

Oneida Tribe of Indians of Wisconsin

Legislative Reference Office
P.O. Box 365
Oneida, WI 54155
(920) 869-4376
(800) 236-2214
<http://oneida-nsn.gov/LOC>



Committee Members
Brandon Stevens, Chairperson
Tehassi Hill, Vice Chairperson
Fawn Billie, Councilmember
Jennifer Webster, Councilmember

LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room-2nd Floor Norbert Hill Center
February 4, 2015 9:00 a.m.

- I. Call To Order and Approval of the Agenda**
- II. Minutes to be approved**
 - 1. January 21, 2015 LOC Meeting Minutes
- III. Current Business**
 - 1. Leasing Law
 - 2. Petition: Budget Cuts, Swimming Lessons, GTC Directives & Home Repairs for Elders
- IV. New Submissions**
- V. Additions**
- VI. Administrative Updates**
 - 1. LOC Priority List
- VII. Executive Session**
- VIII. Recess/Adjourn**

Oneida Tribe of Indians of Wisconsin

Legislative Reference Office
 P.O. Box 365
 Oneida, WI 54155
 (920) 869-4376
 (800) 236-2214
<http://oneida-nsn.gov/LOC>



Committee Members
 Brandon Stevens, Chairperson
 Tehassi Hill, Vice Chairperson
 Fawn Billie, Councilmember
 Jennifer Webster, Councilmember

LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES Business Committee Conference Room-2nd Floor Norbert Hill Center January 21, 2015 9:00 a.m.

PRESENT: Jennifer Webster, Fawn Billie, Tehassi Hill, Brandon Stevens

OTHERS PRESENT: Candice Skenandore, Danelle Wilson, Taniquelle Thurner, Matt Denny, Fawn Cottrell, Jacob Metoxen, Rae Skenandore, Lynn Franzmeier

I. Call To Order and Approval of the Agenda

Brandon Stevens called the January 21, 2015 Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Fawn Billie to approve the agenda; seconded by Tehassi Hill. Motion carried unanimously.

II. Minutes to be approved

1. January 15, 2015 LOC Meeting Minutes

Motion by Jennifer Webster to approve the January 15, 2015 LOC Meeting Minutes; seconded by Fawn Billie. Motion carried unanimously.

III. Current Business

1. Marriage Law Amendments (01:08-02:18)

Motion by Jennifer Webster to defer the Marriage Law Amendments for a legislative analysis and fiscal impact statement; seconded by Fawn Billie. Motion carried unanimously.

2. Motor Vehicle Law Amendments (02:20-07:50)

Motion by Jennifer Webster to approve the public meeting date of February 19, 2015 regarding the Motor Vehicle Law Amendments; seconded by Fawn Billie. Motion carried unanimously.

3. Vehicle Driver Certification and Fleet Management (07:51-31:22)

Motion by Jennifer Webster to forward the Vehicle Driver Certification and Fleet Management to a February 19, 2015 public meeting; seconded by Tehassi Hill. Motion carried unanimously.

IV. New Submissions

1. Petition: Raise Employee Salaries 99 Cents (31:27-33:20)

Motion by Tehassi Hill to add the Petition: Raise Employee Salaries 99 Cents to the active files list; seconded by Jennifer Webster. Motion carried unanimously.

Motion by Fawn Billie to forward the Petition: Raise Employee Salaries 99 Cents analysis to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.

2. Petition: Budget Cuts, Swimming Lessons, GTC Directives & Home Repairs for Elders (33:21-35:31)

Motion by Jennifer Webster to add the Petition: Budget Cuts, Swimming Lessons, GTC Directives & Home Repair for Elders to the active files list; seconded by Tehassi Hill. Motion carried unanimously.

Motion by Tehassi Hill to forward the memorandum updating the Oneida Business Committee on the progress regarding Petition: Budget Cuts, Swimming Lessons, GTC Directives & Home Repairs for Elders analysis; seconded by Fawn Billie. Motion carried unanimously.

3. Hunting, Fishing and Trapping Law Amendments (35:33-36:19)

Motion by Tehassi Hill to add the Hunting, Fishing and Trapping Law Amendments to the active files list; seconded by Fawn Billie. Motion carried unanimously.

Note: Tehassi Hill will be the sponsor.

V. Additions

None

VI. Administrative Updates

1. Furlough Policy and Rules of Appellate Procedures Amendments Public Meeting Date E-poll (36:24-37:10)

Motion by Jennifer Webster to ratify the Furlough Policy and Rules of Appellate Procedures Amendments Public Meeting Date E-poll; seconded by Tehassi Hill. Motion carried unanimously.

VII. Executive Session

VIII. Recess/Adjourn

Motion by Jennifer Webster to adjourn the January 21, 2015 Legislative Operating Committee meeting at 9:38 a.m.; seconded by Fawn Billie. Motion carried unanimously.



Legislative Operating Committee

February 4, 2015

Leasing Law

Submission Date: September 17, 2014

Public Meeting:
 Emergency Enacted:

LOC Sponsor: Tehassi Hill

Summary: *This item was carried over into the current term by the LOC. Development of a new law would allow the Tribe to approve surface leases at their discretion, instead of the Secretary of Interior, so long as the Secretary of Interior has approved Tribal surface lease regulations.*

09/17/14 LOC: Motion by Tehassi Hill to add the Leasing Law to the Active Files List with Tehassi Hill as sponsor; seconded by Fawn Billie. Motion carried unanimously.

12/17/14 LOC: Motion by Jennifer Webster to direct that a legislative analysis and a fiscal impact statement be completed on the Leasing Law; seconded by Tehassi Hill. Motion carried unanimously.

Next Steps:

- LOC to review the analysis and most recent draft of the Law and direct any changes. FYI – the redline draft included in the packet shows the changes made to the Law since the last time the LOC reviewed the draft on 12/17/14.

**Chapter 65
 LEASING**

- 65.1. Purpose and Policy
- 65.2. Adoption, Amendment, Repeal
- 65.3. Definitions
- 65.4. General Provisions
- 65.5. Lease and Lease Document Requirements
- 65.6. Residential Leases

- 65.7. Agricultural Leases
- 65.8. Business Leases
- 65.9. Environmental and Cultural Reviews
- 65.10. Lease Management
- 65.11. Enforcement
- 65.12. Appeals

1

<i>Analysis by the Legislative Reference Office</i>					
Title	Leasing law (the Law)				
Requester	Nathan King, Legislative Affairs	Drafter	Lynn Franzmeier	Analyst	Tani Thurner
Reason for Request	This is a proposal for a new Law that meets the requirements of the Federal HEARTH Act ¹ , establishing a Tribal leasing law that, if approved by the Secretary of the Interior, would enable the Tribe to authorize leases for Tribal trust land without needing to have the Secretary of the Interior approve of each individual lease.				
Purpose	To set out the Tribe's authority to issue, review, approve and enforce leases of Tribal fee land and trust land.				
Authorized/Affected Entities	Department of Land Management (DLM), Land Commission, Oneida Law Office, Cultural Heritage Department, Environmental Health & Safety Division, the Judiciary.				
Due Process	DLM decisions are appealable to the Judiciary.				
Related Legislation	Real Property Law; Public Use of Tribal Land Law.				
Policy Mechanism	Issuing leases to occupy/use Tribal trust and fee land.				
Enforcement	Denial of lease requests and cancellation of leases; interested parties can also request that the Secretary of the Interior review the Tribe's leasing law to ensure it is being followed.				

2

3

Overview

4

This request for a leasing law was originally submitted to the Legislative Operating Committee (LOC) on January 23, 2013, but was not completed by the LOC during the prior term; and was carried over into the current term by the current LOC.

5

6

7

This is a proposal for a new Law to meet the requirements of the Federal HEARTH Act. This Law will be submitted to the Secretary of the US Department of Interior (*hereinafter: Secretary*) for approval, and, if approved, the Tribe will be able to execute leases for Tribal trust land without needing to obtain Secretarial Approval for each individual lease.

8

9

10

Note: This proposal is unrelated to the proposed Constitutional amendments – the requirement of Secretarial approval for tribal trust land leases is a federal requirement; not an Oneida Constitutional requirement, and is unaffected by the upcoming Secretarial Election.

11

12

13

14

HEARTH Act – Background

15

16

Until recently, federal law² required Indian tribes to obtain approval from the Secretary before the Tribe could enter into any agreement to lease out their trust land (i.e. land held in trust

17

¹ Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, this Act amended the Indian Long-Term Leasing Act of 1955, 25 U.S.C. Sec. 415.

² 25 USC 415

18 for the Tribe by the US government). This changed in 2012, with the enactment of the HEARTH
19 Act, which allows tribes to create their own tribal leasing regulations (like this leasing law) and
20 submit those regulations to the Secretary for approval³. After the Secretary approves a tribe's
21 regulations, that tribe may negotiate and execute leases for their trust land without having to seek
22 Secretarial approval first – instead, the tribe only has to submit the leases to the Bureau of Indian
23 Affairs (BIA) for recording in the Land Titles and Records Office. Since the HEARTH Act was
24 enacted, at least 15 other tribes have had such regulations approved.

25 The HEARTH Act requires the Secretary to approve a tribe's leasing regulations if they are
26 consistent with the requirements used by the Secretary to determine whether to approve a tribal
27 land lease. Those requirements are set out in the Code of Federal Regulations⁴.

28

29

The Proposed Oneida Leasing Law

30 This Law would take effect 30 days after being approved by the Secretary. [65.2-1] Once
31 effective, the Tribe may approve and execute leases without Secretarial approval, unless the
32 Secretary rescinds approval and reassumes responsibility for approving Oneida trust land leases.
33 [65.4-6]

34 This Law may be amended or repealed by the OBC in accordance with the Legislative
35 Procedures Act, but any major, substantive changes would not be effective until approved by the
36 Secretary. Minor, technical amendments may take effect once adopted by the OBC. [65.2-2]

37 This proposed Law would govern all Tribal land. [65.4-1] Federal law and the HEARTH Act
38 only apply to leases for tribal trust land, but this Law would also apply to any leases for Tribal
39 fee land. This Law defines “Tribal trust land” to include 4 types of land:

- 40 1. The surface estate of land or any interest therein held by the US in trust for the Tribe;
- 41 2. land held by the Tribe subject to federal restrictions against alienation or
42 encumbrance;
- 43 3. land reserved for federal purposes; and/or
- 44 4. land held by the United States in trust for a Tribal corporation chartered under
45 Section 17 of the Indian Reorganization Act. [65.3-1(t)]

46 The HEARTH Act authorizes tribes to create regulations to execute three main types of
47 leases on their trust land: agricultural leases, business leases, and leases for residential,
48 recreational, religious or educational purposes. In accordance with that, this Law governs
49 residential, agricultural and business leases executed by the Tribe, as well as actions and
50 decisions taken in connection with those leases. [65.4-1 and 65.4-2]

51 This Law does not apply to mineral leases or to leases of individually-owned Indian allotted
52 land, and does not affect the terms and conditions of existing leases. [65.4-2]

53 Nothing in this Law shall be construed to waive the Tribe's sovereign immunity. [65.4-5]

54

55

Authorities and Responsibilities

56 This Law establishes responsibilities and authorities for various Tribal entities, including:

- 57 • **Division of Land Management (DLM):** DLM will manage all already-existing leases as
58 well as any leases executed under this law [65.10-1(a)]; including lease amendments,
59 assignments, subleases and encumbrances (collectively: “lease documents”). DLM is given
60 all powers necessary and proper to enforce this Law and lease terms [65.11-1]. Various
61 related responsibilities/authorities for DLM are set out in the Law, including:

³ The Secretary must either approve or disapprove of those regulations within 120 days, unless this time period is extended after consultation with the Tribe. See 25 USC 415 (h)(4)(A)

⁴ 25 C.F.R. 16

- 62 ○ Making information available about leases; and accepting lease and lease document
63 applications. [65.5-1]
- 64 ○ Instituting a leasing management plan, implementing an accounting system, and
65 developing requirements for lease applications and additional procedures/processes
66 for offering/awarding leases and lease documents. [65.10-1(b), 65.5-1(a) and 65.10-2]
- 67 ○ Approving and executing all subleases; and approving mortgages and other
68 encumbrances (if not prohibited by law). [65.5-4]
- 69 ○ Submitting leases and lease documents for trust land to the BIA for recording when
70 required; [65.10-3]; recording all leases and lease documents in the Tribe's Register
71 of Deeds and distributing copies to the lessee. [65.10-3]
- 72 ○ Charging administrative fees (DLM is authorized, not required, to do so). [65.10-5]
- 73 ○ Entering a leased premises, assessing penalties and late payments, cancelling leases;
74 taking action to recover possession of a property and/or to pursue additional remedies
75 in holdover and trespass situations; taking emergency action to prevent or respond to
76 criminal activity and/or immediate and significant harm to a leased premises; and
77 taking action to have lessees cure a default. [65.11]
- 78 ● **Oneida Land Commission.** This entity has approval authority over the requirements DLM
79 creates for lease/lease document applications, and over any additional procedures and
80 processes DLM creates that are related to offering and awarding leases and lease documents.
81 [65.5-1(a)]
- 82 ● **Environmental Health and Safety Division.** This entity is responsible for preparing
83 environmental reviews (including any recommendations) for each lease and for forwarding
84 the completed review, along with the cultural review, to the DLM. [65.9-2 and 65.9-4]
- 85 ● **Cultural Heritage Department.** This entity is responsible for conducting or requesting
86 cultural reviews for all proposed leases and documents. [65.9-3]
- 87 ● **Oneida Law Office.** DLM may request that the Oneida Law Office assist with enforcing this
88 Law and leases. [65.11-1]
- 89 ● **Judiciary.** The lessee or an interested party may appeal a determination of DLM to the
90 Judiciary in accordance with the Judiciary Rules of Civil Procedure. [65.12-1]

91 92 **Environmental and Cultural Reviews**

93 In order for a tribe's leasing regulations to be approved by the Secretary, they must
94 include an environmental review process. The process is required to identify and evaluate any
95 significant effects of the proposed lease on the environment, include a process for notifying the
96 public and soliciting public comment on any environmental impacts, and include a process for
97 responding to public comment before approving the lease. [25 USC 415(h)(3)(B)]

98 This Law satisfies that requirement, requiring not only an environmental review, but also
99 a cultural review, before any lease can be approved. After receiving both reviews, DLM may
100 require that any reasonable actions, as recommended within the reviews, be completed, and then
101 updated reviews must be prepared.[65.9-4] Leases approved/executed in violation of this
102 requirement, are null and void. [65.5-5 and 65.9-1]

103 *Environmental Review*

104 To comply with the federal requirements, the Law requires environmental reviews to be
105 conducted in accordance with the process established under the National Environmental Policy
106 Act (NEPA) to evaluate environmental effects of federal undertakings. [65.9-2]

107 *Cultural Review*

108 Although not a federal requirement, this Law requires cultural reviews for all leases, which
109 must be done in accordance with the permit review requirements for undertakings established in

110 the Tribe's Protection and Management of Archeological & Historical Resources law (PMAHR).
111 [65.9-3] Essentially, this means that a Preservation Officer must review the application and
112 determine if the proposal constitutes an "undertaking" and if so, must conduct a literature and
113 oral history search, and a field survey when necessary; to determine whether the undertaking will
114 affect any archaeological, historic or cultural resources; and whether the effect will be harmful.
115 Within six weeks, the Officer must submit the cultural review and any recommendations.

116 Unlike an environmental review, this Law does not provide for any sort of public comment
117 for a cultural review.

118

119

Lease Requirements

120

121

122

123

124

125

126

127

128

129

130

131

132

133

134

135

136

137

138

139

140

141

142

143

144

145

146

147

148

149

150

151

152

153

154

155

156

157

In order to enter into a lease, this Law requires that there be a signed lease and any reports, surveys and site assessments needed to comply with Tribal environmental, cultural resource, and land use requirements. [65.5-6] Lease documents must be by written consent of the lessor (i.e. the Tribe) and lessee (the party leasing the land from the Tribe). Both leases and lease documents must identify an effective date. Leases must contain various provisions which track federal requirements – identifying the parties; the property; the lease term; the purpose of the lease and authorized uses; and various provisions governing rent - including whether, when and how to do rental reviews or adjustments, and how disputes will be resolved - and various requirements related to due diligence, performance bonds and insurance, minimum insurance, and improvements. [65.5-2 to 5-5] Lessees must also all indemnify the US and Tribe against all liabilities or costs related to the use or release of hazardous materials, except for liability or cost arising from the Tribe's negligence or willful misconduct. [65.5-2(l)]

The Law also identifies some specific rules for all leases, including:

- Both DLM and the Secretary are authorized to enter a leased premises for inspection and to ensure compliance with a lease – at any reasonable time and upon reasonable notice, in accordance with federal regulations. [65.5-2(j)]
- If a lessee fails to cooperate with a request to make appropriate records, reports or information available for inspection and duplication, DLM or the Secretary has discretion to treat this as a lease violation. [65.5-2(m)]
- Land Management or the Secretary has the right, at any reasonable time during the term of the lease and upon reasonable notice, in accordance with federal regulations, to enter the leased premises for inspection and to ensure compliance with the lease. [65.4-4]
- Mortgages that encumber title to Tribal land are prohibited, but leasehold interests (i.e. the lessee's interest in the land) can be encumbered. [65.5-4]
- Even without any specific notice from DLM, interest charges and late payment penalties apply, and failure to pay these must be treated as a breach of the lease. [65.11-5]

This Law includes provisions that track federal law - 65.4-4 and 25 USC 415(h)(7) both state:

- The US is not liable for losses sustained by any party to a lease executed under this Law.
- Pursuant to the Secretary's authority to fulfill the US trust obligation to the Tribe, the Secretary has discretion to enforce the provisions of, or cancel, any lease on Tribal trust land executed by the Tribe; upon reasonable notice from the Tribe.

Specific Requirements for Types of Leases

This Law permits leases of up to a maximum of 75 years. Business and Agricultural leases may be for terms of up to 25 years, with options to renew for up to two additional terms of up to 25 years each. Residential leases may be for up to 75 years. [65.6-2(b), 65.7-2 and 65.8-2]

Residential Leases

158 The Law states that “It is in the best interest of the Tribe to ordinarily not have rental
159 reviews and/or adjustments on residential properties,” but it also requires residential leases to set
160 out circumstances that would result in DLM reviewing/adjusting a lease rental rate. [65.6-3]
161

162 *Agricultural Leases*

163 The Law states that “An agricultural lease shall be entered into for the lease of land suited
164 or used for the production of crops, livestock or other agricultural products, or land suited or
165 used for a business that supports the surrounding agricultural community.” [65.7-1]

166 Agricultural leases must require the lessee to manage land in accordance with any
167 agricultural resource management plan developed by the Tribe. No other detail about such a plan
168 is provided in the Law. [65.7-3]
169

170 *Business Leases*

171 This Law contains several additional provisions exclusively for business leases:

- 172 • Applicants for leases must submit a financial statement, a site survey and legal
173 description if applicable, and any other documents as may be required by “the” business
174 site leasing management plan. [65.8-3]
- 175 • A business lease must include a description of the property being leased; but it must also
176 contain adequate site surveys and legal descriptions based on metes and bounds,
177 rectangular, or lot and block systems. [65.5-2 (a) and 65.8-3(b)]
- 178 • Any required performance bonds must be obtained by the lessee in an amount that
179 reasonably assures performance. The bond is for guaranteeing the annual lease payment,
180 the estimated development cost of improvements, and any additional amount necessary to
181 ensure compliance. [65.8-6]
- 182 • The Law identifies appropriate methods for establishing and recording Fair Annual Lease
183 Value, including the retention of records. [65.8-4]. DLM is required to present written
184 records to the lessee for review and acceptance or non-acceptance. [65.8-5(c)]
- 185 • The Law identifies six ways a business lease may be structured. [65.8-5(b)]
- 186 • Business leases cannot be approved for less than the appraised fair annual lease value,
187 except in three situations: 1) the lessee is in the development period; 2) DLM needs to
188 provide an incentive to attract business to locate on Tribal land; or 3) DLM determines
189 that approving a lease for less than fair annual lease value is in the best interest of the
190 Tribe. [65.8-5(a)] It is not clear whether residential or agricultural leases can be approved
191 for less than a fair annual lease value.
192

193 *Federal Enforcement*

194 Although not addressed in this Law, federal law also provides enforcement remedies: after
195 exhausting any applicable tribal remedies, an interested party may submit a petition to the
196 Secretary to review a tribe’s compliance with their own leasing regulations. If the Secretary
197 determines that a tribe violated their own law, the Secretary may take any necessary action to
198 remedy the violation – this includes rescinding approval of the Tribal regulations and reassuming
199 responsibility for approving leases of tribal trust lands. However, before implementing any
200 remedy, the Secretary must first provide the Tribe with written notice of the allegation, a hearing
201 on the record and a reasonable opportunity to cure the alleged violation. [25 USC 415(h)(8)]
202

203 *Miscellaneous*

204 A recordkeeping provision is included in the Law: Records of activities taken pursuant to this
205 Law with respect to Tribal trust land are the property of the US and the Tribe. Records compiled,

206 developed or received by the lessor in the course of business with the Secretary are the property
207 of the Tribe. [65.10-4]

208 A public meeting has not been held.
209

210 **Considerations**

- 211 • **DLM Rulemaking Authority** – *Please See Attachment A for a separate discussion of this*
212 *issue.*
- 213 • **Types of Leases.** The HEARTH Act allows tribes to regulate several different types of
214 leases; primarily: agricultural leases, business leases, and leases for residential, recreational,
215 religious or educational purposes. In addition to agricultural and business leases, this Law
216 only provides for leasing land for residential purposes – it does not authorize leases for
217 recreational, religious or educational purposes. This may limit the Tribe’s ability to lease
218 Tribal trust land for things such as churches, parks or schools. This is a policy call.
- 219 • **Applicability to lease documents for existing leases.** 65.4-2(a) states that this Law does not
220 affect the terms/conditions of existing leases. However, the Law is not clear about whether
221 the intent is to apply the requirements of this Law to any future
222 amendments/subleases/renewals/encumbrances of leases that were already in effect when the
223 Law is adopted, even if the Law does not apply to the original or parent lease.
- 224 • **Environmental/Cultural Reviews for Lease Documents.** This Law requires environmental
225 and cultural review not only for every lease, but for all lease documents, too - meaning that a
226 new environmental review and cultural review would be required for lease amendment, lease
227 assignment, sublease and encumbrance. This may result in substantial additional cost, and a
228 fiscal analysis may be helpful for anticipating the effects.
- 229 • **Appeals.** 65.12-1 states that “The lessee or interested party may appeal a determination of
230 Land Management to the Tribe’s Judiciary in accordance with the Judiciary Rules of Civil
231 Procedure.” For several of the issues noted in Attachment A, an appeal is difficult because
232 there would be no law for the Judiciary to apply – DLM is given substantial discretion.
233 Further:
 - 234 ○ An “interested party” may appeal a DLM determination – but “interested person” is
235 not defined, and the term is very broad. This provision grants jurisdiction to bring an
236 action in the Judiciary, to a wide group of people and entities, who may not otherwise
237 have jurisdiction.
 - 238 ○ It may be helpful to clarify whether this would be appealed to the Trial Court or Court
239 of Appeals – although it seems clear under the Judiciary Law that this would be
240 appealed to the Trial Court; the use of the term “appealed” may cause readers to think
241 a case goes to the Appellate Court, and there are actually very limited provisions in
242 the Rules of Civil Procedure that explain why such a matter would go to the Trial
243 Court – the authority to hear such a matter is actually set out in the Judiciary Law.
- 244 • **Appealability of Environmental and Cultural Reviews.** Cultural Reviews must be
245 conducted in accordance with the permit review requirements for undertakings established in
246 the Protection and Management of Archeological & Historical Resources Law [65.9-3].
247 Under that law, the responsible person may appeal the disapproval of a permit application in
248 accordance with the APA; however that Law is currently being processed for repeal. It is not
249 clear whether or how a party can appeal a cultural review.
- 250 • **Different language.** 25 USC 415(h)(6) requires the tribe to provide copies of
251 lease/amendments/renewals to the Secretary; this Law requires the lease and lease documents
252 to be provided to the BIA for recording in the Land Titles and Records Office (this is also the

253 same language used in a BIA memo interpreting the federal law) however to eliminate
254 confusion, it may be helpful to have the same requirement/terminology in this Law that is
255 used in the actual federal law, since any person consulting the Law would look at the statute,
256 not a policy memo.

257 • **Federal Requirements Not Addressed.**

258 ○ 25 USC 415(h)(6)(B) requires the Tribe to provide documentation of lease payments
259 made directly to the tribe, to be provided to the Secretary; documentation that is
260 “sufficient to enable the Secretary to discharge the responsibility of the United
261 States...”. That is not addressed in this Law.

262 ○ 25 USC 415b prohibits rent or other consideration from being paid or collected for a
263 tribal land lease more than one year in advance, unless so provided in the lease. It is
264 not known if this is required to be stated in the tribal leasing law.

265 ○ The BIA Policy Memorandum requires Tribal regulations to establish the process for
266 obtaining a lease or lease document. Some of those requirements are included in 65.5-
267 6. However, this Law does not clearly establish an actual process, it just includes
268 scattered requirements. The BIA policy memo also requires tribal leasing regulations
269 to state certain things that the Law does not address:

270 ■ “whether tribal approval ... is required separate from tribal execution of leases
271 or lease documents, for example, if a different entity/person executes a lease
272 then approves a lease.”

273 ■ The identity of officials/entities authorized to approve and/or execute leases
274 (65.5 shows DLM is authorized to approve leases, this Law does not
275 specifically state who executes leases on behalf of the Tribe - The definition
276 for DLM [65.3-1 (k)] is “the Division of Land Management or other Tribal
277 entity responsible for entering into leases of Tribal land.” However, this is not
278 expressly authorizing any party to execute leases on behalf of the Tribe, as
279 required by federal law.)

280 ■ Whether any lease documents (amendment, assignment, sublease, leasehold
281 mortgage) may be completed without further tribal action (execution or
282 approval). 65.5-4 states that DLM must approve and execute subleases, and
283 that DLM must approve of encumbrances, but the Law does not address
284 whether DLM must approve/execute any amendments or assignments.

285 ■ Any timelines for approval, “if desired” – although timelines are not
286 mandatory, they would help to establish a more complete process, as opposed
287 to scattered requirements; and would also help to ensure consistency in
288 application – i.e. preventing parties from just delaying the process indefinitely
289 by drawing it out.

290 • **Management Plans.** The following two provisions reference plans, however it is not clear if
291 there actually are such plans, or if there aren’t, who would develop such plans. If the intent is
292 for DLM to develop these plans, it may be beneficial to specifically state this within the Law.

293 ○ 65.7-3 - Agricultural leases shall require the lessee to manage land in accordance with
294 any agricultural resource management plan developed by the Tribe.

295 ○ 65.8-3(c) - All applicants for business site leases shall submit the following
296 documents to Land Management: [...] other documents as may be required by the
297 business site leasing management plan.

298 • **Missing Process.** The BIA Policy Memo requires the tribal regulations to “establish the
299 process for enforcing trespass and lease violations; including, among other things, “stating

300 whether negotiated remedies are allowed” and “establishing a process for any cancellation or
301 termination and establishing when they become effective.” This Law does none of these – it
302 just gives the DLM “all powers necessary” to enforce the law, and gives both DLM and the
303 Secretary authority to cancel a lease, among other remedies. Further, this law does not
304 address enforcement from an eviction/removal point of view. Since there is no Tribal law on
305 the books that governs an eviction process, there may be difficulty in enforcement; or state
306 courts may need to be utilized to evict a tenant.

307 • **Entering Premises.** 65.5-2(j) authorizes Land Management or the Secretary the right to
308 enter a leased premises for inspection and to ensure compliance with the lease at any
309 reasonable time during the term of the lease and upon reasonable notice, in accordance with
310 federal regulations. First, it is not known which “federal regulations” might apply, and a
311 citation may be helpful. Second, this may conflict with 65.11-1: DLM shall have all powers
312 necessary and proper to enforce this Law and the lease terms [...] including the power to
313 enter the premises at a reasonable time, with or without notice; and even if there is no
314 conflict, authorizing DLM to enter premises at any “reasonable time” – especially without
315 notice - may cause legal concerns, particularly for residential leases.

316 • **Enforcement Assistance.** 65.11-1 states that DLM may request the Oneida Law Office assist
317 in enforcement of this law and leases. However (particularly with emergency actions and
318 removing unauthorized persons or entities from Tribal land,) the Oneida Police Department
319 (OPD) is generally authorized to assist in enforcement - *See the ATV Law, Cemetery Law,*
320 *Domestic Animals Ordinance, Election Law, Emergency Management, Food Service Code,*
321 *Hunting Fishing Trapping Law, Indian Preference Law, ONGO, Public Use of Tribal Land,*
322 *Recycling and Solid Waste Disposal, Rules of Civil Procedure, Tobacco Ordinance,*
323 *Anonymous Letters Policy, Child Abuse and Neglect Reporting, and Social Media Policy.*

324 • **Effect of Non-Acceptance.** 65.8-5(c) requires DLM to keep “records of the basis used in
325 determining the fair annual lease value, as well as the basis for adjustments” and to present
326 these records to the lessee for review and acceptance or non-acceptance. However, it is not
327 clear whether the lessee is accepting/non-accepting the records, or the adjusted rent, and the
328 Law does not provide any detail about this process – i.e. what happens if the lessee does not
329 accept the records (or the adjusted rental rate).

330 • **Precatory Statement.** 65.6-3 states “It is in the best interest of the Tribe to ordinarily not
331 have rental reviews and/or adjustments on residential properties” – This is not an enforceable
332 legal statement, and it is not clear how or why this is in the best interest of the Tribe. This
333 appears to be a precatory statement, which may be more appropriate in a purpose or policy
334 section, if it is included in a law. Further, 65.5-2 already states that leases must identify
335 whether there will be rental reviews or adjustments, how and when they will be done, when
336 any adjustments will be effective and how disputes regarding adjustments will be resolved;
337 so 65.6-3 is repetitive, anyhow.

338 • **“Other entity.”** The definition for DLM 65.3-1 (k) is “the Division of Land Management or
339 other Tribal entity responsible for entering into leases of Tribal land.” It may be confusing to
340 reference (or grant authority to an “other entity”) because this law delegates various
341 authorities and responsibilities that may be intended only for DLM. Instead of including
342 other tribal entities in the definition for DLM, it may be beneficial to authorize DLM to
343 delegate authority to another entity, or to otherwise rephrase so that any other tribal entity
344 that is authorized to enter into leases will not accidentally be authorized to do things that it is
345 intended that only DLM have authority to do.

346 • **Repetition.** The following two provisions are repetitive.

- 347 ○ 65.5-5. Land Management shall not approve a lease or lease document until an
- 348 environmental review and a cultural review, as required under section 65.9, have been
- 349 completed. Leases approved and executed in violation of this section shall be null
- 350 and void.
- 351 ○ 65.9-1. Land Management shall not consider approving a lease or lease document
- 352 until an environmental review and a cultural review have been completed.

- 353 • **Miscellaneous.**

- 354 ○ 65.9-4 states that a completed environmental review “includes” the cultural review.
- 355 This suggests that it is part of the environmental review instead of a separate review.
- 356 Recommend revising to clarify that EHSD forwards both reviews to DLM – and to
- 357 maybe add more information about why Cultural Heritage does not forward the
- 358 Cultural Review directly to DLM, and why EHSD does this instead.
- 359 ○ 65.11-2. Land Management or other party may take appropriate emergency action,
- 360 which includes cancelling the lease and/or securing judicial relief.
 - 361 ▪ This does not say “including but not limited to”, and using general rules of
 - 362 statutory interpretation, this means that these are the only two emergency
 - 363 actions allowed under this Law.
 - 364 ▪ This is not grammatically correct – “or another party” would be proper.
 - 365 ▪ It is not clear what “other party” is intended to be able to take appropriate
 - 366 emergency action – as written, this may be too broadly phrased.
- 367 ○ 65.6-3 refers to adjusted fair market value, however, this term is not defined or
- 368 explained.
- 369 ○ 65.7-1 states that an agricultural lease is “the lease of land suited or used for the
- 370 production of crops, livestock or other agricultural products, or land suited or used for
- 371 a business that supports the surrounding agricultural community.” Residential lease
- 372 and business lease are not defined, and this provision may be more appropriate in the
- 373 definitions section.
- 374 ○ 65.3-1(c) defines Cultural Review as “a review of the anticipated effects of a
- 375 proposed lease or lease document on archaeological, cultural and/or historic
- 376 resources, as defined in the Protection and Management of Archeological &
- 377 Historical Resources law.” However, that law does not define “cultural review”, it
- 378 just sets out a permit review process. Further, 65.9-3 already identifies the
- 379 requirements as they relate to that Law, so it may be beneficial to delete references to
- 380 the PMAHR law from this definition.

381
382
383
384
385
386
387
388
389
390
391
392
393

394 **Attachment A**
395 **Rulemaking/Enforcement Authority**
396

397 The proposed Leasing Law delegates various responsibilities to DLM to implement,
398 create or establish different types of regulations (including setting administrative fees and
399 penalties) and the Law also delegates authority to make broad decisions - with very little
400 oversight, very few approval requirements, and limited guidelines for those regulations and
401 limited guidance as to how they make decisions. These are all policy calls, but it should be noted
402 that numerous other laws/policies require approval from OBC or another entity, and/or include a
403 more internal process for objecting to or appealing decisions made by an entity.

404 By giving DLM such broad authority to create rules and decide how to administer leases,
405 it will be somewhat difficult to appeal or challenge any DLM actions or decisions, because there
406 wouldn't be any actual law for the Judiciary to interpret or apply – challenges would most likely
407 be based on DLM's rules or requirements, and this law appears to give DLM the authority to not
408 only create those rules without much oversight, but to change them at will.

409 Although it can be difficult to determine what sort of rulemaking should require OBC
410 approval or oversight; two of the more recently-enacted Tribal laws have tried to address the
411 issue by providing that: “Any Agency requirements which would affect individuals outside the
412 Agency and do not relate to the internal management of the Agency shall require [OBC]
413 approval in the form of a law or rule.” [See Paternity and Child Support Laws, 77.2-6 and 78.2-
414 6.] If the intent is to ensure consistency in legislation, it may be beneficial to consider similar
415 requirements in this Law, or to otherwise identify any oversight/approval requirements.
416

417 **Comparison – Rulemaking authority in other Tribal Laws that requires OBC approval**

418 The following entities are delegated broad authority to implement rules, but OBC approval is
419 required:

- 420 • Election Board - policies regarding implementation of the Election Law
- 421 • Judiciary and Family Court - rules of pleading, practice and procedure to regulate all
422 hearings
- 423 • Trust Committee – enrollment procedures
- 424 • Gaming Commission – Rules of Play and Gaming Minimum Internal Controls
- 425 • Records Management – alternate retention periods for retaining records
- 426 • Environmental, Health and Safety Division – standards for environmental quality
427

428 **Specific Authorities Identified in the Leasing Law**

- 429 • **Management Plans.** 65.10-1(b) makes DLM responsible for “instituting a leasing
430 management plan that employs sound real estate management practices, and addresses
431 accounting, collections, monitoring, enforcement, relief, and remedies.” Enforcement, relief,
432 and remedies, in particular, are usually established in Tribal law because they affect more
433 substantive rights of parties – and this is especially true if the intent is to make such
434 enforcement, relief, and remedies appealable to the Judiciary, because the Judiciary is
435 responsible for interpreting and applying laws; not creating solutions from the bench. But
436 even if not addressed in a law, OBC approval or the approval of another entity is generally
437 required for such matters. Also, 65.7-3 requires lessees to manage land in accordance with
438 any agricultural resource management plan developed by the “Tribe” and 65.8-3(c)
439 references a business site leasing management plan. The law does not identify who is

440 responsible for creating or implementing such plans, but it appears this responsibility would
441 fall to DLM, and the same issues noted above would apply to these plans as well.

442 • **Providing Incentives.** 65.8-5(a) seems to permit DLM to offer and provide incentives such
443 as lease concessions, lease improvement credits, or lease abatements, to attract businesses to
444 locate on Tribal land; and to otherwise approve business leases for less than the appraised
445 fair annual lease value if it is “in the best interest of the Tribe.” There is no
446 oversight/approval requirement, and DLM appears to have full authority to decide when and
447 how to provide incentives – there is not even a requirement for a written rule governing when
448 and how incentives could be offered.

449 • **Fees, Costs, Interest Charges and Late Payment Penalties.** 65.10-5 authorizes DLM to
450 charge administrative fees related to leases or conducting any other administrative
451 transaction. 65.11-5 states that interest charges and late payment penalties apply in the
452 absence of any specific notice to the lessee from DLM. There is no requirement that DLM
453 even create a fee schedule, or a fines/penalties schedule; let alone a requirement that the OBC
454 or other entity must approve or adopt such a schedule. By comparison:

455 ○ Various Tribal laws actually set out a fine or fee schedule within the law itself, or
456 require that *fine/fee schedules be set out in an attachment to the Law or in a*
457 *resolution.*

458 ○ Under the Tribal Environmental Resources Law, Zoning Law, and Building Code,
459 administrative fee schedules and/or fine schedules must be *adopted by the OBC upon*
460 *recommendation of the entity.*

461 ○ Various other laws require *OBC approval* for fee schedules or fine schedules related
462 to administering/enforcing the Law, including – the Food Service Code, Indian
463 Preference Law, Motor Vehicle Registration Law, Vendor Licensing Law, Sanitation
464 Law, and ONGO.

465 • **Enforcement Actions.** 65.11-1 gives DLM “all powers necessary and proper to enforce this
466 Law and the lease terms [...] including the power to enter the premises at a reasonable time,
467 with or without notice, assess penalties, assess late payments and cancel leases.” This also
468 seems to cover matters that should be established in writing, in order to ensure consistent
469 application and to protect due process.

470 • **Actions related to environmental/cultural reviews.** DLM “may” require that any
471 reasonable actions, as recommended within the environmental and cultural reviews, be
472 completed. Otherwise, DLM appears to have full authority to decide whether to approve or
473 deny a lease or lease document, and even to completely ignore the recommendations from
474 EHSD and Cultural Heritage, if desired. 65.9-4(a) (although this also appears to only
475 authorize DLM to require actions that are included as recommendations – raising the
476 question of whether they can require any other actions, or if the law is intentionally only
477 permitting DLM to impose requirements if they were made in a recommendation.)

478 In short, this appears to make enforcement difficult. If DLM denies an application for a lease,
479 there is very little a party could do – an appeal to the Judiciary may not be helpful, if there is
480 no provision in law, policy or even SOP that identifies when or why DLM could deny an
481 application for a lease.

482
483
484
485
486

487
488 **Chapter 65**
489 **LEASING**
490

491 **65.1. Purpose and Policy**

492 65.1-1. *Purpose.* The purpose of this Law is to set out the Tribe’s authority to issue, review,
493 approve and enforce leases. In addition, the purpose of this Law is to meet the requirements of
494 the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH
495 Act) by establishing a process under which the Tribe will be able to approve leases on Tribal
496 trust land without additional approval of the Secretary of the Interior.

497 65.1-2. *Policy.* It is the policy of the Tribe to set out the expectations and responsibilities of the
498 lessors and lessees of Tribal land and to ensure the leasing of Tribal land results in minimal risk
499 to the Tribe.

500
501 **65.2. Adoption, Amendment, Repeal**

502 65.2-1. This Law was adopted by the Oneida Business Committee by resolution _____
503 and shall take effect thirty (30) days after approval by the Secretary of the Interior.

504 65.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to
505 the procedures set out in the Legislative Procedures Act. Major, substantive changes to this Law
506 shall not take effect until they have been approved by the Secretary of the Interior. Minor,
507 technical amendments may take effect upon approval by the Oneida Business Committee.

508 65.2-3. Should a provision of this Law or the application thereof to any person or circumstances
509 be held as invalid, such invalidity shall not affect other provisions of this Law which are
510 considered to have legal force without the invalid portions.

511 65.2-4. In the event of a conflict between a provision of this Law and a provision of another
512 Tribal law, the provisions of this Law shall control.

513 (a) To the extent that this Law conflicts with any applicable federal statutes or
514 regulations, the federal statute or regulation shall control.

515 (b) To the extent that any lease to which this Law applies conflicts with this Law, this
516 Law shall control.

517 65.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians
518 of Wisconsin.

519
520 **65.3. Definitions**

521 65.3-1. This section shall govern the definitions of words and phrases used within this Law. All
522 words not defined herein shall be used in their ordinary and everyday sense.

523 (a) “Assignment” shall mean an agreement between a lessee and an assignee whereby the
524 assignee acquires all or some of the lessee’s rights and assumes all or some of the lessee’s
525 obligations under a lease.

526 (b) “Cultural Heritage Department” shall mean the Tribal entity responsible for
527 conducting cultural reviews as required under this Law.

528 (c) “Cultural review” shall mean a review of the anticipated effects of a proposed lease or
529 lease document on archaeological, cultural and/or historic resources, as defined in the
530 Protection and Management of Archeological & Historical Resources law.

531 (d) “Day” or “days” shall mean calendar days, unless otherwise specified.

532 (e) “Encumbrance” shall mean a claim or liability that is attached to property.

533 (f) “Environmental, Health and Safety Division” shall mean the Tribal entity responsible
534 for conducting environmental reviews as required under this Law.

- 535 (g) “Environmental review” shall mean a review of the anticipated environmental effects
536 of a proposed lease or lease document.
- 537 (h) “Improvements” shall mean buildings, other structures, and associated infrastructure
538 attached to the leased premises.
- 539 (i) “Land Management” means the Division of Land Management or other Tribal entity
540 responsible for entering into leases of Tribal land.
- 541 (j) “Lease” shall mean a written contract between the Tribe and a lessee, whereby the
542 lessee is granted a right to use or occupy Tribal land, for a specified purpose and
543 duration.
- 544 (k) “Lease document” shall mean a lease amendment, lease assignment, sublease or
545 encumbrance.
- 546 (l) “Leasehold mortgage” shall mean a mortgage, deed of trust, or other instrument that
547 pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the
548 lessee to a lender or other mortgagee.
- 549 (m) “Lessee” shall mean a person or entity who has acquired a legal right to use or occupy
550 Tribal land by a lease under this Law, or one who has the right to use or occupy a
551 property under a lease.
- 552 (n) “Lessor” shall mean the Tribe as the legal, beneficial and/or equitable owner of Tribal
553 land subject to a Lease, and any administrator or assign of the Tribe.
- 554 (o) “Performance bond” shall mean a bond given to ensure the timely performance of a
555 lease.
- 556 (p) “Secretary” shall mean the Secretary of the Interior, U.S. Department of the Interior,
557 or its authorized representative.
- 558 (q) “Sublease” shall mean a written agreement by which the lessee grants to a person or
559 entity a right to use or occupy no greater than that held by the lessee under the lease.
- 560 (r) “Tribal” or “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.
- 561 (s) “Tribal land” shall mean Tribal trust land and any land owned by the Tribe held in fee
562 status.
- 563 (t) “Tribal trust land” shall mean the surface estate of land or any interest therein held by
564 the United States in trust for the Tribe; land held by the Tribe subject to federal
565 restrictions against alienation or encumbrance; land reserved for federal purposes; and/or
566 land held by the United States in trust for a Tribal corporation chartered under Section 17
567 of the Indian Reorganization Act, 25 U.S.C §§ 461-479, et. seq.

568
569 **65.4. General Provisions**

570 65.4-1. *Applicable Land.* This Law applies to all Tribal land.

571 65.4-2. *Applicable Leases.*

572 (a) Except as excluded in (b) below, or as contrary to applicable federal statutes and
573 regulations, this Law shall apply to all residential, agricultural and business leases
574 executed by the Tribe and to all actions and decisions taken in connection with those
575 leases. Provided that, nothing herein shall be construed to affect the terms and conditions
576 of existing leases.

577 (b) This Law shall not apply to mineral leases or to any lease of individually owned
578 Indian allotted land in accordance with 25 U.S.C. 415(h)(2).

579 65.4-3. *Applicable Law.* In addition to this Law, leases approved under this Law are subject to:

580 (a) all Tribal law, except to the extent those Tribal laws are inconsistent with applicable
581 federal law;

582 (b) applicable federal laws; and

583 (c) any specific federal statutory requirements that are not incorporated in this Law.
584 65.4-4 Pursuant to the authority of the Secretary to fulfill the trust obligation of the United
585 States to the Tribe under federal law, the Secretary may, upon reasonable notice from the Tribe
586 and at the discretion of the Secretary, enforce the provisions of, or cancel, any residential,
587 agricultural or business lease on Tribal trust land executed by the Tribe. The United States shall
588 not be liable for losses sustained by any party to a residential, agricultural or business lease
589 executed pursuant to this Law.

590 65.4-5. All disputes over residential, agricultural and business leases shall be resolved under the
591 laws of the Tribe and in accordance with federal law. Nothing in this Law shall be construed to
592 waive the Tribe's sovereign immunity.

593 65.4-6. After the Secretary approves this Law, all leases of Tribal trust land approved and
594 executed under this Law shall be effective without federal approval under 25 U.S.C. 415(h),
595 unless the Secretary rescinds approval of this Law and reassumes responsibility for such
596 approval.

597

598 **65.5. Lease and Lease Document Requirements**

599 65.5-1. *Information and Application.* Information on obtaining residential, agricultural or
600 business leases or lease documents shall be available at Land Management. Parties interested in
601 obtaining a residential, agricultural or business lease or lease document shall submit an
602 application to Land Management.

603 (a) Land Management shall develop, and the Oneida Land Commission shall approve,
604 the format and requirements set out in the lease and lease document applications for
605 different types of leases, as well as additional procedures and processes to be followed
606 when offering and awarding leases and lease documents.

607 65.5-2. *Terms and Conditions.* Leases shall be in writing and contain, at a minimum, the
608 following:

609 (a) A description of the land or building being leased; business leases shall contain
610 adequate site surveys and legal descriptions based on metes and bounds, rectangular, or
611 lot and block systems;

612 (b) The effective date and term of the lease;

613 (c) The purpose of the lease and authorized uses of the leased premises;

614 (d) The parties to the lease;

615 (e) How much rent is due, when it is due, who receives it, what form(s) of payment is
616 acceptable, and whether any late payment charges or special fees apply and the rate of
617 interest to be charged if the lessee fails to make payments in a timely manner;

618 (f) Whether there will be rental reviews or adjustments, how and when they will be
619 done, when any adjustments will be effective and how disputes regarding adjustments
620 will be resolved;

621 (g) Who will be responsible for any taxes applied to the property and/or
622 improvements;

623 (h) Due diligence requirements that apply, if any;

624 (i) Performance bond and insurance requirements that apply, if any;

625 (j) Land Management or the Secretary has the right, at any reasonable time during the
626 term of the lease and upon reasonable notice, in accordance with federal regulations, to
627 enter the leased premises for inspection and to ensure compliance with the lease.

628 (k) The lessee holds the United States and the Tribe harmless from any loss, liability or
629 damages resulting from the lessee's use or occupation of the leased premises;

630 (l) The lessee indemnifies the United States and the Tribe against all liabilities or costs

631 relating to the use, handling, treatment, removal, storage, transportation, or disposal of
632 hazardous materials, or the release or discharge of any hazardous material from the leased
633 premises that occurs during the lease term, regardless of fault, with the exception that the
634 lessee is not required to indemnify the Tribe for liability or cost arising from the Tribe's
635 negligence or willful misconduct;

636 (m) Land Management or the Secretary may, at its discretion, treat as a lease violation
637 any failure by the lessee to cooperate with a request to make appropriate records, reports
638 or information available for inspection and duplication.

639 65.5-3. *Improvements.* A lease shall set out requirements related to improvements, including:

640 (a) whether improvements may be constructed;

641 (b) ownership of improvements;

642 (c) responsibility for constructing, operating, maintaining and managing improvements;

643 (d) removal of improvements;

644 (e) whether a lessee may develop equity in improvements and sell its interest in the lease
645 based on the equity; and

646 (f) the lessor's right of first refusal to purchase the lessee's interest, if any.

647 65.5-4. *Obtaining a Lease Document.* Lease documents shall be by written consent of the lessor
648 and the lessee, unless otherwise provided herein and shall contain the effective date of the lease
649 document.

650 (a) The lease may authorize subleases only upon approval and execution from Land
651 Management. This in no way relieves the parties from carrying out their duties under the
652 lease.

653 (b) The lease may authorize encumbrances, including leasehold mortgages, on the
654 leasehold interest for the purpose of financing to develop and improve the premises.
655 Approval of the encumbrance by Land Management is required.

656 (c) The lease shall not authorize mortgages that encumber title to Tribal land.

657 65.5-5. *Environmental and Cultural Reviews.* Land Management shall not approve a lease or
658 lease document until an environmental review and a cultural review, as required under section
659 65.9, have been completed. Leases approved and executed in violation of this section shall be
660 null and void.

661 65.5-6. *Documentation.* The following are required for a party to enter into a lease:

662 (a) a signed lease; and

663 (b) any reports, surveys and site assessments needed to comply with Tribal
664 environmental, cultural resource and land use requirements.
665

666 **65.6. Residential Leases**

667 65.6-1. In addition to the requirements that apply to all leases under section 65.5, the
668 requirements of this section shall also apply to residential leases.

669 65.6-2. *Duration.* Residential leases shall not exceed seventy-five (75) years.

670 65.6-3. *Rental Reviews.* It is in the best interest of the Tribe to ordinarily not have rental
671 reviews and/or adjustments on residential properties; however, the lease shall set out
672 circumstances that would result in Land Management reviewing the rental rate and adjusting it to
673 reflect the fair market value or an adjusted fair market value.
674

675 **65.7. Agricultural Leases**

676 65.7-1. In addition to the requirements that apply to all leases under section 65.5, the
677 requirements of this section shall also apply to agricultural leases. An agricultural lease shall be
678 entered into for the lease of land suited or used for the production of crops, livestock or other

679 agricultural products, or land suited or used for a business that supports the surrounding
680 agricultural community.

681 65.7-2. *Duration and Renewal.* Agricultural leases shall not exceed twenty-five (25) years,
682 except that any such lease may include an option to renew for up to two (2) additional terms,
683 which may not exceed twenty-five (25) years each.

684 65.7-3. *Land Management.* Agricultural leases shall require the lessee to manage land in
685 accordance with any agricultural resource management plan developed by the Tribe.

686

687 **65.8. Business Leases**

688 65.8-1. In addition to the requirements that apply to all leases under section 65.5, the
689 requirements of this section shall also apply to business leases.

690 65.8-2. *Duration and Renewal.* Business leases shall not exceed twenty-five (25) years, except
691 that any such lease may include an option to renew for up to two (2) additional terms, which may
692 not exceed twenty-five (25) years each.

693 65.8-3. *Supporting Documents.* All applicants for business site leases shall submit the following
694 documents to Land Management:

- 695 (a) financial statement;
- 696 (b) site survey and legal description, if applicable;
- 697 (c) other documents as may be required by the business site leasing management plan.

698 65.8-4. *Appraisal, Local Studies.*

699 (a) The fair annual lease value shall be determined by an appraisal or equivalent
700 procedure performed by Land Management utilizing the following data: improvement
701 cost, replacement cost, earning capacity, and sales and lease data of comparable sites. An
702 appraisal log reporting the methods of appraisal and value of the Tribal land shall be
703 attached to every business site lease.

704 (b) Alternatively, the fair annual lease value shall be determined by an appraisal
705 performed by a licensed appraiser utilizing the Uniform Standards of Professional
706 Appraisal Practice or another commonly accepted method of appraisal. An appraisal log
707 describing the method of appraisal and value of the Tribal land shall be attached to every
708 business site lease.

709 65.8-5. *Fair Annual Lease Value.*

710 (a) No lease shall be approved for less than the present fair annual lease value as set forth
711 in the appraisal, except as follows:

- 712 (1) The lessee is in the development period;
- 713 (2) Land Management is providing an incentive for businesses to locate on Tribal
714 land, and must provide lease concessions, lease improvement credits, and lease
715 abatements to attract such business; or
- 716 (3) Land Management determines such action is in the best interest of the Tribe.

717 (b) A lease may:

- 718 (1) Be structured at a flat lease rate; and/or
- 719 (2) Be structured at a flat lease rate plus a percentage of gross receipts, if the
720 lessee is a business located in a shopping center, or the lessee generates over one
721 million dollars (\$1,000,000.00) annually in gross receipts; and/or
- 722 (3) Be structured based on a percentage of gross receipts, or based on a market
723 indicator; and/or
- 724 (4) Be structured to allow for lease rate adjustments. The lease shall specify how
725 adjustments will be made, who will make such adjustments, when adjustments
726 will go into effect, and how disputes shall be resolved; and/or

727 (5) Be amended to allow for lease rate adjustments; and/or
728 (6) Provide for periodic review. Such review shall give consideration to the
729 economic conditions, exclusive of improvement or development required by the
730 contract or the contribution value of such improvements.

731 (c) Land Management shall keep written records of the basis used in determining the fair
732 annual lease value, as well as the basis for adjustments. These records shall be presented
733 to the lessee for its review and acceptance or non-acceptance and included in any lease
734 file.

735 65.8-6. *Performance Bond.* If a performance bond is required under a business lease, a
736 performance bond shall be obtained by the lessee in an amount that reasonably assures
737 performance on the lease. Such bond shall be for the purpose of guaranteeing the following:

- 738 (a) The annual lease payment;
739 (b) The estimated development cost of improvements; and
740 (c) Any additional amount necessary to ensure compliance with the lease.

741

742 **65.9. Environmental and Cultural Reviews**

743 65.9-1. *Applicability.* Land Management shall not consider approving a lease or lease document
744 until an environmental review and a cultural review have been completed.

745 65.9-2. *Environmental Reviews.* An environmental review shall be conducted by or at the
746 request of the Environmental, Health and Safety Division on all proposed leases and lease
747 documents. The environmental review shall be conducted in accordance with the process
748 established under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq, to
749 evaluate environmental effects of federal undertakings.

750 65.9-3. *Cultural Reviews.* A cultural review shall be conducted by or at the request of the
751 Cultural Heritage Department on all proposed leases and lease documents. The cultural review
752 shall be conducted in accordance with the permit review requirements for undertakings
753 established in the Protection and Management of Archeological & Historical Resources law.

754 65.9-4. *Environmental and Cultural Review Completion.* The Environmental, Health and Safety
755 Division shall forward a completed environmental review, which includes the cultural review, to
756 Land Management for consideration in the approval or denial of a lease or lease document.

757 (a) Before approving a lease or lease document, Land Management may require any
758 reasonable actions, as recommended within the environmental review or cultural review,
759 be completed.

760 (b) The Environmental, Health and Safety Division shall prepare an updated
761 environmental review and the Cultural Heritage Department shall prepare an updated
762 cultural review upon completion of any reasonable actions.

763

764 **65.10. Lease Management**

765 65.10-1. *Management Plan.* Land Management shall:

- 766 (a) manage existing leases as well as those executed pursuant to this Law; and
767 (b) institute a leasing management plan that employs sound real estate management
768 practices, and addresses accounting, collections, monitoring, enforcement, relief, and
769 remedies.

770 65.10-2. *Accounting.* Land Management shall implement an accounting system that generates
771 invoices, accounts for payments, and dates of when rate adjustments should be made. Nothing in
772 this section shall be construed to absolve the lessee of its duties under a lease.

773 65.10-3. *Recording Leases and Lease Documents.* Land Management shall provide all leases
774 and lease documents of Tribal trust land, except residential subleases and encumbrances, to the

775 Bureau of Indian Affairs for recording in the Land Titles and Records Office. All leases and
776 lease documents of Tribal land shall also be recorded in the Tribe's Register of Deeds. Land
777 Management shall also distribute a copy of the recorded lease documents to the lessee.

778 65.10-4. *Ownership of Records.* Records of activities taken pursuant to this Law with respect to
779 Tribal trust land are the property of the United States and the Tribe. Records compiled,
780 developed or received by the lessor in the course of business with the Secretary are the property
781 of the Tribe.

782 65.10-5. *Administrative Fees.* Land Management may charge administrative fees for costs
783 associated with issuing a lease or lease document, or conducting any other administrative
784 transaction.

785

786 **65.11. Enforcement**

787 65.11-1. Land Management shall have all powers necessary and proper to enforce this Law and
788 the lease terms. This includes the power to enter the premises at a reasonable time, with or
789 without notice, assess penalties, assess late payments and cancel leases. Land Management may
790 request the Oneida Law Office assist in enforcement of this Law and leases.

791 65.11-2. *Harmful or Threatening Activities.* If a lessee or other party causes or threatens to
792 cause immediate and significant harm to the premises, or undertakes criminal activity thereon,
793 Land Management or other party may take appropriate emergency action, which includes
794 cancelling the lease and/or securing judicial relief.

795 65.11-3. *Holdovers and Trespass.* If a lessee remains in possession of a property after the
796 expiration or cancellation of a lease, or a person occupies a property without Land
797 Management's approval, Land Management shall take action to recover possession of the
798 property; and/or pursue additional remedies, such as damages, if applicable.

799 65.11-4. *Defaults.* If Land Management determines a lessee is in default, Land Management
800 shall take action to have the lessee cure the default or, if the default is not cured, cancel the lease.

801 65.11-5. *Penalties.* Unless the lease provides otherwise, interest charges and late payment
802 penalties shall apply in the absence of any specific notice to the lessee from Land Management,
803 and the failure to pay such amounts shall be treated as a breach of the lease.

804

805 **65.12. Appeals**

806 65.12-1. The lessee or interested party may appeal a determination of Land Management to the
807 Tribe's Judiciary in accordance with the Oneida Judiciary Rules of Civil Procedure.

808

809

End.

Chapter 65 LEASING

65.1. Purpose and Policy
65.2. Adoption, Amendment, Repeal
65.3. Definitions
65.4. General Provisions
65.5. Lease and Lease Document Requirements
65.6. Residential Leases

65.7. Agricultural Leases
65.8. Business Leases
65.9. Environmental and Cultural Reviews
65.10. Lease Management
65.11. Enforcement
65.12. Appeals

1
2 **65.1. Purpose and Policy**

3 65.1-1. *Purpose.* The purpose of this Law is to set out the Tribe's authority to issue, review,
4 approve and enforce leases. In addition, the purpose of this Law is to meet the requirements of
5 the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH
6 Act) by establishing a process under which the Tribe will be able to approve leases on Tribal
7 trust land without additional approval of the Secretary of the Interior.

8 65.1-2. *Policy.* It is the policy of the Tribe to set out the expectations and responsibilities of the
9 lessors and lessees of Tribal land and to ensure the leasing of Tribal land results in minimal risk
10 to the Tribe.

11
12 **65.2. Adoption, Amendment, Repeal**

13 65.2-1. This Law was adopted by the Oneida Business Committee by resolution _____
14 and shall take effect thirty (30) days after approval by the Secretary of the Interior.

15 65.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to
16 the procedures set out in the Legislative Procedures Act. Major, substantive changes to this Law
17 shall not take effect until they have been approved by the Secretary of the Interior. Minor,
18 technical amendments may take effect upon approval by the Oneida Business Committee.

19 65.2-3. Should a provision of this Law or the application thereof to any person or circumstances
20 be held as invalid, such invalidity shall not affect other provisions of this Law which are
21 considered to have legal force without the invalid portions.

22 65.2-4. In the event of a conflict between a provision of this Law and a provision of another
23 Tribal law, the provisions of this Law shall control.

24 (a) To the extent that this Law conflicts with any applicable federal statutes or
25 regulations, the federal statute or regulation shall control.

26 (b) To the extent that any lease to which this Law applies conflicts with this Law, this
27 Law shall control.

28 65.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians
29 of Wisconsin.

30
31 **65.3. Definitions**

32 65.3-1. This section shall govern the definitions of words and phrases used within this Law. All
33 words not defined herein shall be used in their ordinary and everyday sense.

34 (a) "Assignment" shall mean an agreement between a lessee and an assignee whereby the
35 assignee acquires all or some of the lessee's rights and assumes all or some of the lessee's
36 obligations under a lease.

37 (b) "Cultural Heritage Department" shall mean the Tribal entity responsible for
38 conducting cultural reviews as required under this Law.

39 (c) "Cultural review" shall mean a review of the anticipated effects of a proposed lease or
40 lease document on archaeological, cultural and/or historic resources, as defined in the
41 Tribe's Protection and Management of Archeological & Historical Resources Law.

- 42 (d) “Day” or “days” shall mean calendar days, unless otherwise specified.
- 43 (e) ~~“Environment~~Encumbrance” shall mean ~~the natural and built environment on a claim~~
44 or ~~near the Reservation~~liability that is attached to property.
- 45 (f) “Environmental Health and Safety Division” shall mean the Tribal entity responsible
46 for conducting environmental reviews as required under this Law.
- 47 (g) “Environmental review” shall mean a review of the anticipated environmental effects
48 of a proposed lease or lease document.
- 49 ~~(h) “Equity” shall mean the value of a property over and above the indebtedness against~~
50 ~~it, and includes tangible and intangible assets.~~
- 51 ~~(i)~~(h) “Improvements” shall mean buildings, other structures, and associated
52 infrastructure attached to the leased premises.
- 53 ~~(j) “Interest” shall mean an ownership right to the surface estate of Tribal land.~~
- 54 ~~(k)~~(i) “Land Management” means the Division of Land Management or other Tribal
55 entity responsible for entering into leases of Tribal land ~~in accordance with this Law~~.
- 56 ~~(l)~~(j) “Lease” shall mean a written contract between the Tribe and a lessee, whereby the
57 lessee is granted a right to use or occupy Tribal land, for a specified purpose and
58 duration.
- 59 ~~(m)~~(k) “Lease document” shall mean a lease amendment, lease assignment, sublease or
60 encumbrance.
- 61 ~~(n)~~(l) “Leasehold mortgage” shall mean a mortgage, deed of trust, or other instrument
62 that pledges a lessee’s leasehold interest as security for a debt or other obligation owed
63 by the lessee to a lender or other mortgagee.
- 64 ~~(o)~~(m) “Lessee” shall mean a person or entity who has acquired a legal right to use or
65 occupy Tribal land by a lease under this Law, or one who has the right to use or occupy a
66 property under a lease.
- 67 ~~(p)~~(n) “Lessor” shall mean the Tribe as the legal, beneficial and/or equitable owner of
68 Tribal land subject to a Lease, ~~including the Tribe,~~ and any ~~heir, successor, executor,~~
69 administrator or assign of the ~~Lessor~~Tribe.
- 70 ~~(q)~~(o) “Performance bond” shall mean a ~~written promise~~bond given to ensure the timely
71 performance of a lease.
- 72 ~~(r) “Public” shall mean a person having a personal and direct interest in any significant~~
73 ~~effect on the environment of a proposed lease, which will be presumed to be such persons~~
74 ~~who are known to own or occupy lands within one (1) mile of the site of the proposed~~
75 ~~lease, unless a person not within the category demonstrates a material and particular~~
76 ~~interest that will be impacted by a specific significant effect on the environment of a~~
77 ~~particular proposed lease.~~
- 78 ~~(s)~~(p) “Secretary” shall mean the Secretary of the Interior, U.S. Department of the
79 Interior, or its authorized representative.
- 80 ~~(t) “Significant effect on the environment” shall mean a proposed lease will have, or~~
81 ~~could have, a material and demonstrable impact on the environment.~~
- 82 ~~(u)~~(q) “Sublease” shall mean a written agreement by which the lessee grants to ~~an~~
83 ~~individual~~a person or entity a right to use or occupy no greater than that held by the
84 lessee under the lease.
- 85 ~~(v) “Trespass” shall mean any unauthorized occupancy, use of or action on any Tribal~~
86 ~~land.~~
- 87 ~~(w)~~(r) “Tribal” or “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.
- 88 ~~(x) “Tribal fee land” shall mean the surface estate of Tribal trust land and any interest~~
89 ~~therein,~~land owned by the Tribe held in fee interest.

~~(y)~~(s) “Tribal land” shall mean Tribal fee land and Tribal trust land status.

~~(z)~~(t) “Tribal trust land” shall mean the surface estate of land or any interest therein held by the United States in trust for the Tribe; land held by the Tribe subject to federal restrictions against alienation or encumbrance; land reserved for federal purposes; and/or land held by the United States in trust for a Tribal corporation chartered under Section 17 of the Indian Reorganization Act, 25 U.S.C §§ 461-479, et. seq.

~~(aa)~~ “Violation” shall mean a failure to take an action, including payment of compensation, when required by the lease, or to otherwise not comply with a term of the lease.

65.4. General Provisions

65.4-1. *Applicable Land.* This Law applies to all Tribal ~~fee land and Tribal trust~~ land.

65.4-2. *Applicable Leases.*

(a) Except as excluded in (b) below, or as contrary to applicable federal statutes and regulations, this Law shall apply to all residential, agricultural and business leases executed by the Tribe and to all actions and decisions taken in connection with those leases. Provided that, nothing herein shall be construed to affect the terms and conditions of existing leases.

(b) This Law shall not apply to mineral leases or to any lease of individually owned Indian allotted land in accordance with 25 U.S.C. 415(h)(2).

65.4-3. *Applicable Law. In addition to this Law, leases approved under this Law are subject to:*

(a) all Tribal law, except to the extent those Tribal laws are inconsistent with applicable federal law;

(b) applicable federal laws; and

(c) any specific federal statutory requirements that are not incorporated in this Law.

~~65.4-4~~ Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the Tribe under federal law, the Secretary may, upon reasonable notice from the Tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any residential, agricultural or business lease on Tribal trust land executed by the Tribe. The United States shall not be liable for losses sustained by any party to a residential, agricultural or business lease executed pursuant to this Law.

~~65.4-4~~5. All disputes over residential, agricultural and business leases shall be resolved under the laws of the Tribe and in accordance with federal law. Nothing in this Law shall be construed to waive the Tribe’s sovereign immunity.

~~65.4-5~~6. After the Secretary approves this Law, all leases of Tribal trust land approved and executed under this Law shall be effective without federal approval under 25 U.S.C. 415;~~(h)~~, unless the Secretary rescinds approval of this Law and reassumes responsibility for such approval.

65.5. Lease and Lease Document Requirements

65.5-1. *Information and Application.* Information on obtaining residential, agricultural or business leases or lease documents shall be available at Land Management. ~~Individuals~~Parties interested in obtaining a residential, agricultural or business lease or lease document shall submit an application to Land Management.

(a) Land Management shall develop, and the Oneida Land Commission shall approve, the format and requirements set out in the lease and lease document applications for different types of leases, as well as additional procedures and processes to be followed when offering and awarding leases and lease documents.

138 65.5-2. *Terms and Conditions.* Leases shall be in writing and contain, at a minimum, the
139 following:

- 140 (a) A description of the land or building being leased; business leases shall contain
- 141 adequate site surveys and legal descriptions based on metes and bounds, rectangular, or
- 142 lot and block systems;
- 143 (b) The effective date and term of the lease;
- 144 (c) The purpose of the lease and authorized uses of the leased premises;
- 145 (d) The parties to the lease;
- 146 (e) How much rent is due, when it is due, who receives it, what form(s) of payment is
- 147 acceptable, and whether any late payment charges or special fees apply and the rate of
- 148 interest to be charged if the lessee fails to make payments in a timely manner;
- 149 (f) Whether there will be rental reviews or adjustments, how and when they will be
- 150 done, when any adjustments will be effective and how disputes regarding adjustments
- 151 will be resolved;
- 152 (g) Who will be responsible for any taxes applied to the property and/or
- 153 improvements;
- 154 (h) Due diligence requirements that apply, if any; and
- 155 (h~~i~~) Performance bond and insurance requirements that apply, if any;
- 156 (j) Land Management or the Secretary has the right, at any reasonable time during the
- 157 term of the lease and upon reasonable notice, in accordance with federal regulations, to
- 158 enter the leased premises for inspection and to ensure compliance with the lease.
- 159 (k) The lessee holds the United States and the Tribe harmless from any loss, liability or
- 160 damages resulting from the lessee's use or occupation of the leased premises;
- 161 (l) The lessee indemnifies the United States and the Tribe against all liabilities or costs
- 162 relating to the use, handling, treatment, removal, storage, transportation, or disposal of
- 163 hazardous materials, or the release or discharge of any hazardous material from the leased
- 164 premises that occurs during the lease term, regardless of fault, with the exception that the
- 165 lessee is not required to indemnify the Tribe for liability or cost arising from the Tribe's
- 166 negligence or willful misconduct;
- 167 (m) Land Management or the Secretary may, at its discretion, treat as a lease violation
- 168 any failure by the lessee to cooperate with a request to make appropriate records, reports
- 169 or information available for inspection and duplication.

170 65.5-3. *Improvements.* A lease shall set out requirements related to improvements, including:

- 171 (a) whether improvements may be constructed;
- 172 (b) ownership of improvements;
- 173 (c) responsibility for constructing, operating, maintaining and managing improvements;
- 174 (d) removal of improvements;
- 175 (e) whether a lessee may develop equity in improvements and sell its interest in the lease
- 176 based on the equity; and
- 177 (f) the lessor's right of first refusal to purchase the lessee's interest, if any.

178 65.5-4. *Obtaining a Lease Document.* Lease documents shall be by written consent of the lessor
179 and the lessee, unless otherwise provided herein and shall contain the effective date of the lease
180 document.

- 181 (a) The lease may authorize subleases only upon approval and execution from Land
- 182 Management. This in no way relieves the parties from carrying out their duties under the
- 183 lease.
- 184 (b) The lease may authorize encumbrances, including leasehold mortgages, on the
- 185 leasehold interest for the purpose of financing to develop and improve the premises.

186 Approval of the encumbrance by Land Management is required.
187 (c) The lease shall not authorize mortgages that encumber title to Tribal ~~fee land or~~
188 ~~Tribal trust~~ land.

189 ~~65.5-5. Insurance. The lease shall set out any minimum insurance the lessee must obtain and~~
190 ~~maintain during the term of the lease.~~

191 ~~65.5-6. Environmental and Cultural Reviews.~~ Land Management shall not approve a lease or
192 lease document until an environmental review and a cultural review, as required under section
193 65.9, have been completed. Leases approved and executed in violation of this section shall be
194 null and void.

195 65.5-6. Documentation.

196 ~~65.~~ The following are required for a party to enter into a lease:

197 (a) a signed lease; and

198 (b) any reports, surveys and site assessments needed to comply with Tribal
199 environmental, cultural resource and land use requirements.

200

201 65.6. Residential Leases

202 65.6-1. In addition to the requirements that apply to all leases under section 65.5 ~~of this Law~~, the
203 requirements of this section shall also apply to residential leases.

204 ~~65.6-2. Duration and Renewal.~~

205 ~~(a) A residential lease shall state the effective date of the lease, however, no residential~~
206 ~~lease shall be approved more than twelve (12) months prior to the commencement of the~~
207 ~~term of the lease.~~

208 ~~(b) The term of the lease.~~ Residential leases shall not exceed seventy-five (75) years ~~except that~~
209 ~~any such lease may include an option to renew for up to one (1) additional term, which may not~~
210 ~~exceed seventy-five (75) years.~~

211 65.6-3. *Rental Reviews.* It is in the best interest of the Tribe to ordinarily not have rental
212 reviews and/or adjustments on residential properties; however, the lease shall set out
213 circumstances that would result in Land Management reviewing the rental rate and adjusting it to
214 reflect the fair market value or an adjusted fair market value.

215 ~~65.6-4.~~

216 ~~65. Documentation. The following are required for an individual to lease a residential site:~~

217 ~~(a) a signed lease; and~~

218 ~~(b) any reports, surveys and site assessments needed to comply with Tribal~~
219 ~~environmental, cultural resource and land use requirements.~~

220

221 65.7. Agricultural Leases

222 65.7-1. In addition to the requirements that apply to all leases under section 65.5 ~~of this Law~~, the
223 requirements of this section shall also apply to agricultural leases. An agricultural lease shall be
224 entered into for the lease of land suited or used for the production of crops, livestock or other
225 agricultural products, or land suited or used for a business that supports the surrounding
226 agricultural community.

227 65.7-2. *Duration and Renewal.* Agricultural leases shall not exceed twenty-five (25) years,
228 except that any such lease may include an option to renew for up to two (2) additional terms,
229 which may not exceed twenty-five (25) years each.

230 65.7-3. *Land Management.* Agricultural leases shall require the lessee to manage land in
231 accordance with any agricultural resource management plan developed by the Tribe.

232

233 **65.8. Business Leases**

234 | 65.8-1. In addition to the requirements that apply to all leases under section 65.5 ~~of this Law~~, the
235 requirements of this section shall also apply to business leases.

236 | 65.8-2. *Duration and Renewal*. Business leases shall not exceed twenty-five (25) years, except
237 that any such lease may include an option to renew for up to two (2) additional terms, which may
238 not exceed twenty-five (25) years each.

239 65.8-3. *Supporting Documents*. All applicants for business site leases shall submit the following
240 documents to Land Management:

- 241 (a) financial statement;
- 242 (b) site survey and legal description, if applicable;
- 243 (c) other documents as may be required by the business site leasing management plan.

244 65.8-4. *Appraisal, Local Studies*.

245 (a) The fair annual lease value shall be determined by an appraisal or equivalent
246 procedure performed by Land Management utilizing the following data: improvement
247 cost, replacement cost, earning capacity, and sales and lease data of comparable sites. An
248 appraisal log reporting the methods of appraisal and value of the Tribal land shall be
249 attached to every business site lease.

250 (b) Alternatively, the fair annual lease value shall be determined by an appraisal
251 performed by a licensed appraiser utilizing the Uniform Standards of Professional
252 | Appraisal Practice or another commonly accepted method of appraisal. An appraisal log
253 describing the method of appraisal and value of the Tribal land shall be attached to every
254 business site lease.

255 65.8-5. *Fair Annual Lease Value*.

256 (a) No lease shall be approved for less than the present fair annual lease value as set forth
257 in the appraisal, except as follows:

- 258 (1) The lessee is in the development period;
- 259 (2) Land Management is providing an incentive for businesses to locate on Tribal
260 land, and must provide lease concessions, lease improvement credits, and lease
261 abatements to attract such business; or
- 262 (3) Land Management determines such action is in the best interest of the Tribe.

263 (b) A lease may:

- 264 | (1) Be structured at a flat lease rate ~~;~~ and/or
- 265 (2) Be structured at a flat lease rate plus a percentage of gross receipts, if the
266 lessee is a business located in a shopping center, or the lessee generates over one
267 | million dollars (\$1,000,000.00) annually in gross receipts ~~;~~ and/or
- 268 (3) Be structured based on a percentage of gross receipts, or based on a market
269 | indicator ~~;~~ and/or
- 270 (4) Be structured to allow for lease rate adjustments. The lease shall specify how
271 adjustments will be made, who will make such adjustments, when adjustments
272 | will go into effect, and how disputes shall be resolved ~~;~~ and/or
- 273 | (5) Be amended to allow for lease rate adjustments ~~;~~ and/or
- 274 (6) Provide for periodic review. Such review shall give consideration to the
275 economic conditions, exclusive of improvement or development required by the
276 contract or the contribution value of such improvements.

277 (c) Land Management shall keep written records of the basis used in determining the fair
278 annual lease value, as well as the basis for adjustments. These records shall be presented
279 to the lessee for its review and acceptance or non-acceptance and included in any lease
280 file.

281 65.8-6. *Performance Bond.* If a performance bond is required under a business lease, a
282 performance bond shall be obtained by the lessee in an amount that reasonably assures
283 performance on the lease. Such bond shall be for the purpose of guaranteeing the following:

- 284 (a) The annual lease payment;
- 285 (b) The estimated development cost of improvements; and
- 286 (c) Any additional amount necessary to ensure compliance with the lease.

287

288 **65.9. Environmental and Cultural Reviews**

289 65.9-1. *Applicability.* Land Management shall not consider approving a lease or lease document
290 until an environmental review and a cultural review have been completed.

291 65.9-2. *Environmental Reviews.* An environmental review shall be conducted by or at the
292 request of the Environmental, Health and Safety Division on all proposed leases and lease
293 documents. The environmental review shall be conducted in accordance with the process
294 established under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq, to
295 evaluate environmental effects of federal undertakings.

296 65.9-3. *Cultural Reviews.* A cultural review shall be conducted by or at the request of the
297 Cultural Heritage Department on all proposed leases and lease ~~documents~~documents. The
298 cultural review shall be conducted in accordance with the permit review requirements for
299 undertakings established in the ~~Tribe's~~Protection and Management of Archeological &
300 Historical Resources ~~L~~aw.

301 65.9-4. *Environmental and Cultural Review Completion.* The Environmental, Health and Safety
302 Division shall forward a completed environmental review, which includes the ~~Cultural Heritage~~
303 ~~Department report~~cultural review, to Land Management for consideration in the approval or
304 denial of a lease or lease document.

305 (a) Before approving a lease or lease document, Land Management may require any
306 reasonable actions, as recommended within the environmental review or cultural review,
307 be completed.

308 (b) The Environmental, Health and Safety Division shall prepare an updated
309 environmental review and the Cultural Heritage Department shall prepare an updated
310 cultural review upon completion of any reasonable actions.

311

312 **65.10. Lease Management**

313 65.10-1. *Management Plan.* Land Management shall:

- 314 (a) manage existing leases as well as those executed pursuant to this Law; and
- 315 (b) institute a leasing management plan that employs sound real estate management
316 practices, and addresses accounting, collections, monitoring, enforcement, relief, and
317 remedies.

318 65.10-2. *Accounting.* Land Management shall implement an accounting system that generates
319 invoices, accounts for payments, and dates of when rate adjustments should be made. Nothing in
320 this section shall be construed to absolve the lessee of its duties under a lease.

321 65.10-3. *Recording Leases and Lease Documents.* Land Management shall provide all leases
322 and lease documents of Tribal trust land, except residential subleases and encumbrances, to the
323 Bureau of Indian Affairs for recording in the Land Titles and Records Office. All leases and
324 lease documents of Tribal land shall also be recorded in the Tribe's Register of Deeds. Land
325 Management shall also distribute a copy of the recorded lease documents to the lessee.

326 65.10-4. *Ownership of Records.* Records of activities taken pursuant to this Law with respect to
327 Tribal trust land are the property of the United States and the Tribe. Records compiled,
328 developed or received by the lessor in the course of business with the Secretary are the property

329 of the Tribe.

330 65.10-5. *Administrative Fees.* Land Management may charge administrative fees for costs
331 associated with issuing a lease or lease document, or conducting any other administrative
332 transaction.

333

334 **65.11. Enforcement**

335 65.11-1. Land Management shall have all powers necessary and proper to enforce this Law and
336 the lease terms. This includes the power to enter the premises at a reasonable time, with or
337 without notice, assess penalties, assess late payments and cancel leases. Land Management may
338 request the Oneida Law Office assist in enforcement of this Law and leases.

339 65.11-2. *Harmful or Threatening Activities.* If a lessee or other party causes or threatens to
340 cause immediate and significant harm to the premises, or undertakes criminal activity thereon,
341 Land Management or other party may take appropriate emergency action, which includes
342 cancelling the lease and/or securing judicial relief.

343 65.11-3. *Holdovers and Trespass.* If a lessee remains in possession of a property after the
344 expiration or cancellation of a lease, or a person occupies a ~~residential~~ property without Land
345 Management's approval, Land Management shall take action to recover possession of the
346 property; and/or pursue additional remedies, such as damages, if applicable.

347 65.11-4. *Defaults.* If Land Management determines a lessee is in default, Land Management
348 shall take action to have the lessee cure the default or, if the default is not cured, cancel the lease.

349 65.11-5. *Penalties.* Unless the lease provides otherwise, interest charges and late payment
350 penalties shall apply in the absence of any specific notice to the lessee from Land Management,
351 and the failure to pay such amounts shall be treated as a breach of the lease.

352

353 **65.12. Appeals**

354 65.12-1. The lessee or interested party may appeal a determination of Land Management to the
355 Tribe's Judiciary in accordance with the Oneida Judiciary Rules of Civil Procedure.

356

357

End.



Legislative Operating Committee

February 4, 2015

Petition: Budget Cuts, Swimming Lessons, GTC Directives & Home Repairs for Elders

Submission Date: December 10, 2014

Public Meeting:
 Emergency Enacted:

LOC Sponsor: Brandon Stevens

Summary: *A petition was submitted with four resolutions attached. The resolutions contain various directions, including:*

1. *OBC may not simply make across the board percentage cuts; the OBC and upper management may not make budget cuts that affect the health, safety and education of the Oneida people without the expressed approval of GTC.*
2. *Affordable swimming lessons will be provided at the Oneida Fitness Center.*
3. *Boards, Committees and Commissions must carry out directives given by GTC unless it conflicts with federal or state law.*
4. *The OBC and management may not refuse to help with home repair assistance to Oneida elders who live on the Reservation even if their home is old and management feels it is not worth it; if they do so, they must provide free homes for low income Oneida elders on the Reservation.*

12/10/14 OBC: Motion by Lisa Summers to accept the verified petition submitted by Madelyn Genskow, to send the petition to the Law, Finance and Legislative Reference offices to begin work on the appropriate analyses, and that a progress report be submitted in 30 days, seconded by Jenny Webster. Motion carried unanimously.

01/21/15 LOC: Motion by Jennifer Webster to add the Petition: Budget Cuts, Swimming Lessons, GTC Directives & Home Repair for Elders to the active files list; seconded by Tehassi Hill. Motion carried unanimously.

Motion by Tehassi Hill to forward the memorandum updating the Oneida Business Committee on the progress regarding Petition: Budget Cuts, Swimming Lessons, GTC Directives & Home Repairs for Elders analysis; seconded by Fawn Billie. Motion carried unanimously.

Next Steps:

- LOC to review the analyses and forward to the OBC for consideration.

Oneida Tribe of Indians of Wisconsin Legislative Reference Office

Lynn A. Franzmeier, Staff Attorney
Taniquele J. Thurner, Legislative Analyst
Candice E. Skenandore, Legislative Analyst



P.O. Box 365
Oneida, WI 54155
(920) 869-4376
(800) 236-2214
<https://oneida-nsn.gov/Laws>

Statement of Effect

Petition Resolution: Budget Cuts

Summary

A petition was submitted by Madelyn Genskow to the Tribal Secretary's Office on November 17, 2014 requesting a special GTC meeting to review and consider four attached resolutions. On November 19, 2014, the Enrollments Department verified the petition met the required number of signatures and on December 10, 2014, the Oneida Business Committee (OBC) accepted the petition and forwarded it for analysis, directing that a progress report be submitted in 30 days. The first resolution attached to the petition prohibits the OBC from making across the board percentage cuts and prohibits the OBC and upper management from making budget cuts without express GTC approval.

Submitted by: Taniquele J. Thurner, Legislative Analyst, Legislative Reference Office

Reviewed by: Lynn A Franzmeier, Staff Attorney, Legislative Reference Office

Analysis from Legislative Reference Office

The Findings

When a Resolution is adopted, the adopting entity is establishing the Resolution's findings (i.e. the "Whereas" provisions), as true facts and statements. This Resolution makes the following findings:

- On October 14, 2014, the Oneida Tribal Treasurer and the OBC ordered the upper management of the Oneida Tribe to cut their budgets by 12% across the board.
- The OBC ordered an ongoing Comprehensive Hiring Freeze.
- This action has had a negative impact on health and safety issues for Oneida Children.
- This action has a negative effect on the education of the Oneida People.

The first finding states that on October 14, 2014 the OBC (this would include the Treasurer, so it is not clear why that position is listed separately) ordered the Tribe's upper management to cut their budgets by 12% across the board. However, the only action taken by the OBC at the October 14 meeting was to approve the Special GTC Meeting packet for November 15, 2014. This analysis is not disputing that the OBC directed budget cuts; but it may be helpful to revise the Resolution to include a more specific and accurate finding of where and how the OBC issued this order.

The second finding is that the OBC ordered a Comprehensive Hiring Freeze. It is not clear why this is a finding, because the Resolves do not mention anything about a hiring freeze and the Resolution does not seek to make any changes that would directly affect the hiring freeze. However, if it is determined necessary to include this finding, it is recommended that the provision be revised to provide more detail about when and how the OBC ordered the hiring freeze, and exactly what it entails, similar to the first finding.

The third and fourth finding are that “this action” (it is not clear if this refers to the directed budget cuts or to the hiring freeze, or to both) has had a negative effect on health and safety issues for Oneida children, and a negative effect on the education of the Oneida People. However, these findings do not provide any information or detail about how or why the directed budget cut or hiring freeze have negatively affected health and safety issues for Oneida children, or the education of the Oneida People.

The Resolves

The first resolve states that the OBC may not simply make across the board percentage cuts. This would not affect the percentage cuts that have already been made; it would just prohibit the OBC from doing so in the future.

This resolution would prohibit across the board percentage cuts, but does not identify how budget cuts could or should be made instead. When across-the-board budget cuts are ordered, each department/area is able to review their own budget and determine how to best make those budget cuts – those departments are most familiar with their own operations and may be the most suited to understand how to make budget cuts with the least negative impact on operations. It is not clear how budget cuts should be made if not by this method.

The second resolve states that the OBC and upper management may not make budget cuts that affect the health, safety and education of the Oneida People without the express approval of GTC. There are three concerns with this provision.

First: In general, once a budget has been adopted by GTC, it cannot be changed; however the OBC may make emergency amendments when necessary to protect the health, safety and welfare of the Tribe. If the OBC is unable to order emergency budget cuts in an urgent situation, then there is a risk of the Tribe suffering great financial damage in the time between identifying the emergency and bringing the item to GTC for approval – for example, if a federal government shutdown means grant money is suddenly frozen, then the Tribe may need to use other funding sources to pay for things that the grant money was intended to cover, and if the OBC cannot cut budgets on an emergency basis, then they may run out of money for payroll.

Second: If budget cuts are needed due to an emergency budget situation, it may not be fiscally responsible to call an additional GTC meeting to obtain approval – in 2013 and 2014, the Tribe paid \$2,653,845 to hold 12 GTC meetings – an average cost of \$221,154 per meeting; and this petition would require meetings to be called at a time when the Tribe’s financial situation is already precarious.

Third: The language - this resolution would prohibit budget cuts that affect the health, safety and education of the People without approval; but just about any budget cut could be seen as affecting one or more of those three areas. Those are very broad topics, and it may be beneficial to revise the language to more specifically identify how a budget cut would need to affect the health, safety or education, before it would require GTC approval.

Conclusion

This Resolution does not conflict with any Tribal laws. This Resolution does not have a legislative impact, but it may be beneficial to revise some provisions of the Resolution to more clearly state the intent. In particular, it would be helpful to understand what alternatives should be used instead of across-the-board budget cuts; and to understand what the petitioner intends to happen in situations where emergency budget cuts are necessary to protect the health, safety and education of the membership.

Oneida Tribe of Indians of Wisconsin Legislative Reference Office

Lynn A. Franzmeier, Staff Attorney
Taniquele J. Thurner, Legislative Analyst
Candice E. Skenandore, Legislative Analyst



P.O. Box 365
Oneida, WI 54155
(920) 869-4376
(800) 236-2214
<https://oneida-nsn.gov/Laws>

Statement of Effect

Petition Resolution: Swim Lessons

Summary

A Petition was submitted to the Tribal Secretary's Office on November 17, 2014, and states "we the under signed General Tribal Council members request a special GTC meeting to review and consider the attached resolutions. In the event that public hearings are required we direct the Business Committee to hold the required Public hearings and bring these resolutions to the GTC intact."

The Petition was verified by the Enrollment Director on November 19, 2014 and on December 10, 2014, the Oneida Business Committee (OBC) directed the Legislative Reference Office to complete a legislative analysis on the Petition. This Statement of Effect focuses on the Resolution that directs the Oneida Fitness Center to provide affordable swim lessons.

Submitted by: Lynn A Franzmeier, Staff Attorney, Legislative Reference Office

Analysis from Legislative Reference Office

According to the Resolution, the Oneida Business Committee and upper management have taken steps that have blocked the availability for Oneida children to receive affordable swim lessons at the Oneida Fitness Center. In addition, the Resolution states that being able to swim is a health and safety issue and the Business Committee is not properly taking care of this generation of children, although they talk about taking care of the next Seven Generations.

The Resolution states that we should be concerned with the health and safety of the children now and directs that affordable swimming lessons be provided at the Oneida Fitness Center. The Resolution does not discuss how to determine whether swim lessons are "affordable" and does not make any further direction. Adoption of this Resolution would require affordable swimming lessons to be provided at the Oneida Fitness Center and would leave it open as to who would determine what is affordable or how the term "affordable" would be defined.

Conclusion

This Resolution does not conflict with any Tribal laws.

Oneida Tribe of Indians of Wisconsin Legislative Reference Office

Lynn A. Franzmeier, Staff Attorney
Taniquele J. Thurner, Legislative Analyst
Candice E. Skenandore, Legislative Analyst



P.O. Box 365
Oneida, WI 54155
(920) 869-4376
(800) 236-2214
<https://oneida-nsn.gov/Laws>

Statement of Effect

Petition Resolution: Boards, Committees and Commissions to Carry out GTC Directives

Summary

A Petition was submitted to the Tribal Secretary's Office on November 17, 2014, and states "we the under signed General Tribal Council members request a special GTC meeting to review and consider the attached resolutions. In the event that public hearings are required we direct the Business Committee to hold the required Public hearings and bring these resolutions to the GTC intact."

The Petition was verified by the Enrollment Director on November 19, 2014 and on December 10, 2014, the Oneida Business Committee (OBC) directed the Legislative Reference Office to complete a legislative analysis on the Petition. This analysis focuses on the Resolution that directs that all Tribal boards, committees and commissions to carry out General Tribal Council (GTC) directives unless it conflicts with federal or state laws.

Submitted by: Candice E. Skenandore, Legislative Analyst, Legislative Reference Office
Reviewed by: Lynn A Franzmeier, Staff Attorney, Legislative Reference Office

Analysis from Legislative Reference Office

The Tribal Constitution recognizes the GTC as the governing body of the Tribe and requires GTC to elect the OBC which must perform the duties authorized by GTC. GTC has delegated to the OBC the authority under Article IV, Section 1 of the Tribal Constitution to appoint committees, delegates and officials to conduct Tribal business and relations and can adopt resolutions regulating the procedures of Tribal agencies, Tribal officials or Tribal organizations [See Constitution, Article III, Sections 1 & 3 and Article IV, Section 1 (g) & (i)].

Boards, committees and commissions are already obligated to follow GTC directives. The Comprehensive Policy Governing Boards, Committees and Commissions (Comprehensive Policy) requires all appointed and elected officials to take an oath of office which, among other things, calls for the official to uphold the laws and regulations of the Tribe, GTC and Tribal Constitution [See Comprehensive Policy 6-3 (c) (1) and 7-3 (c)]. If a member of a board, committee or commission is violating this oath, he/she can be removed from his/her positions pursuant to the Removal Law (elected) or Comprehensive Policy (appointed) [See Removal Law 4.4-1 and Comprehensive Policy 6-5].

Conclusion

This Resolution does not conflict with any Tribal laws. In addition, this Resolution does not have a legislative impact, but reiterates what is already expected of board, committee and commission members. If an official ignores a GTC directive he/she may be removed pursuant to the Removal Law or have his/her appointment terminated in accordance with the Comprehensive Policy.

Oneida Tribe of Indians of Wisconsin Legislative Reference Office

Lynn A. Franzmeier, Staff Attorney
Taniquele J. Thurner, Legislative Analyst
Candice E. Skenandore, Legislative Analyst



P.O. Box 365
Oneida, WI 54155
(920) 869-4376
(800) 236-2214
<https://oneida-nsn.gov/Laws>

Statement of Effect

Petition Resolution: Home Repair Assistance to Oneida Elders

Summary

A Petition was submitted to the Tribal Secretary's Office on November 17, 2014, and states "we the under signed General Tribal Council members request a special GTC meeting to review and consider the attached resolutions. In the event that public hearings are required we direct the Business Committee to hold the required Public hearings and bring these resolutions to the GTC intact."

The Petition was verified by the Enrollment Director on November 19, 2014 and on December 10, 2014, the Oneida Business Committee (OBC) directed the Legislative Reference Office to complete a legislative analysis on the Petition. This analysis focuses on the Resolution that directs the OBC and Management to not refuse to help with home repair assistance to those Oneida Elders that live in the Reservation boundaries and if they do so, they must provide free homes for low income Oneida elders within the Reservation boundaries.

Submitted by: Candice E. Skenandore, Legislative Analyst, Legislative Reference Office

Reviewed by: Lynn A Franzmeier, Staff Attorney, Legislative Reference Office

Analysis from Legislative Reference Office

After reviewing the Petition, Resolution and applicable Tribal Law, including the Real Property Law; it has been determined that this Resolution would not have a legislative impact. Therefore a legislative analysis is not required at this time. However there are issues the GTC may want to contemplate before considering this Resolution.

Considerations

Before considering this Resolution, GTC may want to make note of the following:

- There is no clear definition of Oneida Elders.
- This Resolution does not provide a clear understanding of what is considered to be "low income".
- Oneida Elder Services currently provides services to Oneida Elders which include home chores and home repairs.
- The Oneida Division of Land Management (Land Management) provides services that Oneida Elders can take advantage of including rental, leasing and loans for home repairs.
- The number of Oneida Elders that live on the Reservation and the types of housing they currently live in.

Oneida Elders

This Resolution would allow Oneida Elders to receive assistance for home repairs or obtain a free home but the term "Elder" is not define and is therefore open to interpretation.

GTC may want to define Oneida Elder before considering this Resolution. Various Tribal Laws and Resolutions define the term “Elder” differently. For example, both the Hunting, Fishing and Trapping Law and Woodcutting Ordinance define “elder” as a person who has reached the age of 55 or older [See *Hunting Fishing and Trapping 45.3-1 (g) and Woodcutting Ordinance 42.2-1 (g)*]. On the other hand, the Per Capita defines “elder” as a person who has reached the age of 62 and older or 65 and older [See *Per Capita 9.3-1 (e)*]. Likewise, BC Resolution 11-13-02-B defines the Tribe’s elder population at 65 years old or older [See *BC Resolution 11-13-02-B*]. Different age restrictions are placed on services provided by Elder Services; however this is at least partly due to federal funding restrictions. When considering the term “elder”, GTC may want to examine the current enrollment data in order to get a clear understanding of how many Tribal members this Resolution may apply to.

The following table uses data compiled by the Enrollment Department which was prepared on June 13, 2014.

2014 TRIBAL MEMBERSHIP					
Age Group	Reservation	Brown/Outagamie County	Milwaukee Area	Wisconsin	Out of State, unknown
55-61	380	231	227	250	524
62-64	119	74	74	61	169
65-69	172	89	84	97	197
70 +	304	119	117	124	321
Total	975	513	502	532	1211

Low Income

This Resolution directs the OBC and Management to not refuse with home repair assistance but if assistance is refused, that they must provide free homes for low income Oneida Elders in the Reservation boundaries. The Resolution does not specify what is considered “low income”. The U.S. Department of Health and Human Services develops the federal poverty guidelines annually and is used as an eligibility criterion by a number of federal programs. The 2014 Federal Poverty Guidelines for the continental U.S. are shown in the 2014 Federal Poverty Guidelines table.¹

2014 FEDERAL POVERTY GUIDELINES	
Person in Household	Poverty Guideline
1	\$11,670
2	\$15,730
3	\$19,790
4	\$23,850
5	\$27,910
6	\$31,970
7	\$36,030
8	\$40,090
<i>For families/households with more than 8 persons, add \$4060 for each additional person.</i>	

Oneida Elder Services

Oneida Elder Service provided services to more than 665 (unduplicated) elders in FY 2014 and provides services, on average, to more than 300 elders monthly. Among these services

¹ See U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, <http://aspe.hhs.gov/poverty/14poverty.cfm>

include home chore and home repair services which approximately 404 (unduplicated) Oneida Elders used or continue to use.²

Home Chore Service

Home Chore is a service that provides minor home and yard maintenance which includes raking and mowing and snow removal. The intent of this service is to assist in helping reinforce a more independent lifestyle for elders that wish to remain in their homes. Priority is given to elders who are age 70 or older and they are given first consideration for any services.

Home Repair Service

Oneida Elder Service also provides Home Repair services which offers low cost minor home repair to Oneida Elders who are 70 years old and older and own and live in their own homes. This service is not based on income but is dependent upon health and safety concerns. Elders who are under the age of 70 will be assisted; however, any costs of materials must be purchased by the elder prior to the work being performed. This service is for only those that live on the Reservation [See Oneida Elder Service's Book of Services, pg. 8].

Land Management

Land Management offers a number of services that Oneida Elders can take advantage of. One of those services is their rental program. As of January 5, 2015, Land Management has six applicants that are 62 years old or older and three applications where the applicant is at an age that is between 55 and 61. Land Management does not currently have a wait list but they do maintain the applications for a year and score them along with all other similar rental size need. There are 72 rental units and of those units, 20 are currently occupied by Oneida elders (62+). Theoretically Land Management does not set aside rental units for any particular group (i.e. Oneida Elders) but the lower level apartments are acceptable to elder applicants and a majority of the lower apartments are filled with Oneida elders. Because the Tribe is responsible for the upkeep of the rental units, the occupant must pay rent.

Land Management also has 636 Residential Lease sites which are homeownership that Tribal members, including Oneida Elders, can lease. These sites are not categorized according to the lessee's age.

In addition, Land Management also administers a Tribal Home Repair and Improvement Loan; however, there are requirements in which a Tribal member must meet in order to be eligible for the loan. Land Management has loan officers that work with Tribal members to help the Tribal members achieve an eligible status for the loan, if possible. This is a loan and must be paid back.³

Current Housing Options

The GTC may want to consider the type of housing the current Oneida Elders are living in on the Reservation. There are approximately 835 Oneida elders households on the

² Information surrounded by Oneida Elders Service was received from the Elder Service's Book of Services https://oneida-nsn.gov/uploadedFiles/wwwroot/Tribal_Departments/Elder_Services/3_Files/ES%20book%20of%20services.pdf and Oneida Elder Service Assistant Director.

³ Information surrounded by Land Management was received from the Land Management Property Manager

Reservation, including 12 households that are in the nursing home.⁴ The following table illustrates a breakdown of these Oneida Elder households:

	On Oneida Land	On Private Land	Total
Own	29.2%	38.2%	67.4%
Rent	24.3%	3.5%	27.8%
Live with Family/Friends	0.7%	1.4%	2.1%
Other	0.7%	2.1%	2.8%
Total	54.9%	45.2%	100.1%

Conclusion

This Resolution does not conflict with any Tribal laws. In addition, this Resolution does not have a legislative impact but GTC may want to consider defining “Oneida Elder” and “low-income” before adopting this Resolution. In addition, GTC may want to examine the services already provided by Oneida Elder Services and Land Management. Lastly, GTC may want to consider the financial impact this Resolution may have on the Tribe.

⁴ Information received from Tribal Statistician using the 2014 Oneida Quality of Life Survey. *The survey results have a +/- margin of error of 7.4%*

LOC Priority List

GTC DIRECTIVES

Petition: Budget Cuts, Swimming Lessons, GTC Directives and Home Repairs for Elders

Next Steps: Analyses submitted, waiting for GTC consideration

Petition: Child Care Department Consumer Complaint Policy

Next Steps: A work meeting is scheduled for February 23, 2015

Petition: Dialysis Center Development

Next Steps: Analysis submitted, waiting for GTC consideration

Petition: Judiciary Support System

Next Steps: Analysis submitted, waiting for GTC consideration

Petition: Raise Employee Salaries 99 Cents

Next Steps: Analysis submitted, waiting for GTC consideration

OBC DIRECTIVES

Comprehensive Policy Governing Boards, Committees and Commissions Amendments

Next Steps: Begin making amendments to the Policy

Furlough Policy

Next Steps: Public meeting held on February 5, 2015; consider comments and either make changes or forward to OBC for consideration

Higher Education

Next Steps: Continue drafting a Law that incorporates provisions of the Higher Education Student Handbook yet gives the Higher Education Office flexibility to operate

LOC PRIORITIES

BC Sanctions and Penalties

Next Steps: Research how this item affects the Code of Ethics, Removal Law and Comprehensive Policy Governing Boards, Committees and Commissions and decide to either combine this item with one or more of the mentioned legislation or continue to work on this item separately

Budget Management and Control Law

Next Steps: Continue to draft the Law

Code of Ethics Law Amendments

Next Steps: Continue making amendments to the Law

LOC Priority List

Employment Law

Next Steps: Review proposed draft and either continue work on the draft or create a new draft

Removal Law Amendments

Next Steps: Continue making amendments to the Law

ACTIVE FILES LIST

Agriculture Law

Summary: Consider legislation that would enable the Tribe to identify agricultural products that can be grown on the Reservation, including industrial hemp, in order to exercise the Tribe's sovereignty and pursue economic diversification.

Next Steps: Begin working on a draft, continue conducting monthly work meetings

Audit Committee Bylaws

Summary: Review the Audit Committee Charter and consider changing the charter to bylaws

Next Steps: Begin work on this item

Audit Law Amendments

Summary: The Audit Committee requested establishing a standard requirement for correcting high risk findings. The Committee also requested that the OBC clarify roles and responsibilities related to Audit issue interpretations and resolutions, including: who is the primary authority to determine whether audit issues are pursued or closed, who can enforce the need for management action and what process should be adopted to achieve results so past audits can be resolved and closed.

Next Steps: Review proposed draft and either continue work on the draft or create a new draft

Capping Damages and Awards from the Judicial System

Summary: Develop legislation that would cap damages and awards that can be rendered by the Judicial System

Next Steps: Review proposed draft and either continue work on the draft or create a new draft

Children's Code

Summary: Develop a Children's Code which would enable the Tribe to take jurisdiction of child welfare matters involving Tribal children. The Code will establish a Child Welfare Office and the Oneida Child Protective Board, and will address child welfare proceedings including CHIPS; termination of parental rights; adoption; and foster home licensing.

Next Steps: An outline is being created regarding what a Children's Code would encompass and then a meeting will be scheduled with the interested parties to provide the Finance Department with the information they need to determine what the potential fiscal impact of this legislation would be.

LOC Priority List

Election Law Amendments

Summary: Amend the Law to prohibit Tribal members from running for more than one seat per election and serving on more than one board, committee or commission; add enforcement provisions for campaign violations; streamline the role of Election Board, require a Milwaukee polling site; add provisions regarding election observations and clarify the referendum process.

Next Steps: The sponsor and the LRO are continuing to work on the draft.

Employee Advocacy Law

Summary: Develop a new Law that formally codifies the rules and requirements for Tribal employees who wish to serve as an advocate for other Tribal employees who are challenging disciplinary action.

Next Steps: Review proposed draft and either continue work on the draft or create a new draft

Environmental, Health and Safety Law

Summary: Develop a new Law that enables the Environmental, Health and Safety Department (EHSD) to protect land, water, air, people and safety on the Reservation. EHSD shall have the authority to protect the Reservation, promote public health & safety and do business on the Reservation as well as perform duties such as creating rules in implementing this Law.

Next Steps: The sponsor is reviewing the proposed draft and will determine whether it is ready to move forward for an analysis or if changes should be made

Family Court Amendments: Bench Warrants

Summary: Amendments to the Family Court to explicitly include bench warrant authority.

Next Steps: Waiting on input for implementation from the appropriate departments

Fitness For Duty Policy

Summary: Develop a policy that allows supervisors to send employees for an assessment when it is believed that an employee presents a health and/or safety hazard to themselves, others or the Tribe.

Next Steps: Review proposed draft and either continue work on the draft or create a new draft

GTC Meetings Law

Summary: Develop 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.

Next Steps: Review proposed draft and either continue work on the draft or create a new draft

Guardianship Law

Summary: Develop a Guardianship Law for minor children because the Child Custody, Placement and Visitation Law permits a third party (i.e. a non-parent) to petition for custody of a minor child, but does not address third-party guardianships.

LOC Priority List

Next Steps: Review proposed draft and either continue work on the draft or create a new draft

Hunting, Fishing and Trapping Law Amendments

Summary: Streamline the Law and separate policy making and management decisions from the Law to avoid yearly/bi-yearly updates to the Law.

Next Steps: Review amendments to the Law that were submitted by ERB and Conservation.

Investigative Leave Policy Amendments

Summary: Because of a decision made the Oneida Appeals Commission it was requested that the section of the Policy which prohibits the use of investigative leave when a complaint is filed be deleted. In addition, the time period of the investigation should be reduced from 30 days to 15 days.

Next Steps: Begin making amendments to the Policy

Law Enforcement Ordinance Amendments: Conservation Officers

Summary: In order to avoid confusion when it comes to issuing fines, OPD and the Law Office are asking that the Ordinance clarify that Conservation Wardens are not sworn police officers.

Next Steps: Begin making amendments to the Ordinance

Leasing Law

Summary: Develop a new law would allow the Tribe to approve surface leases at their discretion, instead of the Secretary of Interior, so long as the Secretary of Interior has approved Tribal surface lease regulations.

Next Steps: LOC considered the draft and analysis on February 4, 2015.

Marriage Law Amendments

Summary: Because the same-sex marriage ban was ruled unconstitutional in Wisconsin, this Law is being amended to recognize marriages conducted legally in Wisconsin, including same-sex marriages.

Next Steps: A proposed draft is complete and a legislative analysis and fiscal impact statement are being developed.

Membership Ordinance

Summary: Trust/Enrollment Department requested amendments to the Ordinance to include an individual's New York Oneida blood and Oneida of the Thames blood when determining blood quantum for Tribal membership.

Next Steps: Wait until the Sustain Oneida initiative gathers information and the Trust/Enrollment Department decides how to proceed

Motor Vehicle Law Amendments

Summary: Licensing Department proposed amendments to the Law to update the Law and remove the registration prices so they can be changed without having to amend the Law.

Next Steps: A public meeting is scheduled for February 19, 2015

LOC Priority List

Pow-wow Committee Bylaws

Summary: The Pow-wow Committee has requested additions to the Committee bylaws which address qualifications for serving on the committee.

Next Steps: Waiting for clarification and approval from Pow-wow Committee on the proposed bylaws

Rulemaking Law

Summary: Develop a new Law in order to have a consistent process for Tribal agencies that have been granted rulemaking authority under Tribal laws to adopt of administrative rules.

Next Steps: Develop the Law

Rules of Appellate Procedure Amendments

Summary: The Judiciary requested that amendments be made to the Rules to improve the process.

Next Steps: A public meeting was held on February 5, 2015, the LOC will review comments and either make changes or forward to the OBC for consideration

Tribal Hearing Bodies

Summary: This was a request for the LRO to conduct research on Tribal Boards, Committees and Commissions to find out which are also hearing bodies and where the hearing body authority comes from.

Next Steps: Decide how to proceed

Tribally-Owned Business Organization Code

Summary: Because the Tribe has several Tribally-owned entities, a proposal seeks the adoption of a Tribal corporation's code.

Next Steps: Develop the Code

Vehicle Driver Certification and Fleet Management

Summary: Risk Management requests a new Law to govern employee/Tribal official use of vehicles while on Tribal business and replace the current Vehicle Driver Certification Policy and Fleet Management Policy.

Next Steps: A public meeting is scheduled for February 19, 2015

Whistleblower Law

Summary: Develop a new Law that will replace the Employee Protection Law which would provide a more comprehensive avenue for complaints to be processed in a confidential manner.

Next Steps: Review proposed draft and either continue work on the draft or create a new draft

Workplace Violence Policy

Summary: Develop a new Policy that provides guidance to Tribal employees to maintain an environment at and within the Tribe's property and events that is free of violence and the threats of violence.

Next Steps: Develop the Policy

February 2015

February 2015						
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

March 2015						
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				

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Feb 1 - 7	Feb 1	2	3	4 9:00am 2:00pm LOC Meeting (BCCR)	5 11:30am 1:30pm Public Meeting-Furlough Policy and Rules of Appellate Procedure Amendments (BC_Conf_Room) - LOC_Calendar	6	7
	8	9 6:00pm 10:00pm GTC (Radisson)	10	11 BC Meeting (BCCR)	12	13	14
Feb 8 - 14	15	16	17	18 9:00am 2:00pm LOC Meeting (BCCR)	19 12:15pm 2:45pm Public Meeting-Vehicle Driver Certification & Fleet Mgt and Motor Vehicle Law Amendments (BC_Conf_Room) - LOC_Calendar	20	21
	22	23	24	25 BC Meeting (BCCR)	26	27	28
Feb 22 - 28							

March 2015

March 2015							April 2015						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7	5	6	7	1	2	3	4
8	9	10	11	12	13	14	12	13	14	15	16	17	18
15	16	17	18	19	20	21	19	20	21	22	23	24	25
22	23	24	25	26	27	28	26	27	28	29	30		
29	30	31											

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Mar 1 - 7	Mar 1	2	3	4 9:00am 2:00pm LOC Meeting (BCCR)	5	6	7
	8	9	10	11 BC Meeting (BCCR)	12	13	14
Mar 8 - 14	15	16	17	18 9:00am 2:00pm LOC Meeting (BCCR)	19	20	21
	22	23	24	25 BC Meeting (BCCR)	26	27	28
Mar 15 - 21	29	30	31	Apr 1	2	3	4
Mar 22 - 28							
Mar 29 - Apr 4							