the entity that notice of the vacancy has been re-posted, including any changed deadlines or timelines that apply.

105.6. Appointed Entities

105.6-1. ~~The Oneida Business Committee shall make all appointments~~ at regular or special Oneida Business Committee meetings. ~~Provided; provided~~ that, no applicant may be appointed who fails to meet the requirements set out in the ~~entity's by-laws~~ entity's bylaws.

105.6-2. ~~The Oneida Business Committee shall use the~~ following procedures ~~shall be used~~ to determine ~~who shall be~~ which applicant is appointed:

(a) ~~Five~~ Within five (5) business days after ~~close of~~ notice, ~~all applications shall be delivered~~ has been provided to applicants pursuant to section 105.4-4, the ~~Tribal Secretary shall deliver to the~~ Chairperson all applications from eligible candidates, along with a summary of each candidate's qualifications to hold office.

(b) ~~Within a reasonable time, the Tribal Chairperson shall:~~

(1) ~~choose an applicant for appointment, or~~

(2) ~~ask the Tribal Secretary's Office to re-notice the vacancy because of ineligible, unqualified, or under~~ (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-

(e) ~~Forward choice of applicants to all Council members prior to appointment:~~

(1) ~~Council members may accept the Tribal Chairperson's~~ along with his or her selected ~~applicants, or~~

(2) ~~Reject an applicant by~~ 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 ~~regular or special~~ Oneida Business Committee meeting, either accept or reject the Chairperson's selected applicant(s).

~~105.6-3.~~ (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

Public Meeting Draft (Draft 21 – post comment review)

2017 07 20

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 shall vest upon taking the oath. ~~The Tribal Secretary shall notify the chosen persons when they should appear for taking the oath.~~

(a) ~~Originals~~ The Secretary shall maintain originals of the signed oath ~~shall be maintained by the Tribal Secretary's Office.~~

(b) ~~Copies~~ The Secretary shall forward copies of the oath ~~shall be forwarded~~ to the new member and the entity.

(c) ~~Wording of oaths shall be approved by the~~ The Oneida Business Committee shall approve the wording of oaths and ~~kept~~ 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:

~~by the Tribal Secretary's Office.~~

(1) ~~“I, *(name*), do hereby promise to uphold the laws and regulations of the Oneida Tribe of Indians of Wisconsin~~ Nation, the General Tribal Council, and the Tribal 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.”

~~I will carry out the duties and responsibilities as a member of the *entity name*, and all recommendations shall be made in the best interest of the Oneida Tribe as a whole.~~

(d) ~~Revisions of oaths shall be approved by the Oneida Business Committee prior to usage.~~

(e) ~~(d)~~ All oaths shall be sufficient to make the appointee aware of ~~their~~ his or her duty to the ~~Oneida Tribe and Nation~~ as members a member of the entity.

~~105.6-4. The Tribal Secretary shall notify all applicants of the final status of their application.~~

Public Meeting Draft (Draft 21 – post comment review)2017 07 20

The Tribal Chairperson shall forward a list of all applicants to the Tribal Secretary and the final decision regarding the selection after the procedures in sec. 6-2 are completed. Provided that, the Tribal Secretary shall include on the notice to the applicant the following paragraph:

~~“The Oneida Tribe of Indians of Wisconsin reports all income paid by the Oneida Tribe 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 an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income.”~~

105.6-5. *Termination of Appointment.* Appointed ~~members of~~ entities serve at the discretion of the Oneida Business Committee. Upon the recommendation of ~~the Tribal Chair, an Oneida Business Committee member, a member of~~ an appointed ~~member of an~~ entity may have his or her appointment terminated by the Oneida Business Committee by a two-thirds ~~majority~~ (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,

~~105.7~~ Elected Positions

~~105.7-1. All elected positions, unless otherwise noted in the by-laws of 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. shall~~ 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. Provided that, when the Election~~ The Oneida Election Law governs all other processes. In addition to these processes, the Oneida Election Board notifies a petitioner or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included 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 Tribe of Indians of Wisconsin~~ Nation reports all income paid by the ~~Tribe~~ 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 ~~an income report~~ 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.”

~~105.7-2. All other processes shall be as directed in the Oneida Election Law.~~

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 ~~shall~~ vest upon taking the oath.

Public Meeting Draft (Draft 21 – post comment review)2017 07 20

- (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 ~~Tribe of Indians of Wisconsin~~Nation, the General Tribal Council, and the ~~Tribal~~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."

~~I will carry out the duties and responsibilities as a member of the *entity name*, and all recommendations shall be made in the best interest of the Oneida Tribe as a whole.~~

~~(d) Revisions of oaths shall be approved by the Oneida Business Committee prior to usage.~~

~~(e)~~ (d) All oaths shall be sufficient to make the ~~appointee~~elected person aware of ~~their~~his ~~or her~~ duty to the ~~Tribe and~~Nation as ~~members~~a member of the entity.

105.8. By-Laws of Boards, Committees and CommissionsBylaws

105.8-1. ~~By-Laws of all Boards, Committees and Commissions~~Bylaws for each entity shall become effective upon approval by the Oneida Business Committee; except where General Tribal Council approval is required instead. Bylaws shall conform to this outline. ~~All existing entities must comply with this format and present by-laws for adoption within a reasonable time after creation of the entity, or within a reasonable time after adoption of this policy. By-laws must and~~ contain this minimum information, although more information is not prohibited.

105.8-2. -Specifically excepted from this section are ~~Task Forces and Ad Hoc Committees~~task forces, ad hoc committees and subcommittees. However, these entities ~~must have~~shall, at a minimum, have mission or goal statements for completion of the task.

105.8-3. ~~There~~Each entity's bylaws shall ~~be~~contain the following ~~Articles~~articles:

- (a) -Article I. Authority-
- (b) -Article II. Officers
- (c) -Article III. Meetings
- (d) -Article IV. Reporting
- (e) -Article V. Amendments

105.8-4. ~~Sections~~Sub-articles. Articles shall be divided into ~~"Sections"~~as set outsub-articles as identified herein:

- (a) ~~"Article I. Authority"~~consists shall consist of the following ~~information~~:
 - (1) -Name. ~~All entities should list the~~ The full name of the entity. ~~In addition, there should be listed~~ and any short name that will be officially used.
 - (2) -Authority. ~~This section should state the citation and~~ The name, ~~if any~~, of the creation document and the citation for such creation document, if any.
 - (3) -Office. ~~There should be listed the~~ The official office or post box of the entity.

(4) -Membership. ~~The following information should be in this section:~~

(A) -Number of members;

(B) ~~How~~ 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 ~~of the~~ 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.

~~(b) "Article II. Officers" consists of the following information:~~

(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 105.12-2(a)(7), members shall only be eligible for stipends, per diem, and/or reimbursement of expenses for attending a training

2017 07 20

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~~Duties.* Because of the importance of this position, ~~those~~the duties and limitations ~~should~~of the entity's chairperson shall be specifically listed.

(3) *Vice-Chair ~~duties~~Duties.* Because of the importance of this position, ~~those~~the duties and limitations ~~should~~of the entity's vice chairperson shall be specifically listed.

(4) *Additional ~~Offices~~Officers and Duties.* ~~There should be additional sections as needed~~Additional sub-articles shall specifically list duties and limitations for every ~~office created~~officer position identified in subsection (1-~~above~~).

(5) *How ~~chosen~~.* ~~There should be~~Chosen. Bylaws shall ~~set out~~state how a member of the entity will be chosen to occupy an ~~official~~officer's position ~~as set out in this section.~~

(6) *Budgetary and Travel Sign-Off Authority.* The Purchasing Department shall confirm each position within the entity that has been designated as having sign-off authority. Bylaws shall identify:

(A) The entity's varying levels of budgetary sign-off authority, including which members are authorized to sign-off at each level, and

(B) Which members have the authority to sign off on travel on behalf of the entity.

(7) *Personnel.* ~~State entities~~The entity's authority for hiring personnel, if any, and the duties of such personnel.

(c) ~~"Article III. Meetings"~~~~consists~~ shall consist of the following ~~information;~~ provided that, all meetings shall be noticed and called in accordance with the Open Records and Open Meetings law:

(1) *Regular ~~meetings.~~* ~~There shall be listed when and where~~Meetings. The number of regular meetings the entity shall hold each year, including when and where these meetings shall be held; and, how the entity shall provide notice of the meeting, agenda, documents, and minutes ~~will be disbursed to the members.~~ The number of regular meetings identified in the bylaws may not exceed the entity's budget for stipends.

(2) *~~Emergency~~ Special Meetings.* How the entity may call special meetings. ~~There and how the entity~~ shall ~~be listed how~~ provide notice of special meetings. Special meetings are not scheduled regular meetings, but also do not rise to the level of emergency justification required for emergency meetings.

(3) *Emergency Meetings.* Emergency meetings ~~shall~~are meetings that need to be

Public Meeting Draft (Draft 21 – post comment review)2017 07 20

called sooner than a meeting could be called ~~and noticed~~. if the twenty-four (24) hour notice requirement, as set out in the Open Records and Open Meetings law, is followed. Emergency meetings may only be held when necessary to maintain order and/or protect public health and safety. Bylaws shall:

~~(3)~~ (A) State how the entity may call emergency meetings and how the entity shall notice emergency meetings, and

(B) Include the following provision:

“Within seventy-two (72) hours after an emergency meeting, [the entity] shall provide the Secretary with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular or special meeting.”

(4) *Quorum*. ~~This section shall list how~~ How many members create a quorum. At a minimum, a majority of the entity’s current members shall be required to create a quorum.

~~(4) 5~~ *Order of Business*. ~~This section sets out how~~ How the agenda will be set up.

~~(5) 6~~ *Voting*. ~~This section should list how voting shall be taken, what~~ Voting requirements, including the requisite percentages ~~shall be needed to pass for~~ passing different items and when, if at all, the entity’s chairperson may vote.

(d) ~~“Article IV. Reporting”~~ consists” shall consist of the following ~~information:~~

(1) *Agenda Items*. Agenda items shall be maintained in an identified and consistent format.

(2) *Minutes and Attachments*. Minutes shall be typed ~~and~~ in a consistent format designed to generate the most informative record of the meetings of the entity.

~~(3)~~ 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 ~~to the meeting in which they were presented~~. 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. Failure to submit minutes to the Oneida Business Committee as required may result in the suspension of stipend payments to individual members, until the entity has attained compliance with such requirements.

~~(4) 3~~ *Reporting*. Entities ~~will~~ shall report to the Oneida Business Committee member who is their designated liaison. ~~This reporting format may be intermittently~~ as the entity and the liaison ~~and entity~~ agree to, but not less than ~~that as~~ required in any policy on law, rule, or other reporting requirement developed by the Oneida Business Committee or Oneida General Tribal Council. ~~Reports shall be made within a reasonable time after a meeting is held, or as~~ Entities shall also make quarterly reports to the Oneida Business Committee ~~member liaison and entity agree. Provided that, the agreement is to uphold the ability of the liaison to act as a support to that entity; 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.

~~(e) “Article V. Amendments”~~ consists of:

Public Meeting Draft (Draft 21 – post comment review)2017 07 20

~~(1) Amendments to By laws. There should be described~~ (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.

(v) 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.

(vi) 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.

Public Meeting Draft (Draft 21 – post comment review)2017 07 20

(vii) 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

Public Meeting Draft (Draft 21 – post comment review)2017 07 20

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 ~~by-laws shall take place. bylaws may be initiated by the entity.~~ Provided that, amendments shall conform to the requirements of this ~~and any other policy. Provided further, that amendments are approved by the Oneida Business Committee prior~~ law and any other law or applicable rule. Prior to implementation, amendments to bylaws shall be approved by the Oneida Business Committee, or by the General Tribal Council, when applicable.

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.

105.9. Minutes

~~105.9-1. All minutes shall be submitted to the Tribal Secretary's Office within a reasonable time after approval by the entity.~~ **Minutes and Standard Operating Procedures**

105.10-1. Minutes.

(a) Entities shall submit all minutes to the Secretary within a reasonable time after approval by the entity. (b)

~~105.9-2. Actions taken by an entity are valid when minutes are approved, provided that, minutes are and filed according to~~ in accordance with this section; and ~~any specific directions within the entity's approved by laws.~~

~~105.9-3. bylaws.~~ (c) No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the ~~by-laws~~ bylaws of that entity.

~~105.9-4. In the event of dissolution of an entity, all files and documents are required to be forwarded to the Tribal Secretary's Office for proper storage and disposal.~~

~~105.10.~~ 105.10-2. Standard Operating Procedures. All standard operating procedures established by an entity shall be submitted to the Secretary's Office, where they shall be kept on file.

105.11. Creation and Dissolution of Entities

~~105.10-1. All entities~~ Creation of the Tribe ~~Entities.~~ Entities shall be created and delegated authority by law. Provided that, an entity may be created and delegated authority through an emergency resolution adopted by the Oneida Business Committee and/or General Tribal Council, for a period not to exceed six (6) months; with a one-time opportunity for an extension of up to six (6) additional months.

105.11-2. Dissolution of Entities. Entities may be dissolved according to this section. ~~Provided that other; however, additional~~ specific directions may be included ~~within by laws in an entity's bylaws.~~

~~105.10-2. (a)~~ A task force ~~or~~, ad hoc committee or subcommittee dissolves upon a set date or acceptance of a final report. ~~Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Tribal Secretary's Office for proper disposal 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.~~

~~105.10-3. (b)~~ All other entities ~~of the Tribe shall~~ may only be dissolved ~~only~~ by motion of the Oneida General Tribal Council or the Oneida Business Committee. ~~Unless otherwise indicated, the materials generated by these entities shall be forwarded to the Tribal Secretary's Office for proper disposal within two weeks of dissolution, provided that an entity created by the General Tribal Council may only be dissolved by a motion~~

of the Oneida General Tribal Council.

~~105.10-4.(c)~~ All ~~Chairpersons~~ chairpersons and ~~Secretaries/or secretaries~~ of dissolved entities shall ~~be responsible for closing~~ close out open business of the ~~entity and forwarding materials~~ 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.

105.11. Stipends, Reimbursement and Compensation for Service

~~105.11-1.~~ ~~Compensation and reimbursement for expenses~~ 12-1. The Nation shall be compensate members and reimburse members for expenses as set out in this section and according to the Nation's procedures for payment ~~as set out by the Oneida Tribe of Indians of Wisconsin.~~

~~105.11-2.~~ 12-2. -The ~~Oneida Tribe~~ Nation recognizes that persons serving on entities ~~of the Tribe, whether elected or appointed,~~ incur some expense. Therefore, ~~the Tribe,~~ in order to attract persons to serve on entities, the Nation shall pay stipends to ~~these~~ entity members in accordance with this section.

~~105.11-3. Meeting Stipends for Appointed Members. Except provided in sub (a) and,~~ unless otherwise declined by ~~the entity through its bylaws, or declined by a member(s), appointed members).~~

(a) Members may earn stipends, in amounts established by Oneida Business Committee resolution, for the following activities:

(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.

(5) For conducting hearings administered by the entity, with stipends earned 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.

(6) Each member's attendance at entity meetings, in accordance with the following:

(A) Appointed Entities. Members serving on appointed entities ~~shall~~ may be paid a meeting stipend ~~of~~ no more than \$50 once per month ~~when at least one (1) for attending a meeting is conducted~~ where a quorum has

Public Meeting Draft (Draft 21 – post comment review)2017 07 20

been established in accordance with the duly adopted ~~by laws of that~~
~~entity. Provided that the meeting lasts for at least one (1) hour and~~
~~bylaws of that members collecting stipends must be entity, provided that~~
~~the meeting lasts for at least one (1) hour and in order to qualify for the~~
~~stipend, the member shall be present for at least the entire meeting.~~

(i) Should an entity require more than one (1) hour of the
meeting, meeting per month and seek stipends for the additional
meetings(s), 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).

~~(a) B) Elected Entities. Members serving on the Oneida Child Protective Board shall be~~
~~exempt from the \$50 stipend per month limitation and shall receive a \$50 may be paid a~~
~~stipend for each meeting held in accordance with 105.11-3.~~

~~105.11-4. Meeting Stipends for Elected Members. Unless otherwise~~
~~declined by the entity through its bylaws, or declined by a member(s),~~
~~elected members serving on entities shall be paid a minimum stipend of~~
~~\$50 for each meeting which has established a quorum in accordance with~~
~~the duly adopted by laws bylaws of that entity, provided that the meeting~~
~~lasts for at least one (1) hour, regardless of the length of the meeting.~~
~~Members collecting stipends must and in order to qualify for the stipend,~~
~~and the member shall be present for at least one (1) hour of the entire~~
~~meeting, regardless of the length of the meeting.~~

~~105.11-5. The Oneida Business Committee shall periodically review the amounts provided for~~
~~meeting stipends and, based on the availability of funds, shall adjust those amounts accordingly~~
~~by amending this Policy.~~

~~105.11-6. Conferences and Training. A member of any entity, elected or appointed, shall be~~
~~reimbursed in accordance with the Tribal policy for travel and per diem, for attending a~~
~~conference or training. Provided that:~~

(a) (7) Each member's attendance at conferences and trainings, in accordance with
the following:

(A) A member shall be is eligible for a \$100 stipend for each half-day or
full day the member is present at the conference or training, when:

(i) attendance at the conference or training is required by law,
bylaw bylaws or Oneida Business Committee or General Tribal
Council resolution, or

(b) A member shall not be eligible for a conference and training stipend if that training is
not required by law, bylaw or resolution.

(c) (ii) the member receives approval in advance from the Oneida
Business Committee to receive a stipend for attendance.

(B) No stipend payments shall may be made for those days time spent
traveling to and from the conference or training.

(b) Members may earn additional stipends for activities not identified by Oneida
Business Committee resolution, provided that such stipends are identified in the entity's

Public Meeting Draft (Draft 21 – post comment review)2017 07 20

bylaws, as approved by the Oneida Business Committee.

~~105.11-7.~~ 12-3. All members of entities ~~shall be~~are eligible for reimbursement for normal business expenses naturally related to membership in the entity: including but not limited to, reimbursement for travel and per diem costs in accordance with the Oneida Travel and Expense Policy to offset members' costs for attending a conference or training, in accordance with 105.12-2(a)(7).

~~105.12-4.~~ 105.11-8.—Task ~~Force~~force, ad hoc committee and subcommittee members ~~and members of subcommittees shall~~are not ~~be~~ eligible for stipends unless a specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

105.12. Confidential Information

~~105.12-1.~~ The Oneida Tribe is involved in numerous business ventures and governmental functions where it is necessary that private information be kept in the strictest confidence to assure the continued success and welfare of the Tribe. It is in the best interest of the Oneida Tribe that all officials maintain in a confidential manner all information, whether of historical, immediate, or future use or need. The Oneida Tribe desires that all officials who have access to the Oneida Tribe's confidential information be subject to specific limitations in order to protect the interest of the Oneida Tribe. It is the intention of the Oneida Tribe that no persons engaged in by the Tribe, nor their relatives or associates, benefit from the use of confidential information.

~~105.12-2.~~ Confidential information means all information or data, whether printed, written, or oral, concerning business or customers of the Oneida Tribe, disclosed to, acquired by, or generated by officials in confidence at any time during their elected or appointed term or during their employment.

~~105.12-3.~~ Confidential information shall be considered and kept as the private and privileged records of the Oneida Tribe and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.

~~105.12-4.~~ An official will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Oneida Tribe shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the Oneida Tribe and the entity.

~~105.12-5.~~ Upon completion or termination of his/her elected or appointed term of membership in an entity, for any cause whatsoever, the official will surrender to the Oneida Tribe, in good condition, all records kept by the employee.

~~105.12-6.~~ No official shall disclose confidential information acquired by reason of his/her relationship or status with the Oneida Tribe for his/her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.

105.13. Conflicts of Interest

Subpart A. General

~~105.13-1.~~ The Oneida Tribe recognizes the ability of all persons to serve on entities of the Oneida Tribe. However, it is also recognized that the delegated authority and responsibilities of

an entity may cause conflict with membership on other entities or employment.

~~105.13-2. It is the policy of the Oneida Tribe to request a candidate to disclose possible conflicts prior to election or appointment to allow the conflicts to be resolved in a timely manner.~~

~~105.13-3. Officials shall disclose and resolve conflicts of interest in a reasonable and timely manner. Failure to resolve conflicts shall result in removal from office for elected officials and may result in termination of appointment for appointed officials. Provided that, all applicants shall submit, with the application forms, a signed conflict of interest declaration disclosing all known conflicts.~~

~~105.13-4. This section sets forth specifically prohibited conflicts of interests. However, for any individual candidate or member on an entity, conflicts may arise within the by laws of that entity or employment relationships.~~

~~105.13-5. No official shall act as a consultant, agent, representative for, or hold any position as an officer, director, partner, trustee, or belong as a member in a board, committee or commission, or the like without first disclosing such activity to determine possible conflicts of interest.~~

Subpart B. Employment Interests

~~105.13-6. No official shall hold office in an entity which has authority over the area in which the official is employed by the Oneida Tribe or elsewhere. The Oneida Tribe recognizes the ability of all persons to serve on entities of the Oneida Tribe, however, recognizes the conflict arising out of membership on an entity and employment in an area over which the entity has authority.~~

~~105.13-7. Employment is defined for this subpart as that area which the employee supervises or is supervised in regards to a specific subject matter.~~

~~105.13-8. Authority of an entity is defined for this subpart as that area over which the entity has subject matter jurisdiction delegated either by the Oneida Business Committee or Oneida General Tribal Council, and for which that authority may be regulatory, oversight, or otherwise.~~

Subpart C. Financial Interests, Investments, and Gifts

~~105.13-9. No official, or their immediate family, may have a financial interest in any transaction between the entity and an outside party where the official has a financial or familial relationship.~~

~~105.13-10. The following words are defined for the purposes of this subpart:~~

~~(a) "Financial interest" means any profit sharing arrangements, rebates, payments, commissions, or compensation in any form, and shall include any form of ownership, regardless of ability to control the activities of the business. Provided that, this shall not include ownership of shares which, other than in combination with others, cannot exert a controlling influence on the activities of the business and in relation to the outstanding shares, the ownership of shares represents a small part of the whole.~~

~~(b) "Transaction" means any activity wherein a provider of goods and/or services is compensated in any form.~~

~~(c) "Immediate family" means the mother, father, sister, brother, daughter, son, granddaughter, grandson, grandfather, grandmother and these relationships with any~~

Public Meeting Draft (Draft 21 – post comment review)2017 07 20

951 spouse.

952 105.13-11. As referred to in this Subpart, entity includes for the purposes of defining conflicts,
953 the programs or enterprises over which the entity has delegated authority.

954 105.13-12. Officials shall avoid personal investment in any business with which the Oneida
955 Tribe has or is expected to have a contractual or other business relationship. Notwithstanding the
956 foregoing, however, an investment by an official in a business with which the Oneida Tribe has
957 dealings is permissible if the Oneida Business Committee or other delegated authority
958 determines in writing that:

959 (a) the investment is not made or cannot be considered to have been made on the basis of
960 confidential information; and

961 (b) the investment cannot be expected to adversely affect or influence the official's
962 judgement in the performance of any services or obligations on behalf of the Oneida
963 Tribe.

964 105.13-13. Officials shall not use their relationship with the Oneida Tribe to exercise undue
965 influence to obtain anything which is not freely available to all prospective purchasers.

966 105.13-14. No official shall accept gifts, payments for personal gain, opportunities to invest,
967 opportunities to act as an agent, a consultant, or a representative for actual or potential
968 purchasers, sales sources, contractors, consultants, customers or suppliers, or accept any direct or
969 indirect benefit from any actual or potential purchaser, sales source, contractor, consultant,
970 customer, or supplier.

971 105.13-15. No official shall accept any gift, entertainment, service, loan, promise of future
972 benefits or payment of any kind which the Oneida Business Committee or other delegated
973 authority determines adversely affects or influence his/her judgement in the performance of any
974 services, duties, obligations or responsibilities to the Oneida Tribe, or impairs confidence in the
975 Oneida Tribe.

976 105.13-16. Notwithstanding the foregoing, however, officials may accept or provide business-
977 related meals, entertainment, gifts or favors when the value involved is insignificant and the
978 Oneida Business Committee or other delegated authority has determined that it clearly will not
979 place him/her under any obligation.

980
981 *Subpart D. Competition With The Oneida Tribe*

982 105.13-17. No official shall enter into competition with the Oneida Tribe in the purchase or sale
983 of any property, property rights or interests, without prior consent of the Oneida Tribe.

984 105.13-18. An official may enter into competition with the Oneida Tribe where the activity
985 engaged is approved through an Oneida entrepreneur development program or other similar
986 Oneida program and does not otherwise violate this policy.

987
988 *Subpart E. Use Of Tribal of the Nation's Assets*

989 105.13-19. All 1. Entities shall maintain all bank accounts for tribal the Nation's funds shall be
990 maintained in the name of the Oneida Tribe and will be reflected on the Oneida Tribe's Nation.
991 The Nation shall reflect such accounts on its books in accordance with the Generally Accepted
992 Accounting Procedures Principles.

993 105.13-20. 2. Each official member shall comply with the system of internal accounting controls
994 sufficient to provide assurances that:

2017 07 20

(a)— all transactions are executed in accordance with management's authorization; 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 management's authorization identified in the procurement manual rules; and

(c)— all transactions are recorded to permit preparation of financial statements in conformity with generally accepted accounting principles the Generally Accepted Accounting Principles or other applicable criteria.

~~105.13-21. Any records created or obtained while as an official of an entity of the Oneida Tribe is/are the property of the Oneida Tribe and can only be removed or destroyed by approval from a quorum of the entity at a duly called meeting. All removal or destruction of documents must be made in accordance with the Open Records and Open Meetings law.~~

Subpart F. Disclosure

~~105.13-22. Each official 3. Members shall disclose any outside activities or interests that conflict or suggest a potential conflict with the best interests of the Oneida Tribe by completely filling out the application for membership or informing the Oneida Business Committee or other designated authority after election or appointment of a conflict arising during membership on an entity.~~

Subpart G. Reporting

~~105.13-23. All conflicts or potential conflicts that arise during membership on an entity shall be immediately reported to the Tribal Secretary of the Oneida Tribe. Upon receiving information of a potential conflict of interest, the Tribal Secretary shall request a determination from the Oneida Law Office whether further action must be taken by the Oneida Tribe regarding the status of the official.~~

~~105.13-24. Any report to the internal audit staff any evidence of noncompliance with any policy law or rule regarding the use of tribal the Nation's assets shall be immediately reported to the internal audit staff. 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 of the Oneida Tribe, who will shall then make a determination of further action to be taken, if any.~~

Subpart H. 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

~~105.13-25. Officials found to be in violation~~ 15-1. Members who violate the laws and policies of ~~this policy~~ the Nation may be ~~removed pursuant to the Removal Law if elected~~ subject to sanctions or ~~have their~~ other penalties, including termination of appointment ~~terminated if appointed~~ and removal from office, pursuant to applicable law.

~~105.13-26. 15-2. Candidates for appointment or election to office found in violation~~ office, and members, shall be subject to sanctions and penalties for violations of this ~~policy~~ 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 either 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:

(1) if an individual entity's bylaws provide for a longer period of ineligibility; then that longer period shall apply; and

(2) termination or removal from one (1) entity shall not affect a member's concurrent service on any other entity; except that the member may not be reappointed or re-elected during the period of ineligibility.

(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.

End.

Adopted - BC-8-2-95-A

Amended - BC-5-14-97-F

Emergency Amendments - BC-03-06-01-A (expired)

Emergency Amendments - BC-04-12-06-JJ

Emergency Amendments - BC-11-12-09-C

Emergency Amendments Extension - BC-05-12-10-I (expired)

Amended - BC-9-27-06-E (permanent adoption of emergency amendments)

Amended - BC-09-22-10-C

Amended -

Draft 21 – For OBC Consideration
2017 08 09

Title 1. Government and Finances - Chapter 105
Governance of Boards, Committees and Commissions
Yolihwakwe'kú Kayanl'khsla' yethiya'tanú' nha tsi' ka'yá lonatlihu'tú'

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. Creation and 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-9-27-06-E, BC-9-22-10-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 an applicant 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; and

(5) position applied for.

(b) Along with the application, applicants may also be required to submit additional information as may be required for a background check, and/or 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 Enrollment 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:

- (a) the date the applicant's application was filed;
- (b) whether the applicant meets the eligibility requirements and will be considered for the election/appointment;
- (c) a note that further information may be requested by contacting the party sending the notice and providing such contact information;
- (d) the applicable duties for the position sought by the applicant; and
- (e) 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 forty-five (45) 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. 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 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; and
- (c) the Secretary shall promptly notify the entity that notice of the vacancy has been re-posted, including any changed deadlines or timelines that apply.

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 become effective upon approval by the Oneida Business Committee; except where General Tribal Council approval is required instead. Bylaws 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;

- 343 (C) How vacancies are filled;
344 (D) The requisite qualifications for membership. At a minimum,
345 members shall be an enrolled member of the Oneida Nation or another
346 federally-recognized Indian tribe; or an Oneida descendant.
347 (i) Entities may, in their bylaws, establish more stringent
348 requirements for qualifications; including but not limited to:
349 (a) Blood quantum or generational requirements for
350 descendants (i.e. first-generation, second-generation, etc.);
351 (b) Any minimum education requirements; which may
352 include, but are not limited to; a high school diploma or
353 equivalent; an associate's degree or equivalent, or a
354 bachelor's degree; and/or
355 (c) Any other requirements that may enable the entity to
356 best perform the responsibilities delegated to the entity by
357 Oneida law.
358 (ii) If an entity amends its bylaws to establish more stringent
359 requirements for qualifications, then any existing members who do
360 not meet the more stringent qualifications shall be exempt from
361 those requirements until their present term expires. Provided that,
362 such members shall not be eligible for re-election or re-
363 appointment to the entity unless they can meet the more stringent
364 requirements.
365 (E) Causes for termination or removal, if any, in addition to those
366 identified herein and in the Removal law.
367 (F) That members may resign from an entity by doing either of the
368 following, and that such resignation shall be effective upon either of the
369 following occurring:
370 (i) Deliverance of a resignation letter to the entity; or
371 (ii) The entity's acceptance by motion of a verbal resignation.
372 (5) *Stipends*. A comprehensive list of all stipends members are eligible to receive
373 and the requirements for collecting each stipend, if any in addition to those
374 contained in this law.
375 (a) Stipends may only be provided for emergency meetings if the bylaws
376 expressly authorize members to receive stipends for emergency meetings.
377 (6) *Trainings and Conferences*. A comprehensive list of all trainings and
378 conferences that the entity deems necessary for members to responsibly serve the
379 entity. In accordance with section 105.12-2(a)(7), members shall only be eligible
380 for stipends, per diem, and/or reimbursement of expenses for attending a training
381 or conference if the training or conference is required by the entity's bylaws,
382 Oneida law, Oneida Business Committee or General Tribal Council resolution; or
383 if the member's attendance is pre-approved by the Oneida Business Committee.
384 (7) *Conflicts of Interest*. Any additional or particular requirements related to when
385 a member should recuse himself or herself due to a conflict of interest.
386 (b) "Article II. Officers" shall consist of the following:
387 (1) *Chair and Vice-Chair*. This section creates the positions of the entity. Other
388 positions may also be created here.
389 (2) *Chair Duties*. Because of the importance of this position, the duties and
390 limitations of the entity's chairperson shall be specifically listed.

- 391 (3) *Vice-Chair Duties*. Because of the importance of this position, the duties and
392 limitations of the entity’s vice chairperson shall be specifically listed.
- 393 (4) *Additional Officers and Duties*. Additional sub-articles shall specifically list
394 duties and limitations for every officer position identified in subsection (1).
- 395 (5) *How Chosen*. Bylaws shall specifically state how a member of the entity will
396 be chosen to occupy an officer’s position.
- 397 (6) *Budgetary and Travel Sign-Off Authority*. The Purchasing Department shall
398 confirm each position within the entity that has been designated as having sign-off
399 authority. Bylaws shall identify:
- 400 (A) The entity’s varying levels of budgetary sign-off authority, including
401 which members are authorized to sign-off at each level, and
- 402 (B) Which members have the authority to sign off on travel on behalf of
403 the entity.
- 404 (7) *Personnel*. The entity’s authority for hiring personnel, if any, and the duties of
405 such personnel.
- 406 (c) “Article III. Meetings” shall consist of the following; provided that, all meetings shall
407 be noticed and called in accordance with the Open Records and Open Meetings law:
- 408 (1) *Regular Meetings*. The number of regular meetings the entity shall hold each
409 year, including when and where these meetings shall be held; and how the entity
410 shall provide notice of the meeting, agenda, documents, and minutes. The number
411 of regular meetings identified in the bylaws may not exceed the entity’s budget
412 for stipends.
- 413 (2) *Special Meetings*. How the entity may call special meetings and how the entity
414 shall provide notice of special meetings. Special meetings are not scheduled
415 regular meetings, but also do not rise to the level of emergency justification
416 required for emergency meetings.
- 417 (3) *Emergency Meetings*. Emergency meetings are meetings that need to be called
418 sooner than a meeting could be called if the twenty-four (24) hour notice
419 requirement, as set out in the Open Records and Open Meetings law, is followed.
420 Emergency meetings may only be held when necessary to maintain order and/or
421 protect public health and safety. Bylaws shall:
- 422 (A) State how the entity may call emergency meetings and how the entity
423 shall notice emergency meetings, and
- 424 (B) Include the following provision:
425 “Within seventy-two (72) hours after an emergency meeting, [the entity]
426 shall provide the Secretary with notice of the meeting, the reason for the
427 emergency meeting, and an explanation of why the matter could not wait
428 for a regular or special meeting.”
- 429 (4) *Quorum*. How many members create a quorum. At a minimum, a majority of
430 the entity’s current members shall be required to create a quorum.
- 431 (5) *Order of Business*. How the agenda will be set.
- 432 (6) *Voting*. Voting requirements, including the requisite percentages for passing
433 different items and when, if at all, the entity’s chairperson may vote.
- 434 (d) “Article IV. Reporting” shall consist of the following:
- 435 (1) *Agenda Items*. Agenda items shall be maintained in an identified and
436 consistent format.
- 437 (2) *Minutes and Attachments*. Minutes shall be typed in a consistent format
438 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. Failure to submit minutes to the Oneida Business Committee as required may result in the suspension of stipend payments to individual members, until the entity has attained compliance with such requirements.

(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.

(v) *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.

(vi) *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.

(vii) *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 expensed 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

535 following information:

536 (a) *Names*: The name and purpose of the department, the
537 department's website, and the contact person for the
538 department and their phone number, mailing address, and
539 e-mail address.

540 (b) *Employees*: How many employees the department has
541 and how many of those employees are enrolled members of
542 the Nation.

543 (c) *Service Base*: A brief description of who the department
544 serves.

545 (d) *Goals and Accomplishments*: Up to three (3)
546 accomplishments the department achieved in the previous
547 fiscal year and how each accomplishment impacted the
548 Oneida community; as well as three (3) strategic goals the
549 department will pursue in the new fiscal year.

550 (e) *Logo and Images*: The department's logo that may be
551 included in the report and any other pictures or images that
552 the department would like to be considered by the
553 Secretary for inclusion in the report.

554 (f) *Budget*. Annual reports shall also identify the
555 department's:

556 (1) funding sources; including the Nation's
557 contribution, grants, and other sources;

558 (2) total budget for the previous fiscal year; and

559 (3) the actual budget expensed at the close of the
560 fiscal year, and, if not within the department's
561 original budget, an explanation for why the budget
562 was exceeded.

563 (e) "Article V. Amendments" shall identify how amendments to the bylaws may be
564 initiated by the entity. Provided that, amendments shall conform to the requirements of
565 this law and any other law or applicable rule. Prior to implementation, amendments to
566 bylaws shall be approved by the Oneida Business Committee, or by the General Tribal
567 Council, when applicable.
568

569 **105.9. Official Oneida E-mail Address Required for all Entity Members**

570 105.9-1. The Secretary shall work with the Management Information Systems department to
571 provide each entity member with an official Oneida e-mail address upon election or appointment.
572 If a member is also an employee of the Nation, he or she shall receive a separate e-mail address
573 from his or her regular work e-mail address. Members shall sign an acknowledgment form
574 provided by the Secretary indicating notice of the Nation's applicable computer and media
575 related laws, policies and rules. The Secretary shall maintain a record of all such
576 acknowledgment forms.

577 105.9-2. Members shall use their official Oneida e-mail address when conducting business of the
578 entity electronically. Members may not use any personal or work e-mail address to electronically
579 conduct any business of the entity.

580 105.9-3. Immediately upon receipt of notice of an entity vacancy, the Secretary shall instruct the
581 Management Information Systems department to disable the e-mail address for the member
582 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 and Standard Operating Procedures

105.10-1. Minutes.

(a) Entities shall submit all minutes to the Secretary within a reasonable time after approval by the entity.(b) Actions taken by an entity are valid when minutes are approved and filed in accordance with this section and the entity's approved bylaws.(c) 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.

105.10-2. *Standard Operating Procedures.* All standard operating procedures established by an entity shall be submitted to the Secretary's Office, where they shall be kept on file.

105.11. Creation and Dissolution of Entities

105.11-1. *Creation of Entities.* Entities shall be created and delegated authority by law. Provided that, an entity may be created and delegated authority through an emergency resolution adopted by the Oneida Business Committee and/or General Tribal Council, for a period not to exceed six (6) months; with a one-time opportunity for an extension of up to six (6) additional months.

105.11-2. *Dissolution of Entities.* Entities may be dissolved according to this section; however, additional specific directions may be included in an entity's bylaws.

(a) 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.

(b) 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.

(c) 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 earn stipends, in amounts established by Oneida Business Committee resolution, for the following activities:

(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.

(5) For conducting hearings administered by the entity, with stipends earned 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.

(6) Each member's attendance at entity meetings, in accordance with the following:

(A) *Appointed Entities*. Members serving on appointed entities may be paid a meeting stipend no more than once per month for attending a meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, provided that the meeting lasts for at least one (1) hour and in order to qualify for the stipend, the member shall be present for the entire meeting.

(i) Should an entity require more than one (1) meeting per month and seek stipends for the additional meetings(s), 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).

(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, provided that the meeting lasts for at least one (1) hour and in order to qualify for the stipend, and the member shall be present for the entire meeting.

(7) Each member's attendance at conferences and trainings, in accordance with the following:

(A) A member is eligible for a stipend for each half-day or full day the member is present at the conference or training, when:

(i) attendance at the conference or training is required by law, bylaws or Oneida Business Committee or General Tribal Council resolution, or

(ii) 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.

(b) Members may earn additional stipends for activities not identified by Oneida Business Committee resolution, provided that such stipends are identified in the entity's bylaws, as approved by the Oneida Business Committee.

105.12-3. All members of entities are eligible for reimbursement for normal business expenses naturally related to membership in the entity; including but not limited to, reimbursement for travel and per diem costs in accordance with the Oneida Travel and Expense Policy to offset members' costs for attending a conference or training, in accordance with 105.12-2(a)(7).

105.12-4. 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 either 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:

(1) if an individual entity's bylaws provide for a longer period of ineligibility; then that longer period shall apply; and

(2) termination or removal from one (1) entity shall not affect a member's concurrent service on any other entity; except that the member may not be reappointed or re-elected during the period of ineligibility.

(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.

End.

Adopted - BC-8-2-95-A

Amended - BC-5-14-97-F

Emergency Amendments - BC-03-06-01-A (expired)

Emergency Amendments - BC-04-12-06-JJ

Emergency Amendments - BC-11-12-09-C

Emergency Amendments Extension - BC-05-12-10-I (expired)

Amended - BC-9-27-06-E (permanent adoption of emergency amendments)

Amended - BC-09-22-10-C

Amended –



Legislative Operating Committee August 2, 2017

General Tribal Council Meetings Law

Submission Date: 9/17/14	Public Meetings: 12/6/12, 6/26/17 and 6/29/17
LOC Sponsor: Fawn Billie	Emergency Enacted: n/a Expires: n/a

Summary: *This item was carried over into the current term by the LOC. This proposal is for a new law to govern the scheduling and conducting of GTC meetings, including: a standard agenda format and a code of conduct for those in attendance; outlining the duties of those preparing and assisting with GTC meetings, and establishing how petitions would be processed.*

9/17/14 LOC: Motion by Fawn Billie to add the following five items to the Active Files List: GTC Meetings Law; Petition: Directing a “Stall Mall” be Created; Petition: Publishing Names and Addresses of Petition Signers in GTC Mailouts; Petition: Real Estate Taxes for all Tribe Owned Property to be Paid by Tribe; Petition: Responding to Questions and Comments from the Floor at GTC; seconded by Tehassi Hill. Motion carried unanimously.

Note: Fawn Billie will be the sponsor for this item

11/12/14 OBC: Motion by Melinda J. Danforth to defer the GTC Petitions Process SOP to a Business Committee work meeting for discussion, seconded by Fawn Billie. Motion carried unanimously.

4/3/15 LOC: Motion by Jennifer Webster to forward the GTC Meetings Law to the Oneida Business Committee to put on the next GTC agenda; seconded by Tehassi Hill. Motion carried unanimously.

4/22/15 OBC: Deleted from the agenda at the adoption of the agenda since this item was already included in the July 6, 2015 GTC backup.

7/6/15 GTC: Motion by Madelyn Genskow that the General Tribal Council Meetings Law be remanded back to the Legislative Operating Committee for changes, including Public Meetings for comments, and that the mailing be provided to all voting members; seconded by Sherrole Benton. Motion carried by show of hands.

8/5/15 LOC: Motion by David P. Jordan to defer the GTC Meetings Law to a work meeting; seconded by Fawn Billie. Motion carried unanimously.

9/1/15: *Work meeting held.* Attendees include Brandon Stevens, Tehassi Hill, Fawn Billie, Jennifer Webster, David P. Jordan, Rhiannon Metoxen, Steve Webster, Cheryl Skolaski, Bradley Graham, Bill Graham, Krystal John, Candice Skenandore, Douglass McIntyre.

11/18/15 LOC: Motion by Fawn Billie to defer the GTC Meetings Law with the noted changes for a legislative analysis and fiscal impact statement; seconded by David P. Jordan. Motion carried unanimously.

Noted changes include the following:

- *Require the Tribal Secretary to provide a petition form with instructions;*
- *Require one subject matter per petition (does not limit the number of resolutions so long as they apply to the topic);*
- *Limit the number of resolutions that can be heard at a GTC meeting;*
- *Defer the discussion regarding denying a vote on matters deemed illegal or*

A good mind. A good heart. A strong fire.

unconstitutional;

- *Expand the 60-day timeframe under 11.5-5 (a);*
- *Add specific deadlines for each required analysis (legal, legislative & fiscal);*
- *If a petition is denied, notice must be provided to the petitioner and those that signed the petition stating the reason(s) why the petition was denied;*
- *Amend the list under 11.5-8 to be more common sense;*
- *Include when an alternate may be assigned for representing a petition;*
- *Identify the forums, media that can be used at GTC and specify who can utilize them for presentations;*
- *Remove the 2-minute time limit under 11.8-5 (c) and allow GTC, at the start of the GTC meeting, to determine if a time limit is necessary, and if so, identify the time limit;*
- *Require the OBC to adopt a GTC security plan; and*
- *Identify who is allowed to videotape*

12/9/15 OBC: Motion by Lisa Summers to request the Internal Security Department provide a Plan of Action related to Rules of Decorum and their enforcement and for the Plan of Action to be presented to the Business Committee on December 22, 2015, for input and feedback, seconded by Jennifer Webster. Motion carried unanimously.

1/4/16 and 2/20/16 GTC: Motion by Brad Graham to adopt the agenda with the deletion of item 4. Adopt the Rules of Decorum and Appoint Sergeant-at-Arms. Seconded by Mike Debraska. Motion carried by show of hands.

4/27/16 OBC: Motion by Jennifer Webster to approve the Tribal Secretary filing copyright and any other legal requests to remove General Tribal Council videos from YouTube channel, seconded by Tehassi Hill. 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.

9/14/16 LOC: Motion by Lisa Summers to adopt resolution # 09-14-16-A Rules of Decorum for General Tribal Council Meetings, seconded by Jennifer Webster. Motion carried unanimously:

10/7/16: *Quarterly Sponsor Update Meeting held.* Present: Fawn Billie, Cathy Bachhuber, Jennifer Falck, Tani Thurner, Maureen Perkins, Clorissa Santiago. LRO Director will schedule a work meeting and invite the BC Secretary. The Trust Enrollment Dept (Bonnie Pigman) has concerns about combining the GTC stipend policy, the 10 day notice, and the GTC meetings law into one document- because it may become more challenging to make amendments.

11/1/16. *Work meeting held.* Present: Brandon Stevens, Susan White, Jenny Webster, Maureen Perkins, Bonnie Pigman, Jo Anne House, Lisa Summers. Waiting for new draft based on this meeting.

3/1/17: *Work meeting held.* Present: Tani Thurner, Brandon Stevens, Maureen Perkins, Jo Anne House, Cathy Bachhuber, Fawn Billie, Tehassi Hill, and Jessica Wallenfang (minutes)

4/3/17: *Work meeting held.* Present: Danelle Wilson, Tani Thurner, David P. Jordan, Jennifer Webster, Cathy Bachhuber, Jo Anne House

4/13/17: *Work meeting held.* Present: David P. Jordan, Cathy Bachhuber, Tani Thurner, Jennifer Webster, Fawn Billie, Tehassi Hill. Draft updated and sent out for one final review; with comments due to LRO director by April 24, 2017.

5/3/17 LOC: Motion by Jennifer Webster to approve the draft and forward the General Tribal Council Meetings law for a legislative analysis due back to the Legislative Operating Committee by May 17, 2017; seconded by Tehassi Hill. Motion carried unanimously.

Motion by Jennifer Webster to have Brandon Stevens put the General Tribal Council Meetings law on the May 15, 2017 Oneida Business Committee work meeting agenda; seconded by Fawn Billie. Motion carried unanimously.

5/17/17 LOC: Motion by David P. Jordan to approve an extension to June 7, 2017 for the legislative analysis to be completed; seconded by Fawn Billie. Motion carried unanimously.

6/7/17 LOC: Motion by David P. Jordan to approve the public meeting packet and to forward the GTC Meetings 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 Tehassi Hill. Motion carried unanimously.

6/26/17: *Public Meeting held*

6/29/17: *Public Meeting held*

Next Steps:

- Accept the public comments and forward to a work meeting.



HANDOUT

TO: Legislative Operating Committee (LOC)
FROM: Taniquelle J. Thurner, Legislative Reference Office Staff Attorney
DATE: August 2, 2017
RE: General Tribal Council Meetings Law: Public Meeting Comment Review

On June 26, 2017, and June 29, 2017, public meetings were held regarding the proposed General Tribal Council Meetings law. 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.

Disregarding Earlier Comments

Ed Delgado, written comment: Note: On Monday, June 26th I submitted verbal comments. Please disregard those comments.

Ed Delgado oral comment 6/29: First, I'd like my comments that I made on Monday to be done away with.

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 spoken comments and asked that they be redacted. The attached transcript from that public meeting includes his comments; however per his request, his June 26 spoken comments were not included in this public comment review memo.

Comment 1 – Adoption by General Tribal Council

Bonnie Pigman, oral comment 6/29: I also feel that this document should not be adopted by the Oneida Business Committee. I feel that reason is because there's a lot of information in here that affects our General Tribal Council membership and some of it could be very controversial. And I would not like for it to go... I'd rather not see it hit the floor at a General Tribal Council meeting and people being upset because the Business Committee approved this document without their input. Even though I know that's what this meeting is for, there aren't very many people here from our base that we usually see in a General Tribal Council. And I think some of the items like I said in there are going to be controversial. So for that reason I would rather see it being presented to General Tribal Council at a duly called meeting, put it on the agenda. I don't know how you want to do that, but how it gets there.

Response

It has always been the intent that this law would be adopted by General Tribal Council. Section 118.2-1 states "This law was adopted by the General Tribal Council by resolution GTC#

_____.” And section 118.2-2 states that the law can only be amended or repealed by General Tribal Council.

There is no recommended revision based on this comment.

LOC Consideration

Comments 2, 3 and 4: “Eligible voters”

Bonnie Pigman, oral comment 6/29: Throughout the document you have utilized the term “eligible voters” and I feel that that should not be used because our Constitution identifies our voter base as being “qualified voters” and so I think if you’re going to use that term, then I think you to need to change our Constitution in relationship to that same language being used because some people may say that “eligible” could be identified as a criteria or utilized in that kind of ideology, I guess if you want to say that. So I would prefer if you stick with the language used in the Constitution to properly identify our membership that’s identified for General Tribal Council, who are our voter base.

Susan White, written comment: Line 33: “Eligible voter”. The Constitution defines enrolled members of the Oneida Nation age eighteen (18) and over to be “Qualified voters”. The definition and all references (about 8) of “eligible/Eligible voter” throughout this document should be consistent with the Constitution.

Response

The comments are suggesting that the term “qualified voter” be used instead of “eligible voter” throughout the law.

Art. III. Section 2 of the Constitution states that “All enrolled members of the Oneida Nation who are eighteen (18) years of age or over shall be qualified voters provided they present themselves in person at the polls on the day of election.”

The way this law uses the term; it is intended to refer to all members of voting age; regardless of whether they present themselves in person at the polls on the day of election.

The Constitution also refers to eligible voters. Article VI, Section 2 states that Constitutional amendments “may be proposed by petition of the members eligible to vote. Every petition shall [...] be signed by members eligible to vote, equal in number to at least ten percent (10%) of the members eligible to vote.”

Also, Article VI, Section 3 states that: “If the proposed amendment is approved by sixty-five percent (65%) of the members eligible to vote who presented themselves at the polls and voted on the question, it shall become part of the Oneida Constitution and By-Laws”

In this proposed law, the term *eligible voter* is used instead of *qualified voter* because the intent is different – it is not whether members present themselves in person in polls on the day of election, but rather, whether they are of voting age, and therefore, eligible to vote.

The commenter is stating that the references to voters should be consistent with the constitution. However, the term “eligible voter” is consistent with the Constitution. Various other laws also use the term “eligible voter” to refer to Tribal members of voting age, including the Judiciary Law, the Removal law, and the Administrative Rulemaking law. The intent of using “eligible” voter is to ensure there is no confusion with the language of the Constitution which states a qualified voter is such “provided they present themselves in person at the polls on the day of election.”

No changes are recommended based on these comments.

LOC Consideration

Comment 4: “Eligible voters”

Lisa Liggins, oral comment 6/29: One is on line 33. The definition of eligible voter. I believe that we should not include the Tribal member who is 18 years of age, that it should just reference “as defined in the Constitution” because... not that you’re going to change often, but...

Response

The commenter is suggesting that the definition of eligible voter be revised to not specifically state the minimum voting age, because the minimum voting age is established in the Constitution.

If the Constitution is revised in the future to change the minimum voting age, then the definition would also have to be revised in this law to ensure there is no conflict. However, it is unlikely that the voting age will be revised in the foreseeable future; and if it is revised, then any law which identifies a voter as a person who is 18 years of age would need to be revised as well.

This is a policy call. If the LOC wishes to revise this language, the provision could be revised as follows:

118.3-1(e) “Eligible voter” means an enrolled Tribal member who ~~is eighteen (18) years of age or older.~~ meets the minimum voting age requirements, as established in the Constitution.

LOC Consideration

Comments 5, 6, 9 and 10 - Libel and Slander

Ed Delgado oral comment 6/29: Line 43, the term “libel” – that actually means a written statement that is injurious to another person’s reputation. However, the statement must be a lie for the writer to be held liable. So.. lie... libel comes from lie. So it has to be a lie. Is the intent to prevent truthful statements? Recommend that the Chair rule out of order written statements that are not relevant to the agenda. So if somebody’s, you know, saying something and if it is not relevant to the agenda, it should be ruled out of order. But I don’t know if we have the ability to determine what’s a lie and what’s not. At a meeting.

Ed Delgado, written comment: Line 43: "the term libel" actually means a written statement that is injurious to another person's reputation. However, the statement must be a lie for the writer to be held libel. Is the intent to prevent truthful statements? Recommend that the Chair rule out of order written statements that are not relevant to the agenda item.

Ed Delgado, written comment: Line 64: Same issue as above regarding slanderous verbal statements. Recommend Chair rule out of order verbal statements that are not relevant to the agenda. Also recommend Chair delete from the record both verbal and written statements that may be untrue.

Ed Delgado oral comment 6/29: Line 64. Same issue above regarding slanderous statements. Slanderous statements should be ruled out of order, but slanderous again, has to be a lie. They're telling the truth it's not a lie, but ... it's gotta be relevant to the agenda. I believe.

Response

The commenter is correctly identifying that slander (spoken defamation) and libel (written defamation) must be false in order to meet the legal definition for slander or libel, and appears to be asking to have the law revised to clarify that.

The commenter is also requesting that slanderous statements be ruled out of order, that the Chair be required to rule other statements out of order if they are not relevant to the agenda, and that the Chair also delete such statements from the record.

Under commonly recognized rules of parliamentary procedure, the Chair of a meeting may rule a motion or a statement as being out of order if it is dilatory (intended to waste time or cause a delay) or improper. This proposed law does not address parliamentary rules of procedure. It is a policy call for the LOC to determine whether to expand the scope of this law to include parliamentary rules of procedure; and/or whether to identify what rulings the Chair must make in specific situations.

No changes are recommended based on these comments.

LOC Consideration

Comment 7 – Statement of Effect

Lisa Summers, oral comment 6/29: I'll start on page two. The first one that I would like to have a little bit of a dialogue about or express concern about is starting on line 48 for the petition analysis. If you look to line ... 49: "The statement of effect prepared by the Legislative Reference Office which explains the effects adopting a resolution will have on the Nation's laws." I believe that that's a little bit too narrow. The Ten Day Notice policy requires that any action via a motion or resolution be noticed properly to the General Tribal Council prior to action taking place. So I think it just needs to simply say "law or issue" or law or... it needs to be a little bit more inclusive so it's not only just resolutions that are prepared from an analyses perspective, so I think that's just one thing that I would like to respectfully request be considered.

Response

The commenter is requesting that this law be amended to require that the LRO prepare analyses for each “issue” or each “motion” presented to GTC, not just resolutions.

The commenter correctly notes that the Ten Day Notice Policy requires any action via a motion or resolution to be noticed properly to the General Tribal Council prior to action taking place. However, the Ten Day Notice Policy defines “Notice” as “actually informing the membership of a regular or special meeting by publishing an agenda, stating a location, and stating the date and time in a reasonable time for the members to attend.” [See the Ten Day Notice Policy, section 110.2.(c)]

That provision requires notice of the meeting, with the agenda; it does not specifically require statements of effect to be prepared for any action, even for resolutions.

Currently, the only existing requirements for statements of effects was adopted by Oneida Business Committee resolution 8-16-95-A, and amended by BC Resolution 6-1-05-C. As amended, that resolution requires that “all resolutions proposed for adoption by the Oneida Business Committee or the Oneida General Tribal Council shall be accompanied by a Statement of Effect and processed through the Legislative Reference Office.” The amended resolution defines a Statement of Effect as something that contains “legal and policy analysis which explains the effect adopting a resolution has for the Tribe.” (The amended resolution also identifies specific exceptions whereby a statement of effect is not required).

The Oneida Business Committee also currently requires legislative, fiscal and legal analyses be prepared for each petition that is submitted for GTC consideration. However, this is not a requirement established in any law.

The commenter is requesting that an analysis (SOE) be prepared for each “motion” or “issue” that is presented to GTC. It would be difficult for the Legislative Reference Office to anticipate in advance each motion or issue that may be presented to GTC. This change may require that all actions and motions be presented at one GTC meeting and then delayed until the following GTC meeting while the Legislative Reference Office prepares the statements of effect.

Whether to expand the current requirement to also include any motion or issue presented to GTC is a policy call.

There is no recommended revision based on this comment.

LOC Consideration

Comment 8 – Definition for Legal Analysis

Susan White, written comment: Lines 56 – 59: Definitions (l)(3) “a legal analysis” Would this need to include the recent GTC approved Legal Resource Center Attorney?

Response

The commenter is referring to the 118.3-1(l) definition of a “Petition analyses” – one of the three types of analyses required is: “A legal analysis prepared by the Oneida Law Office which discusses the ability to legally take action requested in a petition, based on parliamentary issues, including prior General Tribal Council actions and conflicts with federal law and/or the Constitution or laws of the Nation.”

The commenter is asking whether this definition should include the attorney from the newly-approved Legal Resource Center attorney.

The definition identifies the Oneida Law Office as being responsible for preparing this analysis. The definition does not currently include the attorney from the Legal Resource Center (LRC), because the LRC is a separate entity from the Law Office. The law only directs the Law Office to prepare these analyses.

Whether or not to expand the definition to enable the Legal Resource Center attorney to prepare legal analyses is a policy call.

There is no recommended revision based on this comment.

LOC Consideration

Comment 11 – Employees collecting signatures

Lisa Summers, oral comment 6/29: The next thing is starting on line 99. 118.5-3 for signatures. I was a little... I needed to have a little bit understanding what the intent was for this particular section. It states that employees of the nation who are collecting petition signatures shall do so in accordance with all laws and policies of the nation. I didn’t understand why that was only specific to employees. Because non-employees who are petitioners must also adhere to the proper laws and policies when collecting signatures. So I wasn’t 100% certain why this was in here this way. I feel like it’s something that should apply to everyone. I think if the intent was to just clarify or to remind employees that they have specific rules to follow when engaging in political activities, that that rule is covered under the Personnel Policies and Procedures and I think it can be referenced as such. So that was just something I wanted to point out to the body.

Response

The commenter’s concern is regarding the following provision:

118.5-3. *Signatures.* Employees of the Nation who are collecting petition signatures shall do so in accordance with all laws and policies of the Nation.

The commenter is noting that employees of the Nation are not the only persons who would be required to collect petition signatures in accordance with all laws and policies of the Nation – all persons would be required to do so.

This could be revised to require all persons to adhere to the laws and policies of the Nation while collecting signatures. If desired, the revision could also specifically identify that employees are subject to employment-related policies, as well.

118.5-3. Signatures. ~~Employees~~ All persons, including employees of the Nation, who are collecting petition signatures shall do so in accordance with all laws and policies of the Nation.

LOC Consideration

Comments 12 and 13 – Requiring phone numbers and e-mail addresses for petition signers

Ed Delgado, written comment: Line 103, a petitioner should not be required to have a phone or e-mail address, nor should the petitioner be required to provide e-mail address if he or she does not want to.

Ed Delgado oral comment 6/29: Line 103...A petitioner should not be required to have a phone or an email address, nor should a petitioner be required to have an email address if he or she does not want one. There's a requirement there that they have something there.

Response

Section 118.5-4(b) in the proposed law currently requires petitions to include a phone number for the petitioner, and an e-mail address if available. The commenter is stating that a petitioner should not be required to have these or to provide them if s/he does not want to.

This is a policy call.

There is no recommended revision based on this comment.

LOC Consideration

Comment 14 – Oath

Susan White, written comment: Line 118: Please identify if the “oath verification” is the “Petitioner” or “Qualified voter”.

Response

The commenter is referring to the following section:

118.5-4. *Completed Petitions.* A completed petition shall contain the following:

(f) An oath verifying that:

- (1) The circulator witnessed each person sign the petition,
- (2) Each signature appearing thereon is the genuine signature of the person it purports to be, and
- (3) The petition was signed in the presence of the circulator on the date indicated.

The commenter is asking whether the person taking this oath is the petitioner or the qualified voter.

The answer is: neither. As indicated in (1), the oath is taken by the person who circulated the petition, whether that person was the petitioner or just another person assisting the petitioner by circulating the petition.

There is no recommended revision based on this comment.

LOC Consideration

Comments 15 through 17 – Petition Circulators

Susan White, written comment: Lines 119 & 122: “circulator” should be in the “Definitions” section as well.

Ed Delgado oral comment 6/29: Um... It has been the custom that petitioners have help in attaining signatures. Recommend that petition provider provide that persons assisting the petitioner sign that they have witnessed.. that they are witnessing to the signing. What you’re recommending is that the petitioner do all the signature gathering by himself and that’s hard.

Ed Delgado, written comment: Lines 118 thru 122: It has been the custom that petitioners have help in attaining signatures. Recommend petition provide that persons assisting the petitioner sign that they witnessed the signing.

Response

The first commenter is suggesting that a definition be added for “circulator,” The second and third comments appear to have misinterpreted the law as prohibiting any person from helping a petitioner collect signatures. However, section 118.5-4(f) specifically allows for a “circulator” of a petition.

A definition may not be necessary, because the term is only used in one provision in the law – it may be easier to just revise that section to clarify intent. The following language is one possible solution to the commenters’ concerns:

118.5-4. Completed Petitions. A completed petition shall contain the following:

(f) ~~An~~ An oath on each page of signatures, signed by the person who circulated that page of signatures, verifying that:

- (1) The circulator witnessed each person sign the petition,
- (2) Each signature appearing thereon is the genuine signature of the person it purports to be, and
- (3) The petition was signed in the presence of the circulator on the date indicated.

LOC Consideration

Comment 18 – Cross-reference

Susan White, written comment: Line 191: add to the end of this line “in accordance with (b).

Response

If the LOC wishes to add the requested language, the provision would read as follows:

118.5-7(a)(2)(C)(ii) If the Trial Court of the Judiciary issues a declaratory judgment finding that the petition does not seek action that violates the Constitution, the Oneida Business Committee shall accept the petition and proceed with processing the petition as an accepted petition in accordance with (b).

The current language appears to be clear from the context, and this additional language may not be necessary. Whether to add this language is up to the LOC.

LOC Consideration**Comment 19 – Progress on Petition Analyses**

Lisa Summers, oral comment 6/29: Similarly, starting on line 199 in that section – “any actions taken on the petition, including but not limited to...” and then it lists three items. Um, one of the things that we’ve been practicing is to post progress of the analyses as they’re being completed and... I didn’t know if we wanted to get that specific or if that was going to be a rule but I just wanted to mention that that was one of the things, for transparency reasons, we’ve been asking for public notification, we’ve been putting it on our agendas so that the public can be informed of what progress is being made on each one of the petitions as they come forward. So that was something I just... I didn’t know if we wanted to get specific or not but I just wanted to put that reminder out there.

Response

The commenter is noting that the Secretary’s Office posts progress of Petition analyses as they are being completed, for transparency reasons; and that the Secretary puts petitions on the OBC meeting agendas so the public can be informed of the progress that is being made on each of the petitions as they move forward.

The commenter states that she is not sure if that level of specificity should be added to this law or if those requirements should come in the form of a rule.

It may be more appropriate to include such detail in processes developed by the Secretary’s Office or by the OBC Support Office. If desired, a provision could be added which identifies specific requirements for notifying the public, and for placing items on agendas. However, if added to the law, then those requirements would become permanent and difficult to change.

Whether to add that level of detail into this law is a policy call for the LOC

LOC Consideration**Comments 20 and 21– Mandatory/Optional meetings between OBC and Petitioner**

Lisa Summers, oral comment 6/29: The next item that I wanted to cover starts on line 216. Section 118.5-8, meetings with the Petitioner. The first item, (a), the optional meeting, I'm going to suggest slightly different language for that portion of it. I think the intent is clear but I think from... at least... as I went through and tried to interpret it, what it would be from my perspective as a layperson? It was ... it still looked as if the Business Committee was, I guess having to take the initiative to do these things, and I think the intent as we discussed it, was for the petitioner or the Business Committee to be able to... Am I... is my time up? Sorry. Ok, I will submit the rest of my comments in writing.

Ed Delgado, written comment: Line 221 thru 225: The petitioner should not be required to meet with the BC or anyone. Recommend delete.

Ed Delgado oral comment 6/29: The petitioner should not be required to meet with the BC or anyone... so there's a requirement that you meet... one statement you say "option" and then a couple lines down you say there's a required meeting. I don't think that is necessary. It's not going to gain anything.

Response

The first commenter is stating that the language regarding the "optional" meeting between a petitioner and the Oneida Business Committee does not appear to reflect earlier discussion on this issue. It appears the commenter wants this provision revised so that either the petitioner or the Oneida Business Committee could take the initiative to request this meeting; or perhaps just to require the petitioner to take the initiative for any optional meetings.

The second commenter feels that there should not be a mandatory requirement for the petitioner to meet with the Oneida Business Committee or anyone else.

Whether the "optional" meeting between the petitioner and OBC could be initiated by the OBC or by the petitioner, and whether or not to require the petitioner to have a mandatory meeting with the OBC, are policy calls for the LOC.

There is no recommended revision based on this comment.

LOC Consideration

Comments 22 and 23 – Petition Presentation

Tehassi Hill, oral comment 6/29: I just have a little bit maybe more general comments and suggestions about the process of General Tribal Council meetings maybe as a whole and how ...the information is shared at meetings. Just another suggestion to consider out there is ... when action is taken at General Tribal Council meetings say, petitions, maybe they get presented at one meeting, and that's all it is, is just presentation and discussion, and then it's automatically forwarded to the next GTC meeting for the vote to happen. Just so that allows more time for people to become more aware of what the discussion is at General Tribal Council meeting and for the emotions of what's going on in those meetings sometimes to defuse a little bit so that people can get back into the actual, I guess, um, crux of what the issue is and not the emotion of it, because I know that sometimes at some of our meetings, they're high emotion topics when they don't necessarily need to be but that's the way they've been pushed and so I'm really

looking forward to the General Tribal Council keeping the logic and what the reasoning is behind the petition and the reasonability of what the petitioner is asking for rather than just getting riled up by the emotion, so I think that might help defuse some of that, if you have the presentations at one meeting, and obviously, it's going to be a month or two or three before they even take action on that particular item; so I think that's one suggestion that would help General Tribal Council make more informed and less emotional decisions. Thank you.

Daniel Guzman, oral comment 6/29: Just had a recommendation to go along with Tehassi's, I've mentioned to other people before is have presentations before the actual GTC meeting starts, for the half hour before, because there's you know, maybe not a thousand but several hundred people there, sitting, waiting for the meeting to start, they could be watching, listening to a presentation, so they get a preview of what they're going to be voting on, before the meeting actually starts. And then, how soon would you guys be presenting this law to the GTC?

Response

The first commenter is suggesting that the Law be revised to require actions – including petitions – to be presented and discussed at one GTC meeting, but to refrain from taking action on the matter until the following GTC meeting. The presenter feels this would allow the membership to become more aware of the issue before making a decision; and the additional time could help to limit the emotional response that accompanies various topics.

The second commenter suggests that presentations could be held a half hour before the actual GTC meeting starts, when hundreds of people are already seated, so that those persons could get a preview of what they would be voting on once the meeting starts.

Whether or not to delay actions on each item until the meeting after they are presented to GTC, is a policy call. If the LOC is interested in revising the Law to add this requirement; additional discussion would be necessary to determine how this would apply, including which items this requirement would apply to.

A requirement that preview-presentations be shown a half-hour before a GTC meeting may more appropriate in a standard operating procedure or a process; as opposed to a mandatory requirement within the law. There may be concerns raised by members who feel that presentations should be made to all GTC attendees at the same time; and prior to a GTC meeting, those who are only arriving when the meeting starts would not receive the same information as those who had been seated early. Whether or not to show presentations prior to the start of a meeting, which preview what GTC would be voting on during the meeting, is also a policy call.

LOC Consideration

Comments 24 through 26 – Petition Presentation Materials

Bonnie Pigman, oral comment 6/29: One of the areas I think is controversial is where the Secretary is given discretion to limit the number of pages that would be included for printing materials. And often at General Tribal Council I hear the Business Committee tell people “well, you should have provided all that factual information up front.” If we're going to start limiting the information that gets printed and sent to our membership for these meetings, then you're also

not working in favor with people to say well, “you can put this in but you can’t put that in” and I can understand about having some issues, like names and such being thrown out there, but I think that... I think that discretionary because we have exhausted, you know, this thing is like 200 pages long, well, I think we have other ways to include in this document methods to say “General Tribal Council will you approve for us to post this if it’s in excess of 100 pages on our website and you can view it there in time for the meeting, as long as it’s done by the ten-day” ... whatever those laws may be that require that criteria. So I think there’s alternative ways of looking at stuff and saying what you will and won’t allow for printing, in regards to trying to find a solution as well, it’s not just pointing out things that are wrong. Thank you.

Susan White, written comment: Lines 286 and 287: Petitioners are commonly asked by the OBC to provide facts/supporting documents to GTC so they can make informed decisions. If the Secretary has discretion to limit number of pages, then the Petitioner may feel they are being prevented from providing sound reasons to support their agenda matter. Perhaps alternate means should be discussed such as allowing pages of material to be posted on web or other acceptable media sites for members to view their materials without printed “books” having to be mailed. Perhaps these ideas may be included in the law and presented to GTC for consideration. Some may like the ability to choose, and it may help with mailing costs/concerns.

Lisa Liggins, oral comment 6/29: And the second being section starting on line 288 of draft 18, the presentation materials? Just a comment for the record that at previous GTC meetings that it’s been indicated that presentations will be inserted into the packet, so if you’re going to make a multimedia presentation at the meeting, that we’re gonna include a copy of that in the printed materials. So the subsection that starts on line 293 saying it has to be to the Business Committee five days prior probably needs to be extended back because if we’re going to start including them in the packet, it doesn’t apply then. Thank you.

Response

The first two commenters are expressing concern with allowing the Secretary to limit the number of pages a petitioner may include with the materials being printed for GTC meeting packets. The relevant language is the following:

118.5-12(b) Meeting Packet Materials. A petitioner may include pages of his or her own information in the General Tribal Council meeting packet where his or her petition is scheduled to be heard, as long as the information does not contain prohibited content in accordance with section 118.5-12(d). The Secretary shall have discretion to limit the number of pages that will be included based on production and printing standards.

Both commenters suggest that alternate options may need to be considered, such as establishing a separate area on the website where voluminous supporting materials could be published without needing to be included in each packet. The LOC has discussed this topic in various work meetings and chose the current language based on a recommendation from the Secretary. Whether to consider different options is a policy call.

The third commenter is requesting that the timeline for submitting supplemental presentation materials (*i.e.* Multimedia, PowerPoint presentations, etc., to accompany a presentation) be extended backwards. The relevant language is at 118.5-12(c), which states:

(c) *Presentation Materials.* Each petitioner may prepare presentation materials to supplement the presentation of his or her petition to the General Tribal Council. Presentation materials shall be related to or germane to, the materials submitted by the petitioner for inclusion in the meeting packet. The petitioner or designee shall have access to the same media presentation formats that are available to other presenters.

(1) Presentation materials shall be submitted to the Business Committee Support Office no less than five (5) business days prior to the General Tribal Council meeting at which the petition is scheduled to be discussed.

The commenter is stating that, per previous discussion at GTC meetings, these multimedia accompanying materials will be printed out and included in the GTC packet, in which case, they would need to be submitted much earlier to be included in the packet, as opposed to being submitted only five business days before the GTC meeting.

If the LOC wishes to revise this section to add a requirement that supplemental materials also be printed in each meeting packet, then this could be done by deleting (c) altogether, and instead revising (b) to state:

(b) Meeting Packet and Presentation Materials.

(1) A petitioner may include pages of his or her own information in the General Tribal Council meeting packet where his or her petition is scheduled to be heard, as long as the information does not contain prohibited content in accordance with section 118.5-12(d). The Secretary shall have discretion to limit the number of pages that will be included based on production and printing standards.

(2) Each petitioner may prepare presentation materials to supplement the presentation of his or her petition to the General Tribal Council. The petitioner or designee shall have access to the same media presentation formats that are available to other presenters.

(A) The petitioner shall submit an electronic copy of the presentation materials to the Secretary to ensure the appropriate media presentation format will be available for use.

(B) The Secretary shall ensure that a printed copy of the petitioner's presentation materials is included in the meeting packet; unless the presentation materials are formatted in a way that cannot be transferred to print (i.e. videos, recordings, etc).

LOC Consideration

Comment 27 – Documenting Information

Susan White, written comment: Lines 293 – 295: Please include how the OBC will document this for information at GTC meetings.

Response

The commenter is referring to 118.5-12 (c)(1), which states that “Presentation materials shall be submitted to the Business Committee Support Office no less than five (5) business days prior to the General Tribal Council meeting at which the petition is scheduled to be discussed.”

It is not clear what the commenter is seeking to have documented, but identifying how the OBC would document something for information at a GTC meeting appears to be more of a procedural requirement. Procedural requirements are more typically set out in internal procedures and SOPs, as opposed to being set out in a law.

There is no recommended revision based on this comment.

LOC Consideration

Comments 28 through 31 – Content of Petitions

Ed Delgado, written comment: Lines 296 thru 308: Generally the peoples reputations should be protected, however, I do not relieve that petitions should not be able to address obvious truths that need to be addressed such as tribal resources, both financial and service benefits, should not be able to be addressed. I do not have recommendations how to address the needs of the petitioner to address meaningful issues and the right of individuals to not be defamed or lied about. I'm sure it can be done though. Lines 315 thru 322 are start, but again, petitions must be able to address real problems .

Ed Delgado oral comment 6/29: Line 308. Truth is always in the best interest of the Tribe. Or nation. Line 296 through 308. Generally the people’s reputation should be protected. However, I do not believe that petitions should not be able to address obvious truths that need to be addressed, such as the protection of Tribal resources, both financial and services. Benefits. Should not be able to be addressed. My writing is getting terrible. There’s important issues that come before the General Tribal Council and they have to be addressed. Nice as you can but some of them are harmful. Do not have recommendations how to address the needs of the petitioner to address meaningful issues and the right of the individuals to not be defamed or lied about. There’s a balance there. I’m sure it can be done, though.

Ed Delgado, written comment: Line 308: Truth is always in the best interest of the Nation.

Ed Delgado oral comment 6/29: Lines 315 through 322 are a start, but again, petitions must be able to address real problems.

Response

The commenter is referring to section 118.5-12(d), which identifies prohibited content that may not be included in meeting packet and presentation materials submitted by a petitioner. The commenter is stating that petitions should be able to address real problems and obvious truths, but that this should also be balanced against the rights of individuals not to be defamed or lied about.

118.5-12(d)(5) does indicate that any information that is false, misleading or fraudulent is prohibited. And as noted by the commenter, section 118.5-12(e)(1) does identify a review process for addressing situations where a petitioner submits unacceptable content. The commenter does not identify a specific change that he is requesting to this law; this comment

appears to be more as recognition of the balancing that must be done when reviewing a petitioner's meeting packet and presentation materials.

There are no recommended revisions based on these comments.

LOC Consideration

Comments 32 and 33 – Date of GTC meeting requested by the Chair

Ed Delgado oral comment 6/29: Section 118.6.(a). I assume the date means that the chair is requesting. There's some issues about the date when the chair calls the meeting, I'm assuming that the date... the meaning of that means that's the date that the chair is requesting.

Ed Delgado, written comment: 118.6.(a). I assume (the date) means the date that the Chair is requesting.

Response

The commenter is referring to the following section:

118.6. Special General Tribal Council Meetings Called by the Chairperson

118.6-1. If the Chairperson calls a special General Tribal Council meeting in accordance with Art. III, section 6 of the Constitution, the Secretary's Office shall:

- (a) place the item on the next available Oneida Business Committee agenda for review. The Oneida Business Committee shall:
 - (1) approve the meeting date when the item will be considered by the General Tribal Council; and
 - (2) direct the appropriate parties to prepare any analyses that the Oneida Business Committee deems appropriate; including deadlines for submitting such analyses.

The commenter is asking whether an item submitted by the Tribal Chair will be sent to a meeting on a date requested by the Chair.

The Chair can request a specific date for a meeting; however the OBC would, as a body, identify when the item would be presented to GTC. If meetings are already scheduled for the near future, the OBC may determine it is more fiscally responsible to add the Chair's item to an upcoming meeting instead of calling a new, separate meeting.

There is no recommended revision based on this comment.

LOC Consideration

Comment 34 – Directing Parties to Prepare for GTC Meetings

Susan White, written comment: Line 333: Please include subsection (3) to section 118.6-1(a). Subsection (3) to state “Requests appropriate parties to make preparations to conduct a dully (*sic*) called GTC meeting.”

Response

The petitioner is requesting the following addition:

118.6-1. If the Chairperson calls a special General Tribal Council meeting in accordance with Art. III, section 6 of the Constitution, the Secretary’s Office shall:

(a) place the item on the next available Oneida Business Committee agenda for review.

The Oneida Business Committee shall:

(1) approve the meeting date when the item will be considered by the General Tribal Council; and

(2) direct the appropriate parties to prepare any analyses that the Oneida Business Committee deems appropriate; including deadlines for submitting such analyses.

(3) request appropriate parties to make preparations to conduct a duly-called GTC meeting.

This law does not specifically require the OBC to request appropriate parties to make preparations for any type of GTC meeting – for all meetings, the responsibilities of individual parties are set out in the law, and the individual parties are responsible for ensuring that they perform their duties when needed, regardless of whether the OBC issues a formal request. This is a policy call for the LOC, but if this language is added in to this section, then it is recommended that it be added in as a requirement for the other types of GTC meetings, as well.

There is no recommended revision based on this comment.

LOC Consideration

Comments 35 and 36 - Notice

Ed Delgado, written comment: 118.7-1. Regarding (Notice). Notice of a meeting must be mailed to the membership. If the 10 day policy requires mailing, then the following that policy is adequate.

Ed Delgado oral comment 6/29: 118.7-1. Regarding notice. Notice of a meeting must be mailed to the membership. If the ten day policy requires mailing, then following that policy is adequate.

Response

The commenter is referring to the following provision:

118.7-1. *Notice.* Notice of a General Tribal Council meeting shall be provided in accordance with the Oneida General Tribal Council Ten Day Notice Policy.

The commenter is stating that notice of a meeting must be mailed to the membership. However, the GTC Ten Day Notice Policy does not specifically use the word “mail”. Instead, that policy defines “notice” as:

110.2.(c) *Notice*: Means actually informing the membership of a regular or special meeting by:

- (1) Publishing an agenda
- (2) Stating a location
- (3) Stating the date and time in a reasonable time for the members to attend.

Although it is currently standard practice to mail GTC meeting packets to the membership, this may not always be the case. Technological advances in electronic communications and internet access are constantly evolving, and members may prefer to receive their packets through other methods, rather than by receiving a physical hard copy in the mail.

Further, if the LOC determines that a mailing requirement should be added, it would be more appropriate to address that in the Ten Day Notice Policy – this Law only refers over to the Ten Day Notice Policy.

There are no recommended revisions based on this comment.

LOC Consideration

Comment 37 - Spacing

Susan White, written comment: Line 343: remove the space before the word “Other”.

Response

This is a formatting issue, and it is recommended that this change be made for consistency.

LOC Consideration

Comments 38 and 39 - Terminology

Susan White, written comment: Line 346: Please include, “and will not be allowed to vote.”

Susan White, written comment: Line 347: replace the words “Minor children” with “Non-qualified voters”.

Response

The commenter is requesting the following changes:

118.7-3. *Eligibility to Attend a General Tribal Council Meeting.*

(a) The following individuals are eligible to attend a General Tribal Council meeting:

- (1) Tribal members eligible to vote per the Constitution.
- (2) Other individuals who attend the meeting for official purposes and are approved to attend the meeting by majority vote of the General Tribal Council. The General Tribal Council shall approve the individual to attend either all or a certain part(s) of the meeting and will not be allowed to vote.

(b) ~~Minor children~~ Non-qualified voters may not attend a General Tribal Council meeting.

The first comment is requesting a language change that may need additional consideration – if the LOC wishes to clarify, it is recommended that instead of making the requested change, a separate sentence be added at the end of (2) which states, “Provided that, such individuals shall not be allowed to vote.”

The second comment seeks to change “minor children” to “non-qualified voters” – however, the two terms do not mean the same thing – Non-qualified voters could be interpreted as meaning any person who is not a qualified voter; not just minor children. The LOC discussed this provision and determined specifically that they wanted the law to state that minor children were not allowed to attend.

Whether to make either of these changes is a policy call for the LOC.

LOC Consideration

Comment 40 – Scope and Mission of Trust Enrollment Department, wording

Susan White, written comment: Line 350: remove the words “with the Trust Enrollment Department,” because this exceeds Trust Enrollment’s scope and mission. Also replace “an” with “a pictured”.

Response

The commenter is requesting the following changes:

118.7-4. *Registration, Verifying Eligibility to Attend a General Tribal Council Meeting.* All individuals who are eligible to attend a General Tribal Council meeting in accordance with section 118.7-3(a)(1) shall register ~~with the Trust Enrollment Department~~, and present ~~an~~ a pictured Oneida Nation identification card or state-issued identification card to verify their identity.

The GTC Meeting Stipend Payment Policy states:

111.5-1. Enrollment Department.

(a) The Enrollment Department shall be responsible for the following at each General Tribal Council meeting:

(1) Conducting check in/out of Tribal members and verifying voter eligibility.

[...]

(b) Enrollment Department officials shall be responsible for verifying the information provided by Tribal members while checking in and out. A Tribal or state issued picture identification card shall be required to verify the identity of the person registering.

As such, it is already established in Tribal law (the GTC Meeting Stipend Payment Policy was adopted by GTC) that persons are required to register for GTC meetings with the Enrollments Department. The Enrollments Department has merged with the Trust Department to form the Trust Enrollments Department, meaning that this duty established by GTC for the Enrollments Department would become a duty for the Trust Enrollment Department. If the commenter feels that this duty exceeds the Trust Enrollment Department’s scope and mission, then the commenter may need to request General Tribal Council to revise the GTC Stipend Payment Policy.

The second part of this comment is recommending that the language in this law be revised to clarify that the required ID must be a picture ID.

Because the GTC Meeting Stipend Payment Policy already states that “A Tribal or state issued picture identification card shall be required to verify the identity of the person registering,” one option might be to simply remove the repetitive language from this proposed law.

118.7-4. *Registration, Verifying Eligibility to Attend a General Tribal Council Meeting.* All individuals who are eligible to attend a General Tribal Council meeting in accordance with section 118.7-3(a)(1) shall ~~register~~ follow the registration requirements as identified in the General Tribal Council Meeting Stipend Payment Policy. ~~—with the Trust Enrollment Department, and present an Oneida Nation identification card or state issued identification card to verify their identity.~~

Whether to make changes to this section is a policy call.

LOC Consideration

Comment 41 through 45 – Calling and Cancellation of Meetings

Susan White, written comment: Lines 360-362: Why would is a special meeting called by the Chairperson with a “so few items on the agenda” be held to a different level of importance, than a request from 50 qualified voters? Article III, section 6 of the Constitution doesn’t differentiate the two.

Ed Delgado oral comment 6/29: 118.7-5(a)(3) please delete this subsection. This sub... this section... This section causes problems when the OBC is directing to bring back an issue within a certain number of days. That’s cancellation of meetings. Cancelling a meeting less than 24 hours before a meeting for any other reasons than protecting the safety of the General Council could be abused. We are going through that experience right now and it is hurtful to many of the membership who support and want to protect the institution of GTC. Cancelling due to the meeting being impractical or for a good cause are reasons that could be abused. In addition, all notices of cancellation must be mailed to the membership unless the cancellation is for safety reasons ... if you have a storm, you know, you’re not going to be able to mail that cancelling.

Ed Delgado, written comment: 118.7-5(a)(3). Please delete this subsection. This section could cause problems when the OBC is directed to bring back an issue within a certain number of days.

Ed Delgado, written comment: 118.7-5((b)). Cancelling a meeting less than 24 hours before the meeting for any other reason other than protecting the safety of the General Council could be abused. We are going through that experience right now and it is hurtful to many of the membership who support and want to protect the institution of the GTC. Cancelling due to the meeting being impractical or for good cause are reasons that could be abused. In addition, all notices of cancellation must be mailed to the membership, unless the cancellation is for reasons of safety.

Brandon Stevens oral comment 6/29: I guess as LOC chair, I’d like to kind of comment as well, as part of, some the things that are kind of... developing as we speak, and speak on as... in a formal record, about the cancelling of a meeting, of a GTC meeting. I think that’s something

that needs to be addressed here, in section 118.7-5 Cancelling the Meeting...sub 3 – I think there needs to be criteria. If we cancel a meeting at the Business Committee, and I think I'm hearing that a notice is being sent out and that's generally being accepted, but, having provided timelines of when a duly called meeting should be cancelled, providing adequate time. At what point can you cancel a meeting and at what point can't you, in that it would be more of a burden on communication, it would be more costly at a certain time period. And so, as a Business Committee, should have a particular timeline of when they should cancel meetings for whatever reasons that may be. So number sub (3) says "there are no agenda items to discuss or there are so few agenda items that would be fiscally irresponsible to hold a meeting; provided that, this shall not apply to a meeting called by a chairperson in accordance with section 118.6. And so, looking at how to adjust that to making sure we have the ability to be fiscally responsible but also have the ability to reach out to the community as much as possible in an adequate fashion, so that we don't have the situation we are having now where people are coming from out of state... coming to the meetings and that we give them adequate notice. And so I think that timelines should be in there. And I think we try and accommodate that now as much as possible but the timeline would further help to know to direct, the individual to say, "Ok is this meeting still going on? I have a month timeline here that I may know that I may need to check... that this meeting may be cancelled and here's the timeline. So that's what I think we need to consider, as LOC, is possible more criteria on that last section there due to what's happening. That fills the gaps, what's happening right now. And, otherwise I think this is ... it's as good as we're going to get. And then General Tribal Council will take a look at it and they will have their say again. This was sent to them in 2015 for GTC review. They had some considerations and they sent it back to us to review those considerations and now this is the process that we're following and we will be soon ready to put this back in front of General Tribal Council for their purview again and see whether or not this is the direction where they want to go.

Response

The comments above are all in relation to the following provision:

118.7-5(a) The Oneida Business Committee may cancel a meeting if:

- (3) There are no agenda items to discuss or there are so few items on the agenda that it would be fiscally irresponsible to hold the meeting. Provided that, this shall not apply to a meeting called by the Chairperson in accordance with section 118.6.

The first comment is asking why the OBC can only cancel a meeting due to there being no agenda items to discuss or if there are so few agenda items that holding the meeting would be fiscally irresponsible, but not permitting the OBC to cancel a meeting for these reasons if the meeting was called by the Chair. The commenter is noting that although the Constitution allows for the chairperson "or fifty qualified voters" to call a GTC meeting, this provision allows for the OBC to cancel a meeting as long as it wasn't been called by the Chair.

This provision was considered by the LOC in various work meetings, and this was a policy call made by the LOC.

Whether to allow the OBC to cancel meetings called by the Chair is a policy call. If the LOC wishes to revise this to enable the OBC to cancel either type of GTC meeting, the second sentence could be deleted from (3). If the LOC wishes to revise this to not permit the OBC to cancel meetings at all, the entire provision (3) could be deleted.

The second through fourth comments are requests to delete (3) altogether. The commenter is noting that there is the potential for abuse in allowing the OBC to cancel meetings due to no agenda items or very few agenda items. The commenter is also concerned that cancelling a meeting could result in a failure to obey a GTC directive, when the GTC directs that a particular item be brought back within a certain number of days, but the only GTC meeting scheduled in that timeframe is being cancelled.

The second comment is also requesting that a provision be added which states that whenever there is a cancellation, that the all notices of cancellation must be mailed to the membership unless the cancellation is for safety reasons – i.e. reasons where the meeting is cancelled with such short notice that it would not be possible to mail cancellation notices. This is a policy call - If the LOC wishes to amend the law to require notice of cancellation to be mailed, then the following provision could be revised.

118.7-6 (b) General Tribal Council meetings shall not be cancelled less than twenty-four (24) hours in advance of the meeting start time, unless, for good cause, such notice is impossible or impractical, in which case shorter notice may be given.

(1) Notice of a meeting cancellation shall be provided through any practicable media outlet, including, but not limited to, newspapers, internet, ~~mail~~, radio and television.

(2) Notice of a meeting cancellation shall be sent by mail to the membership in all situations, except where the cancellation occurs so close to the meeting date that there is not time to mail notice to members.

The fifth comment, from LOC Chairman Stevens, is recommending that a timeline be added to this law in regards to cancelling meetings. The following is one example of language that could be added that may address the Chairman's concern:

118.7-5. *Canceling a Meeting.*

(a) The Oneida Business Committee may cancel a meeting if:

[...]

(3) There are no agenda items to discuss or there are so few items on the agenda that it would be fiscally irresponsible to hold the meeting. Provided that, this shall not apply to a meeting called by the Chairperson in accordance with section 118.6. Provided further, that special meetings shall not be cancelled less than thirty (30) days prior to the date on which the meeting was scheduled to be held.

Whether to prohibit GTC meetings from getting cancelled, and whether to identify timelines for cancellations of GTC meetings, and whether to add a mailing requirement for cancelling GTC meetings – these issues are all policy calls for the LOC.

LOC Consideration

Comments 46 and 47

Ed Delgado oral comment 6/29: Secretary, line 375. The Secretary may recommend, but the approval of the rescheduled date should be made by the OBC.

Ed Delgado, written comment: Line 375: The Secretary may recommend, but the approval of the rescheduled date should be made by the OBC.

Response

These comments refer to the following provision:

118.7-6(b) When a special General Tribal Council meeting is canceled, the Oneida Business Committee shall either:

- (1) re-schedule the meeting as soon as practicable; or
- (2) place the agenda items from the meeting on the agenda for the next available General Tribal Council meeting, as determined by the Secretary.

Currently, the law makes the Secretary responsible for placing agenda items from a cancelled meeting onto the agenda(s) for an upcoming GTC meeting(s). The commenter is requesting that the rescheduled date should be approved by the OBC. The commenter may have misunderstood this provision – it is not stating that the Secretary will select the date for a rescheduled GTC meeting; this is just stating that the Secretary will place the items on the agendas for available GTC meetings after they have been scheduled by the entire OBC.

There are no recommended revisions based on this comment.

LOC Consideration

Comments 48 and 49

Richard Baird, written comment: Written Comment - GTC Agenda. I would like to add my written comment to the record regarding the new GTC law under consideration. I visited the Secretaries office at NHC a couple of days ago and explained that at a recent credit union annual meeting in Appleton they follow Robert's Rules of Order to conduct their meeting and they like us have an agenda. Everyone who attended the meeting was handed an agenda when we registered. When to meeting was brought to order, I noticed that there was no approval of that agenda. The Secretary simply stated that the first order of business was the Chairman's comments and the meeting began. So, I was wondering why we need to approve an agenda for GTC which was the purpose of my visit to the Secretaries office. Here's what I found out.

1. BC staff works on the agenda for each meeting, insuring that all material relevant to each subject are included before the final document is sent to printing. What surprised me was the length of time and effort put into the final document, it can be as much as two months' worth of work. So when I attend GTC and see the whole thing fall apart because of motions, amendments and moving items around I'm discouraged. It seems all the time and effort the BC staff puts into this is wasted. So I am making the following proposal.

1. BC staff continues to work on the agenda.

2. We no longer approved the agenda at the GTC meeting.
3. If anyone wants to add or amend the agenda, they need to come to the Secretaries office and put in their request and justification, making sure they adhere to the 10 day notice period. Once it is finalized, that's it, no more changes.
4. If someone wants to add something to the agenda it will have to be done between GTC meetings and added to the next agenda, if appropriate.
5. The agenda and other materials go to printing and are readied for mailing.
6. When the meeting is called to order, we can skip the "approval of the agenda" and get on with moving the Nation forward.

Mike Denny oral comment 6/29: Mike Denny. Under General Tribal Council Meeting Agenda. It's the Secretary's responsibility to set the agenda, is that correct? I guess? Well, sometimes it takes an hour to set the agenda and maybe we could rearrange some of these items that don't need to be... that could be tackled right away and get through with some of the items, like reports. Or approve the minutes. Put them first. Because when you get to tabled business and new business, those should be last on the agenda or later on the agenda so we can accomplish and finish some of the things that are on the agenda. Otherwise, you're having people making amendments to the agenda to move those items which they figure are more important, than regular scheduled items that are... need to be approved by the GTC. I just don't like the timeframe it takes to set an agenda, we waste an hour of our time, just setting the agenda sometimes. And maybe we could improve how we set the agenda so we don't get stuck on one topic for the whole time limit. It seems to me that's a waste of time. That's all I'm going to have to say. Thank you.

Response

Both of these comments are expressing concern with the amount of time that is spent on setting the agenda at GTC meetings. The first commenter is requesting that approval of the agenda be done before the GTC meeting – i.e. if someone wants to request a change to the agenda, they must come to the Secretary's Office and make their request far enough in advance to ensure their request satisfies the requirements of the ten-day notice period.

If the LOC wishes to revise the relevant sections of the law to remove the option of amending the agenda, the law could be changed as such:

118.8-1. The Secretary's Office shall develop a process to address General Tribal Council meeting agenda development. The order of the agenda for each General Tribal Council meeting shall be as follows, provided that, when there is no business in a listed category, it shall be noted on the agenda:

- (a) Opening
- (b) Call to Order
- ~~(c)~~ Adoption of the Agenda
- ~~(d)~~(c) Approval of Minutes
- ~~(e)~~(d) Unfinished Business
- ~~(f)~~(e) Tabled Business

- ~~(e)~~(f) New Business
- ~~(h)~~(g) Reports
- ~~(i)~~(h) Other
- ~~(j)~~(i) Adjourn

118.8-4. *Adoption of the Agenda.* ~~Amendments to the agenda may be made before the agenda is adopted.~~ The agenda shall not be amended from the floor at a General Tribal Council meeting.

(a) Any eligible voter who wishes to request changes to the agenda for an upcoming General Tribal Council meeting shall submit their request in writing to the Secretary no less than thirty (30) days prior to the date of the meeting.

LOC Consideration

Comment 50

Susan White, written comment: Line 434: replace the word “by” with “before”.

Response

The commenter is requesting the following change:

118.8-7. [...] Items not completed ~~by~~before the adjournment of a special meeting shall be put to the General Tribal Council on whether to defer or table the item to a subsequent special meeting, or dismiss it.

Either term is correct. It is up to the LOC to determine whether this change should be made.

LOC Consideration

Comments 51 and 52 – Sergeant-At-Arms

Ed Delgado, written comment: 118-9. All issues regarding Sargent at Arms. The Chair shall designate a Sargent at Arms and such designation must be approved by the Council (the Council being the GTC) providing that the Chair or the Council may designate another Sargent at Arms at the beginning of any meeting.

Ed Delgado oral comment 6/29: All issues about the Sergeant of Arms, the following requirements; I have a lot to say about that. It should be appointed by the Chair, and the General Tribal Council should have the approval, I mean if they want it, they can approve that Sergeant at Arms. It should not be a person designated by the GTC. And GTC should be able, at the beginning of every meeting, to change that sergeant of arms, because maybe it’s not working out. Maybe it’s too brutal.

Response

The commenter is referring to the following provisions:

118.9-1. *Sergeant-at-Arms*. The Oneida Business Committee shall designate an individual to serve as the Sergeant-at-Arms at General Tribal Council meetings. The Sergeant-at-Arms shall oversee the Internal Security Department during General Tribal Council meetings.

118.9-2(c)(2) Any individual who violates these general conduct requirements or who is found to be making an audio or video recording of a General Tribal Council meeting, may be prohibited from attending the meeting or may be removed from the meeting.

(A) The Sergeant-at-Arms or designee shall be responsible for enforcing this provision, upon discovery of a violation or at the direction of the Chairperson of the meeting.

The commenter is stating that the Sergeant-at-Arms should be appointed by the Chair, with GTC approving that designation, if they want to do so; and that GTC should be able, at the beginning of each meeting, to change the person designated by the Chair to be the Sergeant-at-Arms.

The law currently states that the entire OBC – not just the Chair - designates an individual to serve as the Sergeant-at-Arms. The law currently does not give GTC the option of approving the OBC's selection.

Whether to change the law so that the entire OBC, not just the Chair, designates an individual to serve as the Sergeant at Arms, is a policy call. Whether to add language giving GTC the ability to change the person designated that responsibility, is also a policy call. If the LOC wishes to change the law, the following language is one possible option:

118.9-1. *Sergeant-at-Arms*. The ~~Oneida Business Committee~~Chairperson shall designate an individual to serve as the Sergeant-at-Arms at General Tribal Council meetings. Upon motion, the General Tribal Council may reject the Chairperson's designation and designate a different individual to serve as Sergeant-at-Arms for a meeting.— Provided that, if the General Tribal Council is unable to identify and approve another individual serving as Sergeant-at-Arms, then the Chairperson's designee shall continue in this capacity.

(a) The Sergeant-at-Arms shall oversee the Internal Security Department during General Tribal Council meetings.

LOC Consideration

Comment 53

Ed Delgado, written comment: Also, lines 441thru442: Please mention the General Tribal Council. Recommend, "The following requirements shall apply to all members of the General Tribal Council, and all other persons in attendance as approved by the Council.

Response

The commenter is referring to the following section:

118.9-2. *General Tribal Council Meeting Attendees*. The following requirements shall apply to all persons in attendance at a General Tribal Council meeting; including but not limited to, the Oneida Business Committee, other Tribal officials, and any persons performing job responsibilities related to the meeting:

The language in this section states that these requirements apply to all persons in attendance at a GTC meeting. To avoid confusion, the LOC previously directed that language be added to clarify that this includes persons who are working during the meeting, not just attending the meeting.

The commenter's proposed language does not clarify that persons who are working during the meeting are not exempt from these requirements.

There are no recommended revisions based on this comment.

LOC Consideration

Comment 54 – Attendees under the influence of alcohol or drugs

Ed Delgado, written comment: Regarding prohibiting members of the GTC under the influence of alcohol: Attendance is a constitutional right and violating that right has to be for a very good reason. We the people of the Oneida Nation do have a large number of alcoholics. It is a sickness, a tragic sickness, but you know what, if they are not you, or I, we should not disallow them the right to attend unless they are violating the other prohibited behaviors of the proposed law. Regarding illegal drugs, what will be the determiner of that?

Ed Delgado oral comment 6/29: And the other one is the protection of ... people have a right to participate in GTC, alcoholism is a disease. It's a disease that is very harmful to the person there and to our membership. Unless they are creating a disturbance, a person under the influence – and you're under the influence if you have one drink - should not be prohibited from exercising their right to go to GTC. Unless they are disturbing or creating.

Response

The commenter is referring to 118.9-2(a)(1). That section identifies five general conduct requirements for GTC meeting attendees; including one which states that “meeting attendees shall not be under the influence of alcohol or illegal drugs.”

The commenter is stating that unless a person is creating a disturbance, a person who is under the influence should not be prohibited from exercising their right to attend a GTC meeting. The commenter notes that:

- a person would be deemed “under the influence” when they have only had a single drink.
- There are a large number of members who are alcoholics, and alcoholism is a sickness
- Persons should not be prohibited from participating in GTC just because they are under the influence of alcohol or drugs – participation is a Constitutional right that should not be violated without good reason. If the person is not causing a disturbance, they should not be barred from attendance.
- It could be difficult to determine whether a person is under the influence of drugs, and this law does not identify who would be responsible for deciding a person is under the influence.

Whether to permit attendees to be under the influence of alcohol or drugs is a policy call for the LOC. If the LOC wishes to permit attendees who are under the influence of alcohol or drugs, then the provision “Meeting attendees shall not be under the influence of alcohol or illegal drugs” could be deleted from section 118.9-2(a)(1).

LOC Consideration

Comments 55 and 56 – Protecting attendees from defamation

Ed Delgado, written comment: Slanderous statements are verbal statements that are lies. Who is to determine what statements are lies. This issue is hard. GTC members must be protected from such verbal attacks, including but to a lesser extent members who are also on the BC. A Chairman is normally in position to control such behavior.

Ed Delgado, written comment: Final Comment. To protect the reputations of Council Members, statements may be redacted from the record, statements about themselves as individuals that are obviously untrue or not relevant to the item on the agenda.

Response

The commenter is making a statement about the following:

118.9-2(a) *Kalihwi=y% and general conduct.* Meeting attendees are expected to keep in line with the Oneida core value of *Kalihwi=y%*; treating each other with respect and kindness.

(1) Meeting attendees shall not:

(E) Make defamatory statements about others, including but not limited to, slanderous statements.

118.9-2(c)(2) Any individual who violates these general conduct requirements or who is found to be making an audio or video recording of a General Tribal Council meeting, may be prohibited from attending the meeting or may be removed from the meeting.

The commenter states that the Chair of a meeting is in a position to control slanderous statements, and is requesting that slanderous statements – i.e. statements about individuals that are obviously untrue or not relevant to the item on the agenda - be redacted from the record.

This is a policy call for the LOC. If the LOC wishes to add in language that addresses the commenter’s request, the following amendments could be made:

118.9-2(a) *Kalihwi=y% and general conduct.* Meeting attendees are expected to keep in line with the Oneida core value of *Kalihwi=y%*; treating each other with respect and kindness.

(1) Meeting attendees shall not:

(E) Make defamatory statements about others, including but not limited to, slanderous statements. If the Chair determines that a statement is made during a meeting that is obviously untrue or not relevant to the item on the agenda, the Chair may order the statement to be redacted from the record.

LOC Consideration

Comment 57 - Recordings

Ed Delgado, written comment: Recordings: Currently, the GTC is doing just fine regarding recordings and information. What is being proposed here are attempts to muzzle GTC and protecting issues which may need to be public. The Kalih won't do it, but we do have Oneida publications that should not be prohibited from writing the news of the Nation, and Oneida law should not be trying to squash information relevant to the Nation. Without the free flow of the news, the Nation's financial resources are at risk.

Response

This comment is referring to the following provision:

118.9-2(b) *Classified and Sensitive Information*. General Tribal Council meetings are a forum where the governing body of the Nation gathers to discuss matters related to the Nation, including policymaking, internal governance and business strategy. Information provided and shared at General Tribal Council meetings is considered sensitive; and should be treated as classified, in order to minimize the risk of external influence or involvement in Oneida matters. In furtherance of this objective, the following shall apply:

- (1) No person shall make or disseminate any audio or video recording of any General Tribal Council meeting, or of any portion of a General Tribal Council meeting, without obtaining authorization in advance.
- (2) General Tribal Council meeting materials, including but not limited to, meeting packets and minutes, shall not be disseminated to any person who would not have been eligible to attend the meeting at which the materials were or will be provided; without obtaining authorization in advance.
- (3) Authorization to make audio or video recordings or to disseminate meeting materials may be provided by the Oneida Business Committee or by majority vote of General Tribal Council.
 - (A) The Oneida Business Committee may establish a standard operating procedure that allows for non-Tribal employees of the Nation to access General Tribal Council meeting materials as may be necessary for performing their job duties.

The commenter is expressing concern that this language could impede the free flow of information, stating that this provision is attempting to impede the free flow of information to the public. The commenter feels that Oneida publications that should not be prohibited from writing the news of the Nation, and Oneida law should not be trying to quash the sharing of information relevant to the Nation.

The LOC has discussed this issue in great detail during work meetings, and had previously determined that a broad restriction against sharing information is necessary, in order to keep Tribal affairs private.

The language does not flatly prevent every person from making or disseminating audio and video recordings of a GTC meeting; or from sharing GTC meeting materials with non-GTC members;

this law just requires the person to obtain advance authorization to do so. Authorization can be obtained from the OBC or by majority vote of GTC. This restriction is narrowly tailored to allow persons to share information regarding GTC meetings, while still protecting the privacy of GTC affairs.

Whether to revise this section to allow members to record and disseminate GTC information is a policy call.

LOC Consideration

Comments 58 and 59 – Chairperson’s Final Say on Removing GTC Attendees

Ed Delgado oral comment 6/29: And the chair should have the say – and it should be appealable – about anybody being removed from General Tribal Council. Unless it’s for issues of fighting, smoking dope on the thing, ah, place, ah...., or creating a disturbance, or making threats. And then I can see the GTC Sergeant of Arms and the police removing someone of their own volition. Thank you.

Ed Delgado, written comment: Finally the Sargent at Arms should not have the authority to remove a Council member (GTC), without the approval of the Chair, and such removal may be appealable by the Council itself. Illegal activity like physical threats, fighting, smoking dope and such, would not need the approval of the Chair and be carried out by the Sargent at Arms and/or the Oneida Police Department.

Response

These comments are in regards to the following:

118.9-2 (c)(2) *Enforcement.* Any individual who violates these general conduct requirements or who is found to be making an audio or video recording of a General Tribal Council meeting, may be prohibited from attending the meeting or may be removed from the meeting.

(A) The Sergeant-at-Arms or designee shall be responsible for enforcing this provision, upon discovery of a violation or at the direction of the Chairperson of the meeting.

Currently, the law states that the Sergeant at Arms may remove a person - either upon discovering a violation or when directed to do so by the Chairperson. The commenter is stating that the Sergeant at Arms should not have the authority to remove a GTC member without approval of the Chair, except for situations involving illegal activity such as physical threats, fighting, or smoking marijuana.

If the LOC feels it is appropriate to make this change, the provision could be revised as such:

118.9-2 (c)(2) *Enforcement.* Any individual who violates these general conduct requirements or who is found to be making an audio or video recording of a General Tribal Council meeting, may be prohibited from attending the meeting or may be removed from the meeting.

(A) The Sergeant-at-Arms or designee shall be responsible for enforcing this provision, ~~upon discovery of a violation or~~ at the direction of the Chairperson of the meeting.

Provided that, the Sergeant-at-Arms or designee may remove a meeting attendee without being directed to do so by the Chairperson; if the meeting attendee is engaging in disruptive and illegal activity, including but not limited to, making physical threats, fighting or smoking marijuana.-

The commenter is also requesting that any removal of a GTC attendee should be appealable. However, the commenter has not identified how this should be appealed. If every action to remove a GTC member requires stopping the meeting and enabling the violator to appeal to GTC, then this could result in a considerable amount of time added to the length of each meeting. However, any appeal after the meeting ends would be moot – even winning an appeal would not enable the violator to attend the remainder of the meeting.

There is no recommended revision based on this second portion of the request.

LOC Consideration

Comment 60 – Comment regarding the GTC stipend payment policy

Susan White, written comment: Line 490-494: May need to amend the General Tribal Council Meeting Stipend Payment Policy with this language “if” this language is included in the approved draft.

Response

118.9-2(c)(2) Any individual who violates these general conduct requirements or who is found to be making an audio or video recording of a General Tribal Council meeting, may be prohibited from attending the meeting or may be removed from the meeting.

(B) An individual removed from a General Tribal Council meeting shall not be allowed to return for the duration of the meeting and shall forfeit any meeting stipend for which he or she would have been eligible, in accordance with the General Tribal Council Meeting Stipend Payment Policy.

The commenter has not identified how or why the GTC Meeting Stipend Payment Policy would need to be changed. That policy states, in part, that

111.4-2. In order to receive a stipend for attending a General Tribal Council meeting, a person shall:

(c) be present for the entire meeting, from the time the meeting is called to order until the meeting is adjourned; and

(1) For purposes of this policy, a Tribal member who leaves the meeting area and any related bathroom facilities, as identified by the Tribal Secretary’s Office, is not considered present for the entire meeting.

Therefore, if the person is escorted out of the meeting, they would not have been considered present for the entire meeting, and would not be eligible for the stipend payment. This is consistent with the Ten Day Notice Policy.

There are no recommended revisions based on this comment.

LOC Consideration

Comment 61

¹ **Lisa Summers, oral comment 6/29:** A lot of the things that I have comments about are going to be more of ... just things I'd like to see to be mostly just clarified at this point, I didn't really see substantive changes that I felt were necessary. I am a little concerned...I'll start by saying though that I am a little concerned about the rulemaking authority. I believe that rulemaking authority needs to be permitted within the process because there are several operational and logistical things that need to go along with coordinating all General Tribal Council meetings. What I'm concerned about though, at this point, is that it's the sole responsibility of the Secretary to process... I need clarification if it's the sole responsibility of the Secretary's position to develop and implement those rules or if the expectation is that the Secretary acts as the facilitator working with the Business Committee to develop and implement those rules, so I think there's a little bit of a clarification that is needed there. It would be my opinion that is the function of the entire Business Committee to determine what those rules or those processes that support this law are going to look like at the end of the day. I think the Secretary as a facilitator of the process can definitely be part of it, but I just think that the overall decision and authority needs to come from the entire Business Committee, because it's the Business Committee's responsibility to engage with General Tribal Council from that perspective so I just want to start with that.

Response

The commenter is asking whether it is intended to be the sole responsibility of the Secretary's position to develop and implement the rules authorized by this law, or if the expectation is that the Secretary acts as the facilitator working with the OBC to develop and implement those rules.

The Law only specifically gives the Secretary's Office Rulemaking Authority, and the law only delegates rulemaking authority in the following provision:

118.9-3 *Secretary's Office*. The Secretary's Office shall be responsible for (a) Scheduling and organizing General Tribal Council meetings. The Secretary's Office shall:

(2) create rules regarding those entities which assist with the General Tribal Council meetings.

As written, this is only delegating Rulemaking Authority to the Secretary's Office. If the LOC prefers, this could be revised to state:

118.9-3 *Secretary's Office*. The Secretary's Office shall be responsible for (a) Scheduling and organizing General Tribal Council meetings. The Secretary's Office shall:

(2) create rules, subject to OBC approval, regarding those entities which assist with the General Tribal Council meetings.

However, there are other delegations of authority in the law, which are not specifically for rules,

but which require the Secretary's Office to establish internal processes and SOPs. Specifically, the Secretary's Office is also delegated the responsibility to:

- Schedule and organize GTC meetings, including creating and approving SOPs to determine specific roles and responsibilities to carry out and enforce this law. *118.9-3(a)(1)*.
- develop a process to address GTC meeting agenda development. *118.8-1*
- develop standard operating procedures to ensure that the following mandatory reports are included in each GTC meeting packet: (1) meeting scheduling; (2) minutes (if available); the petition process; and costs of each meeting. *118.8-6(b)*
- create a standard petition form, a standard resolution template, and instructions to complete these materials. *118.5-2*

Aside from the Secretary's Office, the Law authorizes two other entities to develop SOPs:

- The OBC Support office may to create SOPs identifying how petitions shall be internally processed after verification results are received from Trust Enrollments. *118.5-5(b)*
- The OBC may establish an SOP that allows for non-Tribal employees to access GTC meeting materials as necessary for performing their job duties. *118.9-2(b)(3)(A)*

Any of these provisions can be revised to add "subject to Oneida Business Committee approval" or to add "in conjunction with the Oneida Business Committee."

Whether or not to revise the rulemaking provision, or any of the other SOP/process provisions, to require approval of the OBC, or to require joint development by the OBC, is a policy call.

LOC Consideration

Date: June 29, 2017

To: Lisa Summers, Oneida Tribal Secretary
From: Susan White Trust Enrollment Director
RE: Written Testimony for June 29, 2017 General Tribal Council Meetings Law Public Meeting

Dear Madam Secretary,

I request the following changes be considered to Draft 18 of the General Tribal Council Meetings Law presented for Public Meeting June 29, 2017.

1. Line 33: "Eligible voter". The Constitution defines enrolled members of the Oneida Nation age eighteen (18) and over to be "**Qualified voters**". The definition and all references (about 8) of "eligible /Eligible voter" throughout this document should be consistent with the Constitution.
2. Lines 56 – 59: Definitions (l)(3) "a legal analysis" Would this need to include the recent GTC approved Legal Resource Center Attorney?
3. Line 118: Please identify if the "oath verification" is the "Petitioner" or " Qualified voter".
4. Lines 119 & 122: "circulator" should be in the "Definitions" section as well.
5. Line 191: add to the end of this line "in accordance with (b).
6. Lines 286 and 287: Petitioners are commonly asked by the OBC to provide facts/supporting documents to GTC so they can make informed decisions. If the Secretary has discretion to limit number of pages, then the Petitioner may feel they are being prevented from providing sound reasons to support their agenda matter. Perhaps alternate means should be discussed such as allowing pages of material to be posted on web or other acceptable media sites for members to view their materials without printed "books" having to be mailed. Perhaps these ideas may be included in the law and presented to GTC for consideration. Some may like the ability to choose, and it may help with mailing costs/concerns.
7. Lines 293 – 295: Please include how the OBC will document this for information at GTC meetings.
8. Line 333: Please include subsection (3) to section 118.6-1(a). Subsection (3) to state "Requests appropriate parties to make preparations to conduct a dully called GTC meeting."

9. Line 343: remove the space before the word "Other".
10. Line 346: Please include, "and will not be allowed to vote."
11. Line 347: replace the words "Minor children" with "Non-qualified voters".
12. Line 350: remove the words "with the Trust Enrollment Department," because this exceeds Trust Enrollment's scope and mission. Also replace "an" with "a pictured".
13. Lines 360-362: Why would is a special meeting called by the Chairperson with a "so few items on the agenda" be held to a different level of importance, than a request from 50 qualified voters? Article III, section 6 of the Constitution doesn't differentiate the two.
14. Line 434: replace the word "by" with "before".
15. Line 490-494: May need to amend the General Tribal Council Meeting Stipend Payment Policy with this language "if" this language is included in the approved draft.

Taniquelle J. Thurner

From: Candice E. Skenandore
Sent: Friday, June 23, 2017 3:06 PM
To: Richard Baird
Cc: Taniquelle J. Thurner; Jennifer A. Falck
Subject: RE: GTC Meeting Law - Written Comment

Good Afternoon Richard,

The Legislative Reference Office has received your public comments regarding the GTC Meetings law. You will be invited to attend the LOC meeting the next time this item is on the agenda. Thank you for participating in the legislative process. If you have any further comments or have any questions, please let me know.

Have a great weekend,

Candice E. Skenandore
 Legislative Analyst
 Legislative Reference Office
 Oneida Nation
 (920) 869-4422
<https://oneida-nsn.gov/register>



A good mind. A good heart. A strong fire.

NOTICE: This message is intended for the use of the addressee and may contain confidential information. If you are not the intended recipient, you are hereby notified that any copying or dissemination of this message is prohibited. If you have received this message in error, please notify by reply email or by telephone and immediately delete the message and all of its attachments.

From: Richard Baird [<mailto:rbaird@netnet.net>]
Sent: Friday, June 23, 2017 3:03 PM
To: Candice E. Skenandore
Subject: GTC Meeting Law - Written Comment

Written Comment - GTC Agenda

I would like to add my written comment to the record regarding the new GTC law under consideration.

I visited the Secretaries office at NHC a couple of days ago and explained that at a recent credit union annual meeting in Appleton they follow Robert's Rules of Order to conduct their meeting and they like us have an agenda. Everyone who attended the meeting was handed an agenda when we registered. When the meeting was brought to order, I noticed that there was no approval of that agenda. The Secretary simply stated that the first order of business was the Chairman's comments and the meeting began.

So, I was wondering why we need to approve an agenda for GTC which was the purpose of my visit to the Secretaries office. Here's what I found out.

1. BC staff works on the agenda for each meeting, insuring that all material relevant to each subject are included before the final document is sent to printing.

What surprised me was the length of time and effort put into the final document, it can be as much as two months' worth of work. So when I attend GTC and see the whole thing fall apart because of motions, amendments and moving items around I'm discouraged. It seems all the time and effort the BC staff puts into this is wasted. So I am making the following proposal.

1. BC staff continues to work on the agenda.
2. We no long approved the agenda at the GTC meeting.
3. If anyone wants to add or amend the agenda, they need to come to the Secretaries office and put in their request and justification, making sure they adhere to the 10 day notice period. Once it is finalized, that's it, no more changes.
4. If someone wants to add something to the agenda it will have to be done between GTC meetings and added to the next agenda, if appropriate.
5. The agenda and other materials go to printing and are readied for mailing.
6. When the meeting is called to order, we can skip the "approval of the agenda" and get on with moving the Nation forward.

Public Hearing Comment Re: Proposed GTC Meetings Law

Submitted by Ed Delgado

Note: On Monday, June 26th, I submitted verbal comments. Please disregard those comments.

COMMENTS

Line 43: "the term libel" actually means a written statement that is injurious to another person's reputation. However, the statement must be a lie for the writer to be held libel. Is the intent to prevent truthful statements? Recommend that the Chair rule out of order written statements that are not relevant to the agenda item.

Line 64: Same issue as above regarding slanderous verbal statements. Recommend Chair rule out of order verbal statements that are not relevant to the agenda. Also recommend Chair delete from the record both verbal and written statements that may be untrue.

Line 103, a petitioner should not be required to have a phone or e-mail address, nor should the petitioner be required to provide e-mail address if he or she does not want to.

Lines 118 thru 122: It has been the custom that petitioners have help in attaining signatures. Recommend petition provide that persons assisting the petitioner sign that they witnessed the signing.

Line 221 thru 225: The petitioner should not be required to meet with the BC or anyone. Recommend delete.

Line 308: Truth is always in the best interest of the Nation.

Lines 296 thru 308: Generally the peoples reputations should be protected, however, I do not relieve that petitions should not be able to address obvious truths that need to be addressed such as tribal resources, both financial and service benefits, should not be able to be addressed. I do not have recommendations how to address the needs of the petitioner to address meaningful issues and the right of individuals to not be defamed or lied about. I'm sure it can be done though. Lines 315 thru 322 are start, but again, petitions must be able to address real problems .

/.

118.6.(a). I assume (the date) means the date that the Chair is requesting.

118.7-1. Regarding (Notice). Notice of a meeting must be mailed to the membership. If the 10 day policy requires mailing, then the following that policy is adequate.

118.7-5(a)(3). Please delete this subsection. This section could cause problems when the OBC is directed to bring back an issue within a certain number of days.

118.7-5((b). Cancelling a meeting less than 24 hours before the meeting for any other reason other than protecting the safety of the General Council could be abused. We are going through that experience right now and it is hurtful to many of the membership who support and want to protect the institution of the GTC. Cancelling due to the meeting being impractical or for good cause are reasons that could be abused. In addition, all notices of cancellation must be mailed to the membership, unless the cancellation is for reasons of safety.

Line 375: The Secretary may recommend, but the approval of the rescheduled date should be made by the OBC.

118-9. All issues regarding Sargent at Arms. The Chair shall designate a Sargent at Arms and such designation must be approved by the Council (the Council being the GTC) providing that the Chair or the Council may designate another Sargent at Arms at the beginning of any meeting.

Also, lines 441 thru 442: Please mention the General Tribal Council. Recommend, "The following requirements shall apply to all members of the General Tribal Council, and all other persons in attendance as approved by the Council.

Regarding prohibiting members of the GTC under the influence of alcohol: Attendance is a constitutional right and violating that right has to be for a very good reason. We the people of the Oneida Nation do have a large number of alcoholics. It is a sickness, a tragic sickness, but you know what, if they are not you, or I, we should not disallow them the right to attend unless they are violating the other prohibited behaviors of the proposed law. Regarding illegal drugs, what will be the determiner of that?

Slandorous statements are verbal statements that are lies. Who is to determine what statements are lies. This issue is hard. GTC members must be protected from such verbal attacks, including

~~_____~~

but to a lesser extent members who are also on the BC. A Chairman is normally in position to control such behavior.

Recordings: Currently, the GTC is doing just fine regarding recordings and information. What is being proposed here are attempts to muzzle GTC and protecting issues which may need to be exposed to the Oneida public. The Kalih won't do it, but we do have Oneida publications that should not be prohibited from writing the news of the Nation, and Oneida law should not be trying to squash information relevant to the Nation. Without the free flow of the news, the Nation's financial resources are at risk.

Finally the Sargent at Arms should not have the authority to remove a Council member (GTC), without the approval of the Chair, and such removal may be appealable by the Council itself.

Illegal activity like physical threats, fighting, smoking dope and such, would not need the approval of the Chair and be carried out by the Sargent at Arms and/or the Oneida Police Department.

Final Comment. To protect the reputations of Council Members, statements may be redacted from the record, statements about themselves as individuals that are obviously untrue or not relevant to the item on the agenda.



LEGISLATIVE OPERATING COMMITTEE PUBLIC MEETING

General Tribal Council Meetings 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 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. The general opening and closing statements apply to all public meetings held June 26, 2017.]

(13:42 – 20:45)

Brandon Stevens: I'll now begin today's public meeting for the proposed General Tribal Council meetings law, call to order at 12:28.

This is a proposal to create a new General Tribal Council Meetings law which would:

- Create a schedule for GTC meeting dates.
- Outline the petition process.
- Set a general agenda for GTC meetings.
- Set standards of conduct for attending GTC meetings.
- Outline the duties of those preparing and assisting with meetings.

And I'll open up to the floor, for anyone who'd like to provide oral testimony today. All right, Ed? Ok, the floor is yours.

Ed Delgado: Not as bad as I thought. Here's some comments... In fact there's some real good ideas about the petitioners being able to get help from the LRO in their wording. I think it needs to be... you can't submit anything unconstitutional; you can appeal that and see if you're being denied, I think it needs to be clear that it's just Constitutional. Because a lot of petitions may violate Tribal law and a petition can challenge law, but I don't know if you want to do something that violates the Constitution, like due process. That's why we can't bring individual Tribal members to be judged - or BC members to be judged - and take their money away or their houses away or their freedom away... you can't do that. Our Constitution says no. Or it doesn't say no, but it says "due process". And the GTC has said no.

So... all pretty good, it didn't get me upset or anything, except ... there's a process here, "Processing the petition" ... that wasn't too bad. Here, where it says "an optional meeting with the BC"... that's optional, that's understood, but then on line 226 it says "placing a petition on the General Tribal Council only after the required meeting with the petitioner." I don't know, if the petitioner feels or the BC feels there's probably no meeting way ...you can inquire... but... I don't think anything should be mandatory once you submit that petition. You might be hiding out until the meeting... submit your stuff and you shouldn't have to meet with anyone after that. You have an opportunity to provide your input, that's all good, but required meeting I had a problem with.

It has a part here on who can call a GTC meeting – the Chairperson or 50 signatures, if that all complies with it, starting with line 325 – appropriateness. I understand that, you know, you shouldn't be able to defame people and challenge them... I mean, tell lies about them. I think the BC comes under that to a certain degree. You know when I was Chair there was allegations that I took Tribal money and bought a 1989 Toyota van in Phoenix. That's one of my favorite stories I guess. I mean we have checks and balances and we have a Treasurer and we have a CFO and he'd never let that fly. So... but, Tribal members is our thinking. Tribal members and employees should not have to run through that stuff. You shouldn't be defamed and whatnot. But at the same time, petitions should allow...be allowed to address.... improper things that are going on. There's a way to do that and a way that causes individual harm too. So.. protect the employees,

protect the General Tribal Council members, and to a certain degree protect the Business Committee, but there's a higher standard there of what you guys are exposed to and what prior BC members are supposed to have to endure.

All the way up to 437 "Sergeant of arms" – we have... it was passed by the GTC job descriptions. The Chair is afforded ... to run a meeting with the usual powers of a chairman. What's the standard out there in the general public and Robert's Rules and everything like that... and I think normally a Sergeant of Arms is appointed by the Chair. I'm not positive, but normally, and that's it.

Brandon Stevens: Thirty seconds.

Ed Delgado: Thirty seconds? When we're talking about standards of behavior... attendees again. You mention the attendees and you mention the GTC council meeting itself and you mention the BC, Tribal officials, any persons performing jobs or responsibilities but you don't mention... the General Tribal Council. The governing body. It's not in that list. Kalihwiyo, not that wild about Kalihwiyo but it's there and we can, you know, treat people with respect...

Be under the influence of illegal drugs or alcohol. We don't carry.... I don't see anyone carrying around any testing kits or anything like that, so... you're not going to give drug tests to people in GTC; that would not be pretty.

Brandon Stevens: Ok, I will allow you to finish up your last comment.

Ed Delgado: Okay. Last comment. The Constitution says that if you are 18, a Tribal member, you can vote and you can be a member of General Tribal Council. You've got to be very careful when you violate that, or make amendments to that. And it's not against the law to be under the influence of alcohol. General Tribal Council's rights to be there, overrides, I believe, anybody's personal idea that being under the influence should be illegal. As long as there's not hurting or interfering with the meeting. Think twice before you violate a person's right to participate in GTC. Thank you.

Brandon Stevens: All right, thank you, Ed. All right, is there anyone else who would like to provide oral testimony on the General Tribal Council meetings law? Seeing none, I will close this public meeting for the General Tribal Council meetings law at 12:36.

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

New Law: General Tribal Council Meetings

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 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 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 held open at 12:51 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.]

(08:43-38:20)

Brandon Stevens: I will now call to order the General Tribal Council Meetings law at 12:23. This proposal is to create a new General Tribal Council Meetings law which would:

- Create a schedule for GTC meeting dates.
- Outline the petition process.
- Set a general agenda for GTC meetings.
- Set a standard of conduct for attending GTC meetings.
- Outline the duties of those preparing and assisting with GTC meetings.

First up we have Bonnie, are you...?

Bonnie Pigman: Hi. I'm Bonnie Pigman. Throughout the document you have utilized the term "eligible voters" and I feel that that should not be used because our Constitution identifies our voter base as being "qualified voters" and so I think if you're going to use that term, then I think you to need to change our Constitution in relationship to that same language being used because some people may say that "eligible" could be identified as a criteria or utilized in that kind of ideology, I guess if you want to say that. So I would prefer if you stick with the language used in the Constitution to properly identify our membership that's identified for General Tribal Council, who are our voter base.

And I also feel that this document should not be adopted by the Oneida Business Committee. I feel that reason is because there's a lot of information in here that affects our General Tribal Council membership and some of it could be very controversial. And I would not like for it to go... I'd rather not see it hit the floor at a General Tribal Council meeting and people being upset because the Business Committee approved this document without their input. Even though I know that's what this meeting is for, there aren't very many people here from our base that we usually see in a General Tribal Council. And I think some of the items like I said in there are going to be controversial. So for that reason I would rather see it being presented to General Tribal Council at a duly called meeting, put it on the agenda. I don't know how you want to do that, but how it gets there.

One of the areas I think is controversial is where the Secretary is given discretion to limit the number of pages that would be included for printing materials. And often at General Tribal Council I hear the Business Committee tell people "well, you should have provided all that factual information up front." If we're going to start limiting the information that gets printed and sent to our membership for these meetings, then you're also not working in favor with people to say well, "you can put this in but you can't put that in" and I can understand about having some issues, like names and such being thrown out there, but I think that... I think that discretionary because we have exhausted, you know, this thing is like 200 pages long, well, I think we have other ways to include in this document methods to say "General Tribal Council will you approve for us to post this if it's in excess of 100 pages on our website and you can view it there in time for the meeting, as long as it's done by the ten-day" ... whatever those laws may be that require that criteria. So I think there's alternative ways of looking at stuff and saying what you will and won't allow for printing, in regards to trying to find a solution as well, it's not just pointing out things that are wrong. Thank you.

Brandon Stevens: Ok. Thank you Bonnie. All right, is there anyone else that would like to speak on behalf, give, provide oral testimony for the General Tribal Council meetings law? All right, you have the floor.

Lisa Liggins: Lisa Liggins. I just have two comments. One is on line 33. The definition of eligible voter. I believe that we should not include the Tribal member who is 18 years of age, that it should just reference “as defined in the Constitution” because... not that you’re going to change often, but...

And the second being section starting on line 288 of draft 18, the presentation materials? Just a comment for the record that at previous GTC meetings that it’s been indicated that presentations will be inserted into the packet, so if you’re going to make a multimedia presentation at the meeting, that we’re gonna include a copy of that in the printed materials. So the subsection that starts on line 293 saying it has to be to the Business Committee five days prior probably needs to be extended back because if we’re going to start including them in the packet, it doesn’t apply then. Thank you.

Brandon Stevens: Thank you. Okay, Lisa? Secretary Summers?

Lisa Summers: Good Afternoon, thank you very much. A lot of the things that I have comments about are going to be more of ... just things I’d like to see to be mostly just clarified at this point, I didn’t really see substantive changes that I felt were necessary. I am a little concerned...I’ll start by saying though that I am a little concerned about the rulemaking authority. I believe that rulemaking authority needs to be permitted within the process because there are several operational and logistical things that need to go along with coordinating all General Tribal Council meetings. What I’m concerned about though, at this point, is that it’s the sole responsibility of the Secretary to process... I need clarification if it’s the sole responsibility of the Secretary’s position to develop and implement those rules or if the expectation is that the Secretary acts as the facilitator working with the Business Committee to develop and implement those rules, so I think there’s a little bit of a clarification that is needed there. It would be my opinion that is the function of the entire Business Committee to determine what those rules or those processes that support this law are going to look like at the end of the day. I think the Secretary as a facilitator of the process can definitely be part of it, but I just think that the overall decision and authority needs to come from the entire Business Committee, because it’s the Business Committee’s responsibility to engage with General Tribal Council from that perspective so I just want to start with that.

Lisa Summers: I’ll start on page two. The first one that I would like to have a little bit of a dialogue about or express concern about is starting on line 48 for the petition analysis. If you look to line 41... or 49: “The statement of effect prepared by the Legislative Reference Office which explains the effects adopting a resolution will have on the Nation’s laws.” I believe that that’s a little bit too narrow. The Ten Day Notice policy requires that any action via a motion or resolution be noticed properly to the General Tribal Council prior to action taking place. So I think it just needs to simply say “law or issue” or law or... it needs to be a little bit more inclusive so it’s not only just resolutions that are prepared from an analyses perspective, so I think that’s just one thing that I would like to respectfully request be considered.

Lisa Summers: The next thing is starting on line 99. 118.5-3 for signatures. I was a little... I needed to have a little bit understanding what the intent was for this particular section. It states that employees of the nation who are collecting petition signatures shall do so in accordance with all laws and policies of the nation. I didn't understand why that was only specific to employees. Because non-employees who are petitioners must also adhere to the proper laws and policies when collecting signatures. So I wasn't 100% certain why this was in here this way. I feel like it's something that should apply to everyone. I think if the intent was to just clarify or to remind employees that they have specific rules to follow when engaging in political activities, that that rule is covered under the Personnel Policies and Procedures and I think it can be referenced as such. So that was just something I wanted to point out to the body.

Lisa Summers: Similarly, starting on line 199 in that section – “any actions taken on the petition, including but not limited to...” and then it lists three items. Um, one of the things that we've been practicing is to post progress of the analyses as they're being completed and... I didn't know if we wanted to get that specific or if that was going to be a rule but I just wanted to mention that that was one of the things, for transparency reasons, we've been asking for public notification, we've been putting it on our agendas so that the public can be informed of what progress is being made on each one of the petitions as they come forward. So that was something I just... I didn't know if we wanted to get specific or not but I just wanted to put that reminder out there.

Lisa Summers: The next item that I wanted to cover starts on line 216. Section 118.5-8, meetings with the Petitioner. The first item, (a), the optional meeting, I'm going to suggest slightly different language for that portion of it. I think the intent is clear but I think from... at least... as I went through and tried to interpret it, what it would be from my perspective as a layperson? It was ... it still looked as if the Business Committee was, I guess having to take the initiative to do these things, and I think the intent as we discussed it, was for the petitioner or the Business Committee to be able to...

(5-minute timer sounds)

Lisa Summers: Am I... is my time up?

Brandon Stevens: Yeah.

Lisa Summers: Sorry. Ok, I will submit the rest of my comments in writing.

Brandon Stevens: All right, thank you.

Lisa Summers: Thank you.

Brandon Stevens: Okay, Ed, comments on the General Tribal Council Meetings Law? You have the floor.

Ed Delgado: First, I'd like my comments that I made on Monday to be done away with.

Brandon Stevens: Okay, to note, not consider the Monday?

Ed Delgado: The attorney... encouraged... gave me a better explanation of exclusion, so I researched it again and she was right and I was wrong. So, here we go. Line 43 and I have my copy of the lines with my... I'll submit it.

Brandon Stevens: Okay

Ed Delgado: Line 43, the term "libel" – that actually means a written statement that is injurious to another person's reputation. However, the statement must be a lie for the writer to be held liable. So.. lie... libel comes from lie. So it has to be a lie. Is the intent to prevent truthful statements? Recommend that the Chair rule out of order written statements that are not relevant to the agenda. So if somebody's, you know, saying something and if it is not relevant to the agenda, it should be ruled out of order. But I don't know if we have the ability to determine what's a lie and what's not. At a meeting.

Ed Delgado: Line 64. Same issue above regarding slanderous statements. Slanderous statements should be ruled out of order, but slanderous again, has to be a lie. They're telling the truth it's not a lie, but ... it's gotta be relevant to the agenda. I believe.

Ed Delgado: Line 103. A petitioner should not be required to have a phone or an email a... I'm sorry. Yeah, 103. A petitioner should not be required to have a phone or an email address, nor should a petitioner be required to have an email address if he or she does not want one. There's a requirement there that they have something there.

Ed Delgado: Um... It has been the custom that petitioners have held in attaining signatures. Recommend that petition provider provide that persons assisting the petitioner sign that they have witnessed.. that they are witnessing to the signing. What you're recommending is that the petitioner do all the signature gathering by himself and that's hard. The petitioner should not be required to meet with the BC or anyone... so there's a requirement that you meet... one statement you say "option" and then a couple lines down you say there's a required meeting. I don't think that is necessary. It's not going to gain anything.

Ed Delgado: Line 308. Truth is always in the best interest of the Tribe. Or nation. Line 296 through 308. Generally the people's reputation should be protected. However, I do not believe that petitions should not be able to address obvious truths. that need to be addressed, such as the protection of Tribal resources, both financial and services. Benefits. Should not be able to be addressed. My writing is getting terrible. There's important issues that come before the General Tribal Council and they have to be addressed. Nice as you can but some of them are harmful. Do not have recommendations how to address the needs of the petitioner to address meaningful issues and the right of the individuals to not be defamed or lied about. There's a balance there. I'm sure it can be done, though.

Ed Delgado: Lines 315 through 322 are a start, but again, petitions must be able to address real problems.

Ed Delgado: Section 118.6.(a). I assume the date means that the chair is requesting. There's some issues about the date when the chair calls the meeting, I'm assuming that the date... the meaning of that means that's the date that the chair is requesting.

Ed Delgado: 118.7-1. Regarding notice. Notice of a meeting must be mailed to the membership. If the ten day policy requires mailing, then following that policy is adequate.

Ed Delgado: 118.7-5(a)(3) please delete this subsection. This sub... this section...

(5-minute timer sounds)

Ed Delgado: Is that over?

Brandon Stevens: Yeah

Ed Delgado: This section causes problems when the OBC is directing to bring back an issue within a certain number of days. That's cancellation of meetings. Cancelling a meeting less than 24 hours before a meeting for any other reasons than protecting the safety of the General Council could be abused. We are going through that experience right now and it is hurtful to many of the membership who support and want to protect the institution of GTC. Cancelling due to the meeting being impractical or for a good cause are reasons that could be abused. In addition, all notices of cancellation must be mailed to the membership unless the cancellation is for safety reasons ... if you have a storm, you know, you're not going to be able to mail that cancelling.

Secretary, line 375. The Secretary may recommend, but the approval of the rescheduled date should be made by the OBC.

Brandon Stevens: Ok, I'll allow you to wrap it up and then you can submit your comments in written format.

Ed Delgado: All issues about the Sergeant of Arms, the following requirements; I have a lot to say about that. It should be appointed by the Chair, and the General Tribal Council should have the approval, I mean if they want it, they can approve that Sergeant at Arms. It should not be a person designated by the GTC. And GTC should be able, at the beginning of every meeting, to change that sergeant of arms, because maybe it's not working out. Maybe it's too brutal. And the other one is the protection of ... people have a right to participate in GTC, alcoholism is a disease. It's a disease that is very harmful to the person there and to our membership. Unless they are creating a disturbance, a person under the influence – and you're under the influence if you have one drink - should not be prohibited from exercising their right to go to GTC. Unless they are disturbing or creating.

Brandon Stevens: Ok

Ed Delgado: And the chair should have the say – and it should be appealable – about anybody being removed from General Tribal Council. Unless it's for issues of fighting, smoking dope on

the thing, ah, place, ah...., or creating a disturbance, or making threats. And then I can see the GTC Sergeant of Arms and the police removing someone of their own volition. Thank you.

Brandon Stevens: Ok. Thank you, Ed. Is there anyone else that would like to speak on behalf of the General Tribal Council Meetings law? And let's see... and we'll need your name for the record as well too. Thank you, you have the floor.

Mike Denny: Mike Denny. Under General Tribal Council Meeting Agenda. It's the Secretary's responsibility to set the agenda, is that correct? I guess? Well, sometimes it takes an hour to set the agenda and maybe we could rearrange some of these items that don't need to be... that could be tackled right away and get through with some of the items, like reports. Or approve the minutes. Put them first. Because when you get to tabled business and new business, those should be last on the agenda or later on the agenda so we can accomplish and finish some of the things that are on the agenda. Otherwise, you're having people making amendments to the agenda to move those items which they figure are more important, than regular scheduled items that are... need to be approved by the GTC. I just don't like the timeframe it takes to set an agenda, we waste an hour of our time, just setting the agenda sometimes. And maybe we could improve how we set the agenda so we don't get stuck on one topic for the whole time limit. It seems to me that's a waste of time. That's all I'm going to have to say. Thank you.

Brandon Stevens: All right. Thank you. Is there anyone else that would like to provide comment? I guess as LOC chair, I'd like to kind of comment as well, as part of, some the things that are kind of... developing as we speak, and speak on as... in a formal record, about the cancelling of a meeting, of a GTC meeting. I think that's something that needs to be addressed here, in section 118.7-5 Cancelling the Meeting...sub 3 – I think there needs to be criteria. If we cancel a meeting at the Business Committee, and I think I'm hearing that a notice is being sent out and that's generally being accepted, but, having provided timelines of when a duly called meeting should be cancelled, providing adequate time. At what point can you cancel a meeting and at what point can't you, in that it would be more of a burden on communication, it would be more costly at a certain time period. And so, as a Business Committee, should have a particular timeline of when they should cancel meetings for whatever reasons that may be. So number sub (3) says "there are no agenda items to discuss or there are so few agenda items that would be fiscally irresponsible to hold a meeting; provided that, this shall not apply to a meeting called by a chairperson in accordance with section 118.6. And so, looking at how to adjust that to making sure we have the ability to be fiscally responsible but also have the ability to reach out to the community as much as possible in an adequate fashion, so that we don't have the situation we are having now where people are coming from out of state... coming to the meetings and that we give them adequate notice. And so I think that timelines should be in there. And I think we try and accommodate that now as much as possible but the timeline would further help to know to direct, the individual to say, "Ok is this meeting still going on? I have a month timeline here that I may know that I may need to check... that this meeting may be cancelled and here's the timeline. So that's what I think we need to consider, as LOC, is possible more criteria on that last section there due to what's happening. That fills the gaps, what's happening right now. And, otherwise I think this is ... it's as good as we're going to get. And then General Tribal Council will take a look at it and they will have their say again. This was sent to them in 2015 for GTC review. They had some considerations and they sent it back to us to review those considerations

and now this is the process that we're following and we will be soon ready to put this back in front of General Tribal Council for their purview again and see whether or not this is the direction where they want to go. Thank you. Tehassi?

Tehassi Hill: I just have a little bit maybe more general comments and suggestions about the process of General Tribal Council meetings maybe as a whole and how ...the information is shared at meetings. Just another suggestion to consider out there is ... when action is taken at General Tribal Council meetings say, petitions, maybe they get presented at one meeting, and that's all it is, is just presentation and discussion, and then it's automatically forwarded to the next GTC meeting for the vote to happen. Just so that allows more time for people to become more aware of what the discussion is at General Tribal Council meeting and for the emotions of what's going on in those meetings sometimes to defuse a little bit so that people can get back into the actual, I guess, um, crux of what the issue is and not the emotion of it, because I know that sometimes at some of our meetings, they're high emotion topics when they don't necessarily need to be but that's the way they've been pushed and so I'm really looking forward to the General Tribal Council keeping the logic and what the reasoning is behind the petition and the reasonability of what the petitioner is asking for rather than just getting riled up by the emotion, so I think that might help defuse some of that, if you have the presentations at one meeting, and obviously, it's going to be a month or two or three before they even take action on that particular item; so I think that's one suggestion that would help General Tribal Council make more informed and less emotional decisions. Thank you.

Brandon Stevens: Ok, we'll open it up even further, if anyone else wants to comment on the General Tribal Council meetings law.

Daniel Guzman: Just had a recommendation to go along with Tehassi's, I've mentioned to other people before is have presentations before the actual GTC meeting starts, for the half hour before, because there's you know, maybe not a thousand but several hundred people there, sitting, waiting for the meeting to start, they could be watching, listening to a presentation, so they get a preview of what they're going to be voting on, before the meeting actually starts. And then, how soon would you guys be presenting this law to the GTC?

Brandon Stevens: How about I answer that question after we close the comment period... this is all on record right now so if there's not any... So if there's not anyone else that would like to comment on the General Tribal Council Meetings law, I'll look to close the meeting at 12:51.

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-



General Tribal Council Meetings Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: LOC	SPONSOR: Fawn Billie	DRAFTER: Taniquelle J. Thurner	ANALYST: Maureen Perkins
Intent of the Law	The intent of this law is to create organization and consistency for General Tribal Council (GTC) meetings.		
Purpose	The purpose of this law is to create a schedule of GTC meeting dates, set a general agenda for those meetings, outline the petition process, set standards of conduct for those attending meetings, and outline the duties of those preparing and assisting with the meetings <i>[see 118.1-1]</i> .		
Affected Entities	The GTC, the Secretary's Office, Oneida Business Committee (OBC), Legislative Reference Office (LRO), Business Committee Support Office (BCSO), Trust Enrollment Department, Oneida Judiciary		
Affected Legislation	General Tribal Council Meeting Stipend Payment Policy, Oneida General Tribal Council Ten Day Notice Policy, Open Records and Open Meetings law, Oneida Nation Constitution, Personnel Policies and Procedures		
Enforcement/Due Process	Any individual who violates the general conduct requirements identified in section 118.9-2(a), or who is found to be making an audio or video recording of a General Tribal Council meeting, may be prohibited from attending the meeting or may be removed from the meeting <i>[see 118.9-2(c)(2)]</i> . The Sergeant-at-Arms or designee is responsible for enforcing this provision, upon discovery of a violation or at the direction of the Chairperson of the meeting <i>[see 118.9-2(c)(2)(A)]</i> . An individual removed from a GTC meeting shall not be allowed to return for the duration of the meeting and shall forfeit any meeting stipend for which he or she would have been eligible, in accordance with the General Tribal Council Meeting Stipend Payment Policy <i>[see 118.9-2(c)(2)(B)]</i> .		
Public Meeting	A public meeting has not been held this term. A public meeting was held in the previous term on 12/6/12.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. This proposal is for a new law to govern the scheduling and conducting of GTC meetings, including: a standard agenda format and a code of conduct for those in attendance; outlining the duties of those preparing and assisting with GTC meetings, and establishing a process for petitions, public meetings, public comment period, and public meeting follow up.
- B. This law supersedes Robert's Rules of Order meaning that any provisions of this law that conflict will be used instead of Robert's Rules of Order.

SECTION 3. CONSULTATION

- A. The Oneida Law Office and the Secretary's Office were consulted regarding the development of this law.

- B.** Current laws in place that were reviewed in this analysis include the GTC Meeting Stipend Payment Policy *[see O.C. Chapter 111]* and the GTC Ten Day Notice Policy *[see O.C. Chapter 110]*.

SECTION 4. PROCESS

- A.** The correct legislative process has been followed.

- B.** This item was carried over into the current term by the LOC and added to the current Active Files List on 9/17/14. The law was presented to the GTC on 7/6/15 and the GTC tabled it and remanded it back to the LOC for changes including public meetings for comments regarding changes and that all voting GTC members receive a 10 day notice mailing that the law will be on a GTC agenda. A public meeting was held in the previous term on 12/6/12 and was presented to the GTC on 7/6/15. GTC motion:

- 7/6/15 GTC: Motion by Madelyn Genskow to table the General Tribal Council Meetings Law be remand it back to the Legislative Operating Committee for changes, including public meetings for comments, and that the mailing be provided to all voting members when presented to GTC again; seconded by Sherrole Benton. Motion carried by show of hands.

SECTION 5. CONTENTS OF THE LEGISLATION

A. Setting GTC Meeting Dates

- Regular annual and semi-annual meetings will be held in January and July per the Constitution *[see 118.4-1]*. Budget meetings will be held at least once a year and as often as necessary to adopt the Nation's budget for the upcoming fiscal year *[see 118.4-2]*. Special meetings will be held as necessary; but no less than twice per year, to address GTC business, including petitions, in accordance with the Constitution *[see 118.4-3]*.

Petitions

- Eligible voters may submit completed petition requests to the BCSO *[see 118.5-1]*.
- Standard petition forms, resolution templates and instructions will be created by the Secretary's Office *[see 118.5-2]*. Petitioners may consult with the LRO regarding the specific wording of the petition *[see 118.5-2(a)]* and the Secretary's Office with preparing the petition form and scheduling meetings between the petitioner and the OBC *[see 118.5-2(b)]*.
- The requirements for a completed petition are detailed in section 118.5-4.
 - Name, address and enrollment number of petitioner and telephone number and email if available
 - Summary of petition
 - 50 original signatures from eligible voters including enrollment number and birthdate
 - Signatures are not valid if they are not legible, or if enrollment number or birthdate are missing or doesn't match information on file with the Trust Enrollment Department
 - Requires a signed oath that collected signatures are original
- Trust Enrollment Department verifies signatures *[see 118.5-5]*.
- Only a petitioner can withdraw their petition and once withdrawn a petition may not be resubmitted or used for anything else *[see 118.5-6]*.
- OBC review of submitted petitions is detailed in section 118.5-7.
 - Petitions can be rejected for lack of verified signatures *[see 118.5-7(a)(1)]* or for requesting unconstitutional actions *[see 118.5-7(a)(2)]*.

- Petitioners may file with the Judiciary Court of Appeals within 30 days after receiving notice to challenge a rejected petition based on lack of signatures *[see 118.5-7(a)(1)(B)]*.
- Petitioners may file with the Trial Court within 30 days after receiving notice to obtain a declaratory judgement regarding petitions rejected based on unconstitutional actions *[see 118.5-7(a)(2)(B)]*.
 - Accepted petitions shall be sent for analyses to be completed within 60 days *[see 118.5-7(b)]*.
- OBC will meet with petitioners to determine if alternative solutions exist to address the petitioners concerns without holding a special GTC meeting *[see 118.5-8]*.
- No more than five (5) petitions per GTC agenda and petitions must be considered by GTC no later than six (6) months after submission unless tolled by the OBC or the petitioner *[see 118.5-9]*.
- Petitions will be placed on a GTC agenda even if the required analyses are not complete *[see 118.5-10]*.
- 30 day notice required for a petitioner to appoint a designee. If the petitioner or designee is not available for the scheduled meeting GTC can only:
 - discuss/act upon, or
 - take no action on the petition in which case the petition dies.
 - The petition cannot be rescheduled, tabled or deferred *[see 118.5-12]*.
- Petitioner can include presentation materials with a 5 day advanced notice. Prohibited content is listed in section 118.5-12(d).
- Revisions to submitted petition materials can only be made by the Secretary's Office and only after a legal opinion has determined the materials contain prohibited content *[see 118.5-12(e)]*.

Special GTC Meetings Called by the Chair

- The OBC Chairperson may call a special GTC meeting in accordance with the Constitution *[see 118.6]*.

Holding a GTC meeting

- Detail related to holding GTC meetings is contained in section 118.7 including:
 - ten day notice requirements,
 - quorum established by the Constitution,
 - eligibility requirements (eligible to vote per Constitution or approved by 2/3s GTC vote to attend for official purposes),
 - registration with the Trust Enrollment Department with an Oneida Nation or state issued ID,
 - cancelled meetings
 - OBC may cancel a GTC meeting if:
 - the Chairperson nor Vice-Chairperson can be present for reasons beyond their control
 - holding a meeting would endanger attendees due to reasons that cannot be controlled
 - There are no agenda items or very few agenda items except for meetings called by the Chairperson.

- GTC meetings cannot be cancelled with less than 24 hrs notice except for good cause.

- OBC will reschedule a cancelled budget, regular or special meeting as soon as practicable.

GTC Meeting Agenda

- Detail related to the agenda for GTC meetings include descriptions of agenda items is contained in section 118.8.

Additional Responsibilities

- A Sergeant-at-Arms shall be designated by the OBC to oversee the Internal Security Department *[see 118.9-1]*,
- GTC meeting attendees:
 - are expected to comply with section 118.9-2(a)(1) or the designated Sergeant-at-Arms may remove them from the meeting *[see 118.9-(c)(2)(A)]* and may
 - are prohibited from sharing sensitive/classified information without advanced authorization *[see 118.9-2(b)(1)]* and may be prohibited from attending or removed from GTC meetings by the Sergeant-at-Arms if this provision is violated *[see 118.9-2(c)(2)(A)]*. Penalties for violating this provision include: a fine between \$100 and \$2,000 *[see 118.9-2(c)(3)(A)]*.
 - Violations will be brought by the Oneida Law Office before the Trial Court of the Judiciary and decisions may be appealed according to applicable rules of procedure *[see 118.9-2(c)(3)(B)]*.
- Responsibilities of the Secretary's Office include:
 - scheduling and organizing GTC meetings,
 - ensuring GTC meetings are recorded and available to Tribal members within 5 days after a GTC meeting,
 - creating an action report, transcript and draft minutes of GTC meetings,
 - getting approval from GTC for draft minutes
 - placing items on the OBC agenda as required
 - including a statement that meeting materials are not to be shared *[see 118.9-3]*.

Administrative Hearing Bodies

- Administrative hearing bodies are not authorized to hear any actions arising from the law *[see 118.10-1]*.

Rulemaking Authority

- The Oneida Nation Secretary has been granted rulemaking authority to create rules related to entities that assist with GTC meetings *[see 118.9-3(a)(2)]*.

B. The proposed legislation is very wordy and contains more detail than is necessary.

SECTION 6. INTENT

- A.** The purpose of the law is to create a schedule of General Tribal Council meeting dates, set a general agenda for those meetings, outline the petition process, set standards of conduct for those attending meetings, and outline the duties of those preparing and assisting with the meetings *[see 118.1-1]*.

SECTION 7. EFFECT ON EXISTING LEGISLATION

A. The law does not conflict with any current laws in place.

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

A. The proposed legislation creates a process regarding existing rights, privileges, benefits and obligations related to GTC meetings.

B. Due process is addressed that allows petitioners to file appeals related to submitted petitions to the Judiciary.

C. The legislation creates a process for GTC meetings which will supersede processes currently in Place, as well as Robert's Rules of Order.

SECTION 9. ENFORCEMENT

A. The law will be enforced by the OBC, the appointed Sergeant-at-Arms and the Judiciary.

B. The Secretary's Office and the OBSO will provide the human resources to enforce this law.

SECTION 10. ACCOUNTABILITY

A. The Secretary's Office and the OBC have a large role in the implementation and operation of the law.

B. The Secretary shall provide reports at each annual and semi-annual GTC meeting regarding rejected unconstitutional petitions *[see 118.5-7(a)(2)(D)]*.

SECTION 11. OTHER CONSIDERATIONS

A. The analyst consulted with the Secretary's Office and they indicated that the law does not contain some of the provisions initially requested by the Secretary's Office.

B. The LOC may consider defining General Tribal Council in the list of definitions *[see 118.3-1]*.

- According to Article III (Governing Body) of the Oneida Constitution: The governing body of the Oneida Nation shall be the General Tribal Council composed of all qualified voters of the Oneida Nation *[see Oneida Nation Constitution, Article III, Section 1]*.

- The GTC Meeting Stipend Payment Policy *[see O.C. Chapter 111]*, which is related legislation, defines the General Tribal Council as "the governing body of the Oneida [Nation], which is composed of the qualified voters of the Tribe, as determined by the Constitution of the Oneida [Nation] *[see O.C. 111.3-1(a)]*."

C. The LOC may consider using the term qualified voter instead of eligible voter.

- The Election Law defines qualified voter as: an enrolled member of the Nation who is eighteen (18) years of age or older *[see O.C. Chapter 102.3-20]*.
 - The Election Law contains a provision that provides a process regarding the dispute of the eligibility of a qualified voter *[see O.C. Chapter 102.8-6]*. Eligibility therefore establishes criteria for the qualified voter to participate in the election.

D. The LOC may consider removing the 30 day requirement for a petitioner to appoint a designee *[see 118.5-12]*. Petitioners may not know 30 days in advance that they may not be able to attend a GTC meeting.



Legislative Operating Committee
August 2, 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.

7/19/17: Work meeting held.

7/19/17 LOC: Motion by David P. Jordan to accept the public meeting comments memo and approve the adoption packet with the noted changes and forward to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.

The noted changes include:

- *Line 70: insert comma and add “except gaming compliance audits”*
- *Line 131 revised to read “notice of the time requirements for response, including the deadline for requesting an extension”*
- *Line 139 – broadened to cross out (b) starting with “within 14 days” and replace with “within the timeframe provided within the written request”*
- *Line 158 (section 106.6-6) changed from 14 days to “within the timeframe provided”*
- *Section 108.6-6 line 161 – include revisions to capture that the preliminary consultation is required to be done with the internal audit department prior to requesting a consultation with the Audit Committee*
- *Line 179 – “once the Audit Committee has reviewed the management response and approved the final audit report, the approved audit report is forwarded to the Oneida Business Committee for acceptance, and revising this section to recognize that the report would be released as a whole, except for the redacted portions approved by the law office.*
- *Line 205 to change to read “directing the appropriate corrective action, which may include discipline”*
- *108.8-3 - revised to recognize that the annual financial audit is available at all of those locations, but that all other external audits are with the entity.*

Next Steps:

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



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson *BS*
DATE: August 9, 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: Fiscal Impact Statement

Overview

This resolution adopts amendments to the Hunting, Fishing and Trapping 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 22, 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 Amendments 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

- 1
- 2 **A.** The law was significantly redrafted to capture the additional functions and purposes of an audit aside
- 3 from protecting the Nation's assets. Greater detail is provided regarding the internal audit process
- 4 including who may initiate an audit, what the possible focuses of an audit may be and the proper
- 5 course of action regarding responses to audit findings. Additionally, changes clarify the difference
- 6 between the internal and external audit responsibilities and provide the two different points of access
- 7 for internal and external audits to Tribal members.
- 8 **B.** Some detail of the law was removed that was duplicative of the bylaws of the Audit Committee *[see*
- 9 *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, the Audit Committee and the Nation's Directors and Managers 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
2017 08 02

- 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]*:

2017 08 02

- 94 ○ The Audit Committee shall approve finalized audit reports and forward to the
 95 OBC for approval. The OBC shall include in the approval notice if the audit
 96 report is released to for Tribal member viewing in whole or in part.
- 97 **D. Compliance and Enforcement [see 108.7]:**
- 98 • Any entity and / or management found violating this law is subject to corrective action
 - 99 • The Internal Audit Department shall send a report including recommended actions to the
 100 Audit Committee if there is knowledge or belief that an entity has violated this law
 - 101 ○ The Audit Committee may request OBC executive session and direct
 102 management staff to attend.
 - 103 ○ The OBC may direct an entity to comply with this law and information gathering
 104 efforts and/or take corrective action necessary to enforce compliance.
 - 105 ○ The OBC, in consultation with the Oneida Law Office, may report illegal activity
 106 to the proper law enforcement authorities.
 - 107 ○ The OBC may direct discipline of management staff or other responsible
 108 employees for the failure to comply with the Nation's laws
 - 109 ○ Where a board, committee or commission is noncompliant, taking steps to
 110 terminate or remove a board member pursuant to the Nation's applicable laws.
 - 111 ○ Restricting an internal entity's budget funding.
 - 112 • Investigations [see 108.7-3]:
 - 113 ○ If the Internal Audit Department suspect an entity has conducted illegal activity,
 114 it must immediately stop the audit proceedings and report the suspicion to the
 115 Audit Committee. All direction and decisions regarding any investigation are the
 116 sole discretion of the Audit Committee. The Internal Audit Department will
 117 assist outside entities with any investigation directed by the Audit Committee.
 - 118 • External Communications [108.7-4]:
 - 119 ○ The Internal Audit Department shall receive approval from the Audit Committee
 120 prior to initiating communication with any outside entity; including law
 121 enforcement.
- 122 **E. Access to Internal and External Audits [see 108.8]:**
- 123 • Restricted on-site review access of completed internal audit reports approved by the OBC
 124 available to Oneida Nation members with Tribal member identification card and
 125 signature.
 - 126 • Reports may not be provided in any GTC agenda packet.
 - 127 • Requests for internal audit reports are made directly to the Internal Audit Department.
 - 128 • Requests for external audit reports shall be submitted to the responsible custodian at any
 129 of the following locations: Oneida Community Library, Office of the Nation's Treasurer,
 130 Finance Department, or Oneida Business Committee Records Management Office(s).
 - 131 • Internal and external audit reports are available for viewing only and shall not be copied
 132 or printed.
- 133 **G. The proposed amended legislation is drafted with more detail to adhere to current best practices related**
 134 **to internal audits.**

135 **SECTION 6. INTENT**

2017 08 02

- 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(b)].
- 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 the appropriate corrective action, including discipline, of
190 management staff or other responsible employees for failure to comply with the Nation's
191 laws *[see 108.7-2(b)(2)]*.
 - 192 • Where a board, committee or commission is noncompliant, taking steps to terminate or
193 remove a board member pursuant to the Nation's applicable laws *[see 108.7-2(b)(3)]*.
 - 194 • Restricting an internal entity's budget funding *[see 108.7-2(b)(4)]*.
- 195 **C.** The Internal Audit Department will utilize existing staff to implement this law.
196

197 **SECTION 10. ACCOUNTABILITY**

- 198 **A.** The Internal Audit Department, in coordination with the Audit Committee and OBC, will be
199 responsible for implementation and operation of this law.
- 200 **B.** Internal audit reports are finalized and approved by the OBC for Tribal member viewing in whole or
201 as redacted as determined by the Oneida Law Office *[see 108.6-7]*.
202

203 **SECTION 11. OTHER CONSIDERATIONS**

- 204 **A.** The Audit Committee bylaws were updated on January 27, 2016 and reflect some of the current
205 amendments to this law. Additional amendments will require the Audit Committee bylaws to be
206 amended.
207

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) Except for gaming compliance audits, 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 for response, 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 the timeframe provided to the entity in the written request.

(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 the timeframe provided in the draft audit report.

(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, entities highlighting concerns may:

(A) Request a preliminary consultation with the Internal Audit Department to further discuss the contents of the draft audit report prior to finalization of the audit report; and

(B) If there are remaining concerns following the preliminary consultation, request a consultation with the Audit Committee to discuss remaining concerns regarding the contents of the draft audit report prior to its finalization;

(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.* The final audit report shall include all findings as well as any required entity follow-up and/or further scheduled auditing. Any findings modified, removed and/or excused based on the consultation between the Audit Committee and the entity shall remain noted in the final audit report with notes indicating the action taken by the Audit Committee. Once the Audit Committee has reviewed the management response and approved the final audit report, the approved final audit report is forwarded to the Oneida Business Committee for acceptance. The Oneida Business Committee shall include in its acceptance notice that the audit report is released for Tribal member viewing in whole following redaction as determined to be necessary by the Oneida Law Office.

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 the appropriate corrective action, which may include 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. *Investigations.* Should the Internal Audit Department suspect an entity has conducted illegal activity, it shall immediately halt audit proceedings and report the suspicion to the Audit Committee. Upon the Audit Committee's direction, the Internal Audit Department shall assist external parties, which may include, but are not limited to, law enforcement agencies and private investigators, in conducting any investigation directed by the Audit Committee. Investigatory actions and assistance may be carried out by the Internal Audit Department, provided that all direction and decisions related to any investigation are the Audit Committee's sole discretion.

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.* All external audit reports, including those of a vendor, consultant or other party organized outside of the Nation's Federal Identification Number (FIN) shall be made available for Tribal member viewing directly with the audited entity. Requests for the annual financial audit of the Nation 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).

~~261~~
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

FINANCE ADMINISTRATION

Fiscal Impact Statement

HANDOUT



MEMORANDUM

DATE: July 27, 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 Audit Law Amendments**

I. Estimated Fiscal Impact Summary

Law: Audit Law Amendments		Draft 9
Implementing Agency	Oneida Business Committee Audit Committee Internal Audit Department	
Estimated time to comply	30 Days	
Estimated Impact	Current Fiscal Year	10 Year Estimate
Total Estimated Fiscal Impact	\$0	\$0
Revenue and cost considerations	Restricting an internal entity's budget funding.	
Uncertainties and Unknowns	None	

II. Background

A. Legislative History

This law was adopted by the Oneida Business Committee by resolution BC-7-15-98-C.

B. Summary of Content

1. Update the title of the Law to Internal Audit;
2. Clarify the roles and responsibilities related to the internal audit process;

3. Identify the primary authority responsible to when and for what reason an internal audit is initiated;
4. Identify who can require and enforce management response and action as a result of audit findings;
5. Capture additional functions and purposes of an audit aside from protecting the Nation's assets;
6. Provide greater detail regarding the audit process; and
7. Clarify the difference between an internal and external audit and explain the process for reviewing each internal and external audit reports.

The approved 1998 Law included the following language;

108.5-3. Enforcement. The Audit Committee will have the ability to utilize all existing enforcement authorities to carry out their responsibilities.

In the current amendments, the authority to take corrective action lies with the Business Committee and includes the following;

- (4) Restricting an internal entity's budget funding.

It is unclear if this broad reaching authority would result in business interruptions and therefore impact revenues to the Nation.

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 no startup, personnel, office, or documentation costs associated with this legislation. Internal Audit is requesting 30 days from approval to implementation.

III. Financial Impact
Indeterminate.

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
August 2, 2017

Professional Conduct for Attorneys and Advocates

Submission Date: 4/5/17	Public Meeting: 7/20/2017
LOC Sponsor: David P. Jordan	Emergency Enacted: n/a Expires: n/a

Summary: *This law establishes professional standards of conduct for attorneys and advocates practicing before the Judiciary.*

4/5/17 LOC: Motion by David P. Jordan to add the Professional Conduct for Attorneys and Advocates to the active files list as a high priority, with David P. Jordan as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

6/21/17 LOC: 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.

7/20/17: Public meeting held.

Next Steps:

- Accept the public meeting comments and public meeting comment review memo;
- Consider the comments and direct any changes to the law;
- Direct the Legislative Reference Office to prepare an adoption packet.



TO: Legislative Operating Committee (LOC)
FROM: Robert J. Collins II, Staff Attorney, Oneida Law Office
DATE: August 2, 2017
RE: Professional Conduct for Attorneys and Advocates: Public Meeting Comment Review

On July 20, 2017 a public meeting was held regarding the Professional Conduct for Attorneys and Advocates law (Law). This memorandum is submitted as a review of the oral and written comments that were presented at the public meeting and submitted within the public comment period.

Comment 1.

Hon. Gerald Hill and Hon. Denice Beans – written comment: This is to bring your attention a provision that is problematic as drafted, specifically, 810.23-1., *"The Judiciary's Court of Appeals is granted jurisdiction to hear complaints filed regarding any disciplinary actions pertaining to this law."* This statement is in conflict with the mission and purpose of the Appellate Court. The scope of appellate review addresses formal hearing decisions of the Oneida Trial Court, the Family Court, and other original hearing bodies. Hearings based on this proposed law should be held in the Judiciary Trial Court and subject to review in the Court of Appeals. As presently drafted, 810.23-1. et seq. that pertain to hearing of complaints should be redrafted throughout to be consistent with the applicable Judiciary Law, Rules of Civil and Appellate Procedure.

Response: Section 810.23 of the Law was drafted using section 1-8(E) of the Judiciary's Rules of Admission as a guide. That rule states that "[i]f a complaint goes forward, a Chief Judge or Family Court Judge shall appoint three Judges to investigate and preside over disciplinary proceedings." Based on this comment and a review of sections 801.8-2(a)(1)-(3) of the Judiciary law, the law was revised so that disciplinary actions are heard by the Trial Court and the Court's decision may be reviewed by the Court of Appeals. The revised section reads as follows:

810.23. Disciplinary Actions

810.23-1. The Judiciary's ~~Court of Appeals~~Trial Court is granted jurisdiction to hear complaints filed regarding any disciplinary actions pertaining to this law.

810.23-2. Complaints of alleged violations of this law may be filed on behalf of the client with the ~~Court of Appeals~~Trial Court or initiated by the Judiciary. All complaints shall be forwarded to the Chief Judge of the ~~Court of Appeals~~Trial Court or his or her designee who may screen out and take no action on complaints which are determined to be frivolous or repetitive on their face. The Chief Judge or his or her designee shall communicate in writing any such decision with the complainant.

(a) The Chief Judge or his or her designee may take no action on an anonymous complaint other than fulfilling the requirements of the Nation's Anonymous Letters Policy.

810.23-3. If a complaint goes forward, the Chief Judge or his or her designee of the Court of Appeals shall ~~appoint a three (3) judge panel~~ assign a judge to preside over the disciplinary proceedings. Current or pro tem judges are eligible to ~~be on the panel~~ hear disciplinary matters.

(a) The party being accused of the disciplinary violation shall be given notice of a hearing and an opportunity to meaningfully respond to the allegations.

(b) The complainant also shall be given notice of any hearings and shall have the right to present evidence.

810.23-4. The ~~three (3) judge panel~~ judge can dismiss the complaint if it appears frivolous or if there is not enough evidence to substantiate the allegations by a preponderance of the evidence.

810.23-5. If there is enough evidence to substantiate the allegations by a preponderance of the evidence, the Court shall issue a written disciplinary order.

(a) The Court may opt to choose any combination of the following disciplinary methods:

- (1) Private reprimand;
- (2) Public reprimand through publication in the Nation's newspaper;
- (3) Additional training requirements;
- (4) Monetary fine not to exceed five thousand dollars (\$5,000); or
- (5) Suspension or revocation of the right to practice before the Judiciary.

(b) The ~~Judiciary Court~~ may also forward their decision to an appropriate outside regulating authority in appropriate situations (e.g. to the State Bar of Wisconsin if counsel is an attorney licensed to practice in Wisconsin).

810.23-6. ~~All decisions made by the Court of Appeals under this section are final~~ Decisions of the Trial Court under this section may be appealed to the Court of Appeals.

Title 8. Judiciary - Chapter 810
PROFESSIONAL CONDUCT FOR ATTORNEYS AND ADVOCATES

810.1. Purpose and Policy
810.2. Adoption, Amendment, Repeal
810.3. Definitions
810.4. Competence
810.5. Scope of Representation
810.6. Diligence
810.7. Communication
810.8. Fees
810.9. Confidentiality
810.10. Conflict of Interest
810.11. Duties to Former Clients
810.12. Former Judge, Mediator, or Peacemaker

810.13. Client with Diminished Capacity
810.14. Declining or Terminating Representation
810.15. Duties to Prospective Clients
810.16. Role as Advisor
810.17. Candor and Impartiality toward the Judiciary
810.18. Fairness to Opposing Party and Counsel
810.19. Counsel as Witness
810.20. Admittance to Practice and Disciplinary Matters
810.21. Misconduct
810.22. Civil Actions for Negligence or Violation of Duty
810.23. Disciplinary Actions

810.1. Purpose and Policy

810.1-1. *Purpose.* The purpose of this law is to govern the conduct of attorneys and advocates that are admitted to practice law before the Judiciary.

810.1-2. *Policy.* It is the policy of the Nation that the interests of all parties that appear before the Judiciary are protected. In pursuit of this interest, it is to the benefit of all parties that attorneys or advocates are subject to rules governing their professional conduct.

810.2. Adoption, Amendment, Repeal

810.2-1. This law was adopted by the Oneida Business Committee by resolution _____.

810.2-2. 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.

810.2-3. 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.

810.2-4. 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.

810.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

810.2-6. Where precedent for any issue under this law has not been established by the Judiciary, the Judiciary and counsel may refer to established Wisconsin or federal case law precedent or laws for guidance. The Wisconsin State Law Library maintains a section on Legal Ethics and Professional Conduct located at <http://wilawlibrary.gov/topics/legalprof/malpractice.php>.

810.3. Definitions

810.3-1. 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) "Advocate" means a non-attorney advocate who is admitted to practice law and is presented to the Court as the representative or advisor to a party. "Advocate" shall not mean a domestic violence advocate present in court for the sole purpose of providing support.

(b) "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.

(c) "Counsel" means an attorney or advocate that is admitted to practice before the Judiciary.

(d) “Judiciary” means the judicial system responsible for applying the laws of the Oneida Nation. The three branches, as identified in resolutions BC-05-08-13-A and GTC 01-07-13-B are the Family Court, Trial Court and Appellate Court.

(e) “Informed consent” means the agreement by a person to a proposed course of conduct after counsel has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) “Preponderance of the evidence” means it is more likely than not that the facts presented are true.

(g) “Prospective client” means a person who consults with counsel about the possibility of forming a client-counsel relationship.

(h) “Pro Tem Judge” means a decision maker that is not currently seated on the Judiciary, but that is appointed on a temporary (*pro tempore*), case-by-case basis to hear and decide matters in professional conduct panels.

(i) “Reasonable” or “reasonably” when used in relation to conduct by counsel means the conduct of a reasonably prudent and competent attorney or advocate.

810.4. Competence

810.4-1. Counsel shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

810.5. Scope of Representation

810.5-1. A client develops a privileged relationship protected by section 810.9 of this law and section 804.8-2 of the Oneida Judiciary Rules of Evidence once they consult with counsel to obtain legal services or once counsel performs legal services for the client. Any professional opinion given by counsel without express disclosure negating a privileged relationship shall create a privileged client-counsel relationship.

810.5-2. Counsel shall abide by a client’s decisions concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued. Counsel may take such action on behalf of the client as is impliedly authorized to carry out the representation.

810.5-3. Counsel’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, economic, social or moral views or activities.

810.5-4. Counsel may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed written consent.

810.5-5. Counsel shall not advise a client to engage, or assist a client, in conduct that counsel knows is criminal or fraudulent, but counsel may discuss the legal consequences of any proposed course of conduct with a client and may advise or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

810.6. Diligence

810.6-1. Counsel shall act with reasonable diligence and promptness in representing a client.

810.7. Communication

810.7-1. Counsel shall:

(a) Promptly inform the client of any decision or circumstance with respect to which the client’s informed consent is required by this law;

(b) Reasonably consult with the client about the means by which the client’s objectives are to be accomplished;

- (c) Keep the client reasonably informed about the status of the matter;
- (d) Promptly comply with reasonable requests by the client for information; and
- (e) Consult with the client about any relevant limitations on counsel's conduct when counsel knows that the client expects assistance not permitted by this law or other laws or rules.

810.7-2. Counsel shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

810.8. Fees

810.8-1. Counsel shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (a) The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;
- (b) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by counsel;
- (c) The fee customarily charged in the locality for similar legal services;
- (d) The amount involved and the results obtained;
- (e) The time limitations imposed by the client or by the circumstances;
- (f) The nature and length of the professional relationship with the client; and
- (g) The experience, reputation, and ability of the lawyer or lawyers performing the services.

810.8-2. The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client.

810.8-3. Counsel shall promptly respond to a client's request for information concerning fees and expenses.

810.9. Confidentiality

810.9-1. Counsel shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation.

810.9-2. Counsel shall reveal information relating to the representation of a client to the extent counsel reasonably believes necessary to prevent the client from committing a criminal or fraudulent act that counsel reasonably believes is likely to result in death or substantial bodily harm or in substantial injury to the financial interest or property of another.

810.9-3. Counsel may reveal information relating to the representation of a client to the extent counsel reasonably believes necessary:

- (a) To prevent reasonably likely death or substantial bodily harm;
- (b) To prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used counsel's services;
- (c) To secure legal advice about counsel's conduct under this law;
- (d) To establish a claim or defense on behalf of counsel in a controversy between counsel and the client, to establish a defense to an action seeking to deny admission to practice before the Judiciary, or to respond to allegations in any proceeding concerning counsel's representation of the client;

(e) To comply with other laws or court orders; or

(f) To detect and resolve conflicts of interest, but only if the revealed information would not compromise the client-counsel privilege or otherwise prejudice the client.

810.9-4. Counsel shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

810.10. Conflict of Interest

810.10-1. Counsel, except as provided in 810.10-2, shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if:

(a) The representation of one client will be directly adverse to another client; or

(b) There is a significant risk that the representation of one or more clients will be materially limited by counsel's responsibilities to another client, a former client, a third person, or by a personal interest of counsel.

810.10-2. Notwithstanding the existence of a conflict of interest under 810.10-1, counsel may represent a client if:

(a) Counsel reasonably believes that counsel will be able to provide competent and diligent representation to each affected client;

(b) The representation is not prohibited by law;

(c) The representation does not involve the assertion of a claim by one client against another client represented by counsel in the same litigation or other proceeding before the Judiciary; and

(d) Each affected client gives informed consent, confirmed in a writing signed by the client.

810.10-3. Counsel shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by this law.

810.10-4. Counsel shall not provide the client with any financial assistance pertaining to the matter for which counsel represents the client.

810.11. Duties to Former Clients

810.11-1. Counsel who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed written consent.

810.12. Former Judge, Mediator or Peacemaker

810.12-1. Counsel shall not represent anyone in connection with a matter in which counsel participated personally and substantially as a judge, mediator or peacemaker.

810.13. Client with Diminished Capacity

810.13-1. When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for some other reason, counsel shall, as far as reasonably possible, maintain a normal client-counsel relationship with the client.

810.13-2. When counsel reasonably believes that the client has diminished capacity, counsel may request that the court appoint a guardian ad litem for the client.

810.14. Declining or Terminating Representation

810.14-1. Counsel shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (a) The representation will result in a violation of this law or any other applicable law or rule governing professional conduct;
- (b) Counsel's physical or mental condition materially impairs counsel's ability to represent the client; or
- (c) Counsel is discharged.

810.14-2. Counsel may withdraw from representing a client if:

- (a) Withdrawal can be accomplished without material adverse effect on the interests of the client;
- (b) The client persists in a course of action involving counsel's services that counsel reasonably believes is criminal or fraudulent;
- (c) The client has used the counsel's services to perpetrate a crime or fraud;
- (d) The client insists upon taking action that counsel considers repugnant or with which counsel has a fundamental disagreement;
- (e) The client fails substantially to fulfill an obligation to counsel regarding counsel's services and has been given reasonable warning that counsel will withdraw unless the obligation is fulfilled;
- (f) The representation will result in an unreasonable financial burden on counsel or has been rendered unreasonably difficult by the client; or
- (g) Other good cause for withdrawal exists.

810.14-3. Counsel must comply with applicable court rules requiring notice to or permission of the Judiciary when terminating a representation. When ordered to do so by the Judiciary, counsel shall continue representation notwithstanding good cause for terminating the representation.

810.14-4. Upon termination of representation, counsel shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for seeking other counsel, surrendering papers and property to which the client is entitled and refunding any fees not earned.

810.15. Duties to Prospective Clients

810.15-1. Even when no client-counsel relationship ensues, counsel who has learned information from a prospective client shall not use or reveal that information learned in the consultation, unless:

- (a) The affected client and/or the prospective client have given informed written consent; or
- (b) Counsel who received the information took reasonable measures to avoid exposure to more disqualifying information that was reasonably necessary to determine whether to represent the prospective client.

810.16. Role as Advisor

810.16-1. In representing a client, counsel shall exercise independent professional judgment and render candid advice. In rendering advice, counsel may refer not only to law but to other considerations such as moral, economic, social, cultural, and political factors that may be relevant to the client's situation.

810.16-2. In representing a client, counsel shall not:

(a) Knowingly advance a claim or defense that is unwarranted under existing law, except that counsel may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law;

(b) Knowingly advance a factual position unless there is a basis for doing so that is not frivolous; or

(c) File an action, assert a position, conduct a defense, delay a trial, or take other actions on behalf of the client when counsel knows or when it is obvious that such an action would serve merely to harass or maliciously injure another.

810.16-3. In the course of representing a client, counsel shall not knowingly:

(a) Make a false statement of material fact or law to a third person; or

(b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

810.17. Candor and Impartiality toward the Judiciary

810.17-1. Counsel shall not knowingly:

(a) Make a false statement of fact or law to the Judiciary or fail to correct a false statement of material fact or law previously made to the Judiciary by counsel;

(b) Fail to disclose to the Judiciary legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(c) Offer evidence that counsel knows to be false. If counsel, counsel's client, or a witness called by counsel has offered material evidence and counsel comes to know of its falsity, counsel shall take reasonable remedial measures, including, if necessary, disclosure to the Judiciary. Counsel may refuse to offer evidence believed to be false.

810.17-2. Counsel shall not:

(a) Seek to influence a judge, juror, or other court official;

(b) Communicate ex parte with a judge during the proceedings unless authorized to do so by law or court order or for scheduling purposes, if permitted by the court; or

(c) Engage in conduct intended to disrupt the Judiciary.

810.18. Fairness to Opposing Party and Counsel

810.18-1. Counsel shall not:

(a) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. Counsel shall not advise or assist another person to do any such act;

(b) Falsify evidence, advise, or assist a witness to testify falsely;

(c) Knowingly disobey an obligation under any applicable law or rule, except for open refusal based on an assertion that no valid obligation exists;

(d) In pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party; or

(e) In trial, allude to any matter that counsel does not reasonably believe is relevant or that will not be supported by admissible evidence.

810.18-2. In representing a client, counsel shall not communicate about the subject of the representation with a person counsel knows to be represented by another attorney or advocate in the matter unless counsel has the consent of the other attorney or advocate or is authorized to do so by law or a court order.

810.18-3. In dealing on behalf of a client with a person who is not represented by an attorney or advocate, counsel shall inform such person of counsel's role in the matter. When counsel knows

or reasonably should know that the unrepresented person misunderstands counsel's role in the matter, counsel shall make reasonable efforts to correct this misunderstanding. Counsel shall not give legal advice to an unrepresented person other than the advice to secure counsel.

810.19. Counsel as Witness

810.19-1. Counsel shall not act as an attorney or advocate at a trial in which counsel is likely to be a necessary witness unless:

- (a) The testimony relates to the nature and value of legal services rendered in the case; or
- (b) Disqualification of counsel would work substantial hardship on the client.

810.20. Admittance to Practice and Disciplinary Matters

810.20-1. Counsel shall comply with the Judiciary's Rules of Admission to Practice.

810.20-2. An applicant for admission to practice or counsel in connection with a disciplinary matter, shall not:

- (a) Knowingly make a false statement of material fact; or
- (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority.

810.21. Misconduct

810.21-1. It is professional misconduct for counsel to:

- (a) Violate or attempt to violate this law, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) Commit a criminal act that reflects adversely on counsel's honesty, trustworthiness, or fitness as counsel in other respects unless such criminal activity has been pardoned or forgiven;
- (c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation unless such conduct is pardoned or forgiven;
- (d) State or imply an ability to influence improperly a tribal or government agency or official or to achieve results by means that violate any applicable law or rule;
- (e) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable canons of judicial conduct or other law or rule;
- (f) Violate the counsel's oath given to the Judiciary; or
- (g) Fail to cooperate in the investigation of a complaint filed with the Judiciary.

810.22. Civil Actions for Negligence or Violation of Duty

810.22-1. A client alleging that counsel was negligent or violated a duty under this law may initiate a civil action by filing a complaint with the Judiciary's Trial Court.

810.22-2. In a civil action against counsel for negligence or violation of duty, the client has the burden of proving all of the following:

- (a) A client-counsel relationship existed;
- (b) That counsel committed acts that were negligent or in violation of duty under this law;
- (c) That the client suffered actual damages;
- (d) That the negligence or violation of duty was the proximate cause of the damages; and
- (e) That, but for the negligence or violation of duty on counsel, the client would have been successful in the prosecution or defense of the case.

810.22-3. In making a final determination, the Court shall consider what a particular counsel did or failed to do and what a reasonable or prudent counsel would do in the same circumstance.

810.22-4. If there is enough evidence to substantiate the allegations by a preponderance of the evidence, the Court shall issue a written order awarding monetary damages to the client not to exceed five thousand dollars (\$5,000).

810.22-5. Decisions of the Trial Court under this section may be appealed to the Court of Appeals.

810.23. Disciplinary Actions

810.23-1. The Judiciary's Court of Appeals is granted jurisdiction to hear complaints filed regarding any disciplinary actions pertaining to this law.

810.23-2. Complaints of alleged violations of this law may be filed on behalf of the client with the Court of Appeals or initiated by the Judiciary. All complaints shall be forwarded to the Chief Judge of the Court of Appeals who may screen out and take no action on complaints which are determined to be frivolous or repetitive on their face. The Chief Judge or his or her designee shall communicate in writing any such decision with the complainant.

(a) The Chief Judge may take no action on an anonymous complaint other than fulfilling the requirements of the Nation's Anonymous Letters Policy.

810.23-3. If a complaint goes forward, the Chief Judge of the Court of Appeals shall appoint a three (3) judge panel to preside over the disciplinary proceedings. Current or pro tem judges are eligible to be on the panel.

(a) The party being accused of the disciplinary violation shall be given notice of a hearing and an opportunity to meaningfully respond to the allegations.

(b) The complainant also shall be given notice of any hearings and shall have the right to present evidence.

810.23-4. The three (3) judge panel can dismiss the complaint if it appears frivolous or if there is not enough evidence to substantiate the allegations by a preponderance of the evidence.

810.23-5. If there is enough evidence to substantiate the allegations by a preponderance of the evidence, the Court shall issue a written disciplinary order.

(a) The Court may opt to choose any combination of the following disciplinary methods:

(1) Private reprimand;

(2) Public reprimand through publication in the Nation's newspaper;

(3) Additional training requirements;

(4) Monetary fine not to exceed five thousand dollars (\$5,000); or

(5) Suspension or revocation of the right to practice before the Judiciary.

(b) The Judiciary may also forward their decision to an appropriate outside regulating authority in appropriate situations (e.g. to the State Bar of Wisconsin if counsel is an attorney licensed to practice in Wisconsin).

810.23-6. All decisions made by the Court of Appeals under this section are final.

End.

Adopted: _____



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING**

Professional Conduct for Attorneys and Advocates law

Business Committee Conference Room-2nd Floor Norbert Hill Center
July 20, 2017 12:15 p.m.

Present: David P. Jordan, Lee Cornelius, Tani Thurner, Clorissa Santiago, Candice Skenandore, Robert Collins, Rae Skenandore

LOC Member Chairing Meeting: David P. Jordan

David P. Jordan: Greetings. The time is 12:15 p.m. and today's date is Thursday July 20, 2017. I will now call this public meeting to order of the Legal Resource Center law and the Professional Conduct for Attorneys & Advocates law.

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 can be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, or 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, July 27, 2017.

In attendance from the LOC is myself, David Jordan.

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 five minutes. This time limit shall be applied equally to all persons, for both public meetings today.

PROFESSIONAL CONDUCT FOR ATTORNEYS & ADVOCATES LAW

We will now begin today's public meeting for the Professional Conduct For Attorneys & Advocates law.

This is a proposal to create a new law that governs the conduct of attorneys and advocates that are admitted to practice before the Judiciary.

This law will require counsel to provide competent representation and identifies the scope of representation. Counsel is to act with reasonable diligence and promptness when representing a client. The law also specifies how counsel is to communicate with his and her clients. Counsel cannot charge or collect unreasonable fees or expenses.

In addition, the law sets forth confidentiality requirements, identifies when a conflict of interest arises, and describes circumstances when counsel cannot represent a client. Furthermore, the law sets the process for declining or termination representation as well as identify the roles and responsibilities of counsel. The law identifies acts of professional misconduct and sets the process for civil actions regarding negligence or violations of duty of counsel. Lastly, the law includes a process for handling complaints against counsel.

Is anybody here to speak on Professional Conduct for Attorneys and Advocates law? We will wait for five minutes to see if anybody shows up.

With there being no more speakers registered, the public meeting for the proposed amendments to the Professional Conduct for Attorneys and Advocates Law is now closed at 12: 27 p.m.

David P. Jordan: Closing. With there being no more speakers registered to provide public comment, the public meetings for the Legal Resource Center law and the Professional Conduct for Attorneys and Advocates law are now officially closed at 12:28 p.m. Written comments may be submitted until close of business on Friday, July 27, 2017. Thank you.

-End of Meeting-

LEGISLATIVE REFERENCE OFFICE STANDARD OPERATING PROCEDURE



Title: Public Meeting SOP
Origination Date: January 4, 2017
Revision Date: August 2, 2017
Author: LRO
Approvals:

Brandon Stevens, LOC Chair

Date

Jennifer Falck, LRO Director

Date

- 1.0 PURPOSE.** To formalize the public meeting process. Public meetings are required for all legislation except for emergency legislation.
- 2.0 DEFINITIONS**
 - 2.1 “LOC” means the Legislative Operating Committee.
 - 2.2 “LRO” means the Oneida Legislative Reference Office.
 - 2.3 “OBC” means the Oneida Business Committee.
- 3.0 REQUIREMENTS**
 - 3.1 The Legislative Procedures Act contains requirements related to public meetings.
 - 3.1.1 The public meeting notice, legislation, legislative analysis and fiscal analysis, if available, shall be made publically available for a minimum of 10 business days before a public meeting is held:
 - 3.1.1.1 On the Oneida Register;
 - 3.1.1.2 Electronically provided to all managers and directors; and
 - 3.1.1.3 The public meeting notice only shall be published in the Kalihwisaks or other Tribal publication of similar distribution.
 - 3.1.2 The public meeting shall presided over by at least one LOC member.
 - 3.1.3 All persons who present oral testimony at a public meeting shall register.
 - 3.1.4 The presiding LOC member may impose a time limit of no less than five (5) minutes for oral testimony. If a time limit is imposed, it must be identified prior to the start of the public meeting and shall be imposed consistently.
 - 3.1.5 The public comment period shall remain open for no less than five (5) business days after the public meeting is held.
- 4.0 LOC ACCEPTANCE**
 - 4.1 LOC officially approves the public meeting packet through formal motion at an LOC meeting.
 - 4.1.1 The LOC shall approve the contents of the public meeting packet as they will appear:
 - 4.1.1.1 On the Oneida Register;
 - 4.1.1.2 Electronically provided to all managers and directors; and
 - 4.1.1.3 Published in the Kalihwisaks or other Tribal publication of

similar distribution.

- 4.2 LOC directs the LRO to schedule a public meeting.

5.0 PUBLIC MEETING NOTICE AND PACKET

- 5.1 The drafting attorney shall be responsible for preparing the public meeting notice and assembling the public meeting packet; unless the LRO Director assigns a different staff member.
- 5.2 The drafting attorney shall obtain review of the public meeting packet from the LRO staff before the public meeting packet is presented to the LOC.
- 5.3 Each item in the public meeting packet shall be saved in the specific active file folder for the item (G:\LOC\WP\Active Files) as well as the public meeting folder (G:\LOC\WP\Public Meetings).

6.0 ONEIDA REGISTER

- 6.1 The drafting attorney shall be responsible for ensuring the public meeting packet is posted to the Oneida Register once the packet is approved by the LOC. The drafting attorney shall ensure the packet is posted at least ten (10) business days prior to the scheduled public meeting to meet the requirements set out in the Legislative Procedures Act.
- 6.2 The drafting attorney shall verify that the public meeting packet was accurately posted to the Oneida Register in time to meet the ten (10) business day notice requirement.

7.0 KALIHWSAKS

- 7.1 The drafting attorney shall ensure the public meeting notice only is received and verified by Kalihwisaks staff for print in the specific issue to meet the ten (10) business day notice requirement.
- 7.2 After publication of the Kalihwisaks, the drafting attorney shall verify the public meeting notice was included in the specific edition of the Kalihwisaks needed to meet the ten (10) business day notice requirement.

8.0 ELECTRONIC NOTICE TO MANAGERS AND DIRECTORS

- 8.1 The drafting attorney will electronically send the public meeting packet to the LOC meeting packet list (G:\LOC\WP\2014-2017 Active Files List\Contacts) and any individuals listed as contacts under the particular item identified in the active files list as an appointment at least ten (10) business days prior to the public meeting.
- 8.2 The appointment notice shall include language that identifies why the recipient is receiving the notice and direct that the manager or director forward the notice to any employee that may have special knowledge or expertise on the legislation.
 - 8.2.1 For example, "The Legislative Procedures Act requires that all managers or directors shall be electronically provided notice at least ten business days prior to a public meeting. The Legislative Procedures Act requires all appropriate managers or directors to direct employees who have special knowledge or expertise on legislation to provide comments during the public comment period [See Legislative Procedures Act 16.8-2 (a) & 16.8-4 (a)]."

9.0 PUBLIC MEETING COMMENT MEMO

9.1 The drafting attorney shall compile all comments received orally and in writing in a public meeting comment memo. The memo shall provide responses and objective recommendations and alternatives, when pertinent, for changes to the law for the LOC to consider. Public comments shall:

9.1.1 Be accepted by the LOC for at least five (5) business days after the public meeting is held.

9.1.2 Be formally presented to and accepted by official motion at an LOC meeting.

9.1.3 Be fully considered by the LOC in an LOC meeting or work meeting.

10.0 DIRECTED CHANGES

10.1 The drafting attorney shall make appropriate changes to the law as directed by the LOC.

11.0 SUBSTANTIAL CHANGE

11.1 Changes deemed to be substantial by the LOC will require an additional public meeting. In this case, the law cycles back through the public meeting process beginning at 4.0 of this SOP.

12.0 LAW CONSIDERATION

12.1 Once all changes have been made and accepted by LOC with no additional public meeting requirements, the LOC directs the LRO to prepare an adoption packet. The adoption packet is formally accepted by the LOC in an LOC meeting and forwarded to the Oneida Business Committee for consideration.

August 2017

August 2017						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

September 2017						
Su	Mo	Tu	We	Th	Fr	Sa
						1
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

	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	8:30am 1:30pm FW: 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 10:00p m GTC Special Mtg (Radisson)	3:00pm 4:00pm LOC prep				
	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 2 7/28/2017 1:02 PM